BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BM/JR/2024-25/ 31044

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

In respect of:

Asian Hotels (West) Limited
PAN: AADCC0608C

In the matter of Asian Hotels (West) Limited

Facts of the Case:

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

Appointment of Adjudicating Officer:

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO"**) vide communique dated June 28, 2022 under section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter

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

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

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

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

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

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

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

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

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

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

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

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

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

4. In the interest of natural justice, an opportunity of personal hearing was given to the Noticee on September 6, 2022 vide notice dated August 19, 2022. Vide letter dated September 5, 2022, the Authorised Representative (hereinafter referred to as "AR") sought time to file reply and appear for personal hearing. Another opportunity of personal hearing was given to the Noticee on October 7, 2022 vide notice dated September 6, 2022.

5. Vide letter dated October 6, 2022 the AR informed that a pending application for initiation of Corporate Insolvency Resolution Process under section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC**") was admitted by the Hon'ble National Company Law Tribunal, New Delhi (hereinafter referred to as "**NCLT**") against the Noticee vide its order dated September 16, 2022. A moratorium under section 14 of IBC was also declared vide order dated September 16, 2022.

6. Subsequently, vide order dated January 29, 2024 Hon'ble NCLT noted that "*Ld. Counsel for the Ex. Directors submitted that pursuant to the orders of the Hon'ble NCLAT dated 17.10.2023, the entire amount of Rs.371.00 crores has been deposited and consequently the Hon'ble NCLAT, by order dated 09.01.2024 set aside the orders of this*

Tribunal dated 16.09.2022 in allowing the Section 7 Application and further closed the CIRP in this matter."

7. On closure of the CIRP proceedings, the pending adjudication proceedings was resumed. Accordingly, an opportunity of personal hearing was given to the Noticee on November 12, 2024 vide notice dated October 25, 2024. Vide email dated November 6, 2024, Noticee requested that the personal hearing may be rescheduled. Another opportunity of personal hearing was given to the Noticee on November 18, 2024 vide notice dated November 12, 2024. Vide email dated November 19, 2024, Noticee informed as they received the hearing notice very late, it was not possible for seek appropriate legal advice in such short span of time. Therefore, it was unable to attend the personal hearing. Vide email dated November 19, 2024, Noticee was given a final opportunity of personal hearing on December 10, 2024. A supplementary SCN dated November 27, 2024 was issued to Noticee wherein it was informed that the matter shall be adjudged under section 15A(b) of the SEBI Act.

8. Vide email dated December 10, 2024 Noticee referred to some unforeseen roadblock in finalizing the reply and sought for another date of hearing. Acceding to its request, last opportunity of personal hearing was given to the Noticee on December 12, 2024. Noticee submitted its reply vide email dated December 12, 2024 stating, inter alia, the following:

- *The allegations which have been levied against the Noticee are ansmg out the situations which are beyond the control of the Noticee as it is a juristic person. A juristic person, also known as a legal person, is an entity that the law treats as having legal rights and obligations, similar to a natural person (an individual). However, unlike a natural person, a juristic person cannot act independently because it lacks physical presence and consciousness. It only has legal capacity when its actions are carried out by individuals authorized to act on its behalf.*

- *it is sufficient to say that a Company, as a Juristic Person cannot act or make decisions without the involvement of its Board of Directors, Senior Management as KMPs and employees combined. If these individuals fail to act, the Company effectively becomes dormant / inactive in its business operations and is certain to face legal hurdles for no reason / defiance of its own self. This such inaction on part of the Directors, KMPs or employees (for whatsoever reason) could have severe consequences including but not limited to* *legal/ statutory non-compliances. This situation creates a scenario of impossibility on part of the Company to perform and since the Company can acts only through these individuals who are apparently not performing, it can come to point where the functioning of the Company comes to a complete stand-still.*

- *However, in the present case even when there were all the necessary human resources appointed to do the work and the effective corporate governance has been put in place by the law, due to the dead-lock in the different segments of the Board of Directors of the Company forming part of the promoter group, the very important link for smooth functioning of the Company was missing due to which the function of KMPs and the employees also came to a stand-still.*

- *A deadlock arises when the Board of Directors of the Company or its shareholders are unable to make decisions due to divided opinions, typically among the key stakeholders. In the present cased ue to the resignation of all the independent directors from the Board of the Company, the Board only consisted of three promoter group directors being Noticee Nos. 02 to 04. These directors were divided because of opinion in al the matters of functioning of the Company with Noticee No. 03 on one side and Noticee Nos. 02 and 04 on other side.*

<u>Allegation No. 01: Alleged misrepresentation of disclosures made to Stock Exchange regarding delay in submission of financial results by Noticee No.1</u>

- ***It** is submitted that instant SSCNs have been issued to the Noticee alleging and highlighting certain issues which are beyond its reasonable conhol as explained hereinabove and hence no action in this regard should be taken against the Noticee. The preparation and presentation of the financial statements as well as supply of information/details relevant for the preparation of financial statements, was not the responsibility of the Noticee; instead, the Board of Directors along with the management of the Noticee had engaged professionals in order to ensure the preparation and presentation of financial statements. The specific functions in respect to the financial affairs at the micro level were performed by these professions/officers/ employees of the Company and not by the Noticee as the directors of the Company. In this regard attention is once again drawn to the fact the Noticee is a juristic person and cannot act on its own wish and volitions.*

- *During the relevant period, it is a matter of record that the Audit Committee of the Company was not functional since 02 directors being RK Bhargava and Mr. Lalit Bhasin resigned had already resigned and tl1e 02 remaining Independent Directors, namely Mr. Arun Saxena and Ms. Tamali Sengupta, had resigned on account of the ongoing situation of impasse and deadlock in the management of the Company on June 26, 2021. Due to the resignation of all the independent directors during the relevant period, the financial statements of the Company could not be finalized and approved for presentation and publication. **It** is submitted that the non-functionality of the Audit*

Committee was also noted by the Statutory Auditors, in their resignation letter, disclosed by the Company on the Stock exchange(s).

- *Further, as opposed to what has been alleged, the Noticee hereby submits that the reason submitted by the Company to Stock Exchange(s), vide its letter dated June 25, 2021, for the aforesaid delay, was that it is currently not in a position to submit annual audited financial results for the relevant period within the prescribed timeline as the results were yet to be finalized by the Statutory Auditors of the Company. A bare perusal of the said letter, would establish that it has nowhere been alleged that the delay in conducting the audit has been from the Statutory Auditor's side and rightly so, since it is the Company who was not in a position to submit the financial statements on account of the aforesaid highlighted situation of difficulties in the functioning of the management of the Company. The finalization was pending because the documents could not be supplied to the Auditor and since the Statutory Auditor were not in a position to finalize the financial statements, the same could not have been submitted to the perusal of the Audit Committee and hence the disclosure done by the Company was scrupulously accurate and true. Therefore, such misrepresentation as alleged in the SSCNs was neither on account of inaction or delay by the Noticee nor the Statutory Auditors.*

- *In this regard, it is submitted that the Noticee had engaged professionals to ensure that the due process for preparation and finalization of its financial statements is followed in compliance with applicable law and also to ensure timely supply of relevant statements/ accounts to the Statutory Auditor for conducting the audit and to coordinate with the Statutory Auditor. It is due to the aforesaid delegation of the process of preparation and finalization of accounts; the remaining Board of Directors were assured that process was running smoothly. Here, it is important to note that no issues in the process and meeting the statutory timelines for the compliances were seen prior to issue under consideration. Even when the matters were escalated, the Board of Directors were always dependent on the details and data as presented to them by the designated employees, members of Senior Management and KMPs to take any decision.*

- *Further as regard to the allegation that the Company did not respond to queries sought in relation to the resignation of statutory audi tor and completion of audit, financial condition of the Company, etc. despite repeated reminders, it is to be note due to the concerned persons struggling with the ill-health and subsequent demise of Mr. Sushi! Kumar Gupta, non-functioning Board of Directors of the Company arising from the resignation of all the independent directors and the deadlock between the remaining executive directors, no consensus could be arrived at in regard to the response of to be given to the queries raised by the stock exchange(s) and there for due to this impossible situation, no adverse inference could be drawn against the Company.*

Allegation 02: Alleged non-disclosure of information w.r.t. default of payment:

- *The Company, vide letter dated May 28, 2021, made relevant disclosure to the Stock Exchange(s) regarding defaults committed by it in the payment of interest/ repayment of principal amount on loan borrowed from YBL, in terms of SEBI Circular bearing no. SEBI/HO/ CFD/ CMD1/CIR / P/ 2019/140 dated November 21, 2019, wherein the format for making disclosures to Stock Exchange(s), pertaining to each such instance of default, is prescribed. In this regard, the SSCNs duly records that the Noticee had made initial disclosure to Stock Exchange(s) regarding the default committed by the Company, in payment of interest/ repayment of principal amount on loans borrowed from YBL, however it alleges that the Noticee had failed to update material developments on a regular basis to Stock Exchange(s) in terms of applicable SEBI Circular.*

- *In this regard it is submitted that, a bare perusal of the aforesaid allegation would clearly establish that there was no wilful disobedience on part of the Company to comply with the alleged disclosures requirement in respect of the aforesaid default on loans. The fact that the Company had committed default on loans borrowed from YBL, had been adequately communicated to the shareholders at the very instance from side of the Noticee, vide letter dated May 28, 2021.*

- *In this regard, it is reiterated that due to the ongoing difficult position of the Company where the Company was fighting fires at various end arising from the impact of COVID-19, resignation of directors, impasse in the Board of Directors, insubordination of the employees of the Company, weakening financial position of the Company, non- disbursement of the approved loan by YBL, the Company failed to update the stock exchanges and investors regarding the continuing default of repayment of loan with the YBL.*

- *In regards to the aforesaid, it is submitted that the Noticee has always earnestly tried to live up with the above referred issues so as to ensure timely regulatory compliances. However, it had to depend upon the Compliance officer of the Company for ensuring the day-to-day compliances, viz. updating material developments on a regular basis to Stock Exchange(s.) as the Board of Directors of the Company had authorized its Key Managerial Personnel, i.e., Compliance Officer for the purpose of determining materiality of an event or information and for the purpose of making day-to-day disclosures to Stock Exchange(s). However, it is submitted that due to the ongoing situations beyond the control of the Company, no disclosure could be made.*

- *In this regard, it is further submitted that by not holding Noticee No. 03 for the said violation, once again the Ld. Adjudicating officer has indirectly concluded that the no fault can be found with the Company when no fault can be found with its officers entrusted by law to carry out such compliances leading to the alleged violation.*

<u>Allegation No. 03: Alleged incomplete disclosure regarding resignation of Statutory Auditor</u>

- *The Statutory Auditors of the Company, vide letter dated September 13, 2021, submitted their resignation with effect from September 14, 2021. The intimation of this resignation was made by the Company to the Stock Exchange(s) on September 15, 2021, in accordance with SEBI Circular bearing no. CIR / CFD/ CMD1/114/ 2019 dated October 18,2019, which prescribes the conditions to be complied with upon resignation of the Statutory Auditor of listed entity. The SSCNs observes that the information disclosed by the Company regarding the resignation of Statutory Auditor was incomplete and not as detailed, as required in terms LODR Regulations, 2015 read with applicable SEBI Circular.*

- *Due to the resignation of all the independent directors during the relevant period, the Audit Committee of the Board could not be constituted and became non-operational. Hence, the concerns raised by the Statutory Auditor in its resignation letter could not be deliberated upon. Further due to the rift between the promoter directors of the Company, it was highly difficult to find and appoint competent and totally independent personnel in order to act as Independent Director on board of the Company within a short span of time.*

- *Further, with regards to alleged failure by the board of directors to deliberate upon the said concerns, it is submitted that the reasons as cited by the Auditors of the Company were self-explanatory and did not require any deliberations. However, despite the ongoing situation of impasse in the Company, the Chairperson being Noticee No. 02 had attempted to hold a Board Meeting on several occasions in order to discuss the various compliances issues including that of deliberation on the resignation of statutory auditor and had sent repeated reminders to Compliance Officer to facilitate the convening of said Board Meeting during the month of September 2021 however due to the facts beyond the control of the Company arising from the impasse situation between the management the meetings could not be held.*

- *Therefore, it can be notes that the person designated with the duties didn't perform their duties creating a situation of supervening impossibility of part of the Noticee who couldn't act without the functioning of the designated humans for specific tasks is presently alleged with violations due to such impossibility of performance.*

9. The AR of the Noticee appeared on the scheduled date and reiterated the submissions made vide email dated December 12, 2024. Vide email dated December 16, 2024, it made further submissions stating, inter alia, the following:

- *It is submitted that no prima facie references have been made in the Show Cause Notice which establish the allegations beyond reasonable doubt or, that the company has deliberately acted in the manner which is detrimental to the interest of the stakeholders.*

Allegation No. 01: Misrepresentation of disclosures made to stock exchange regarding delay in submission of financial results by the Company

- *It is submitted that the Noticee had engaged professionals to ensure that the due process for preparation and finalization of the Financial Statements of the Company is followed in compliance with applicable law and also to ensure timely supply of relevant statements/ accounts to the Statutory Auditor for conducting the audit and to coordinate with the Statutory Auditor.*

- *It is submitted that due to the dead-lock in the different segments of the Board of Directors of the Company forming part of the promoter(s) group, the very important clog in the smooth functioning of the machinery named company, the functioning of the other parts of the machinery such as the Senior Management, the KMPs, the employees also came to a stand-still. In a scenario where a deadlock causes management to be unable to make decisions, the Company cannot fulfil its obligations because key decisions cannot be made, thus rendering it impossible to meet the agreed terms. Further, non-availability of Independent Directors to intervene and take the necessary decisions, the functioning of the Company came to a halt and creating in impossible situation for the Company beyond its control.*

- *It is submitted that the reason disclosed for delay in submission of the financial reports nowhere alleged that the delay in conducting the audit has been from the Statutory Auditor's side and rightly so, since it is the Company who was not in a position to submit the financial statements on account of the hardship in the functioning of the management of the Company.*

- *It is also necessary to note that both the group of executive directors had tried to show their Bonafide by depicting the acts which were done by each of the parties and putting the blame on the other parties, however, it can be noted that neither party effectively did anything to provide any information to the auditors as required.*

- *Therefore, such misrepresentation as alleged in the Show Cause Notice was neither on account of inaction or delay by the Noticee nor the Statutory Auditors.*

Allegation No. 02: Non-disclosure of information w.r.t. default of payment.

- *It is submitted that the bare perusal of the aforesaid allegation would clearly establish that there was no wilful disobedience on part of the Company to comply with the alleged disclosures requirement in respect of the aforesaid default on loans. The fact that the Company has committed default on loans borrowed from YBL, has been adequately communicated to the shareholders at the very instance from side of the Noticee, vide letter dated May 28, 2021 and consistently furnished information/ clarification to its stakeholders.*

- *Further, it is submitted that in compliance with the requirement as provided in the SEBI circular dated November 21, 2019, the Company intimated the Stock Exchanges of the default in repayment.*

- *It is submitted that Regulation 6 of the LODR Regulations, 2015 that the Compliance Officer shall be responsible for ensuring compliance with regulatory provision applicable to the entity, coordination and reporting to the Board with respect to these compliances as well as discharging such other duties as may be specified by the Board. The function of the Compliance Officer is to ensure compliance of all laws applicable to the company.*

- *Thus, it is prayed that the responsibility for alleged non-disclosure cannot be placed on the shoulders of the company when officers-in-charge undermined the interest of the company in difficult times.*

Allegation No. 03: Incomplete disclosure regarding resignation of statuary auditor

- *It is submitted that the Statuary Auditor tendered their resignation on September 13, 2021 with effect from September 14, 2021. Further, the information regarding resignation has been intimated to the Stock Exchange in accordance of SEBI compliances including SEBI circular dated October 15, 2021.*

- *This is further substantiated by the fact that, the Company, vide its letter dated September 16, 2022, in continuation to the aforesaid letter, disclosed the additional information required with regards to the resignation of the Statutory Auditor, in terms of SEBI Circular bearing no. CIR /CFD/CMD1/114/2019 dated October 18, 2019. This clearly establishes that the Company has fulfilled and undertaken all the actions, required to be taken for the purpose of compliance upon resignation of the Statutory Auditor of listed entity.*

- *It is submitted that the Audit Committee of the company failed to deliberate upon the concerns raised by the Statutory Auditor. It is further submitted that with the resignation of the last set of Independent Directors, the requirement of quorum could not be fulfilled, which mandates presence of two Independent Directors during the Committee Meetings therefore making it impossible for the Company to fulfil the requirements.*

CONSIDERATION OF ISSUES AND FINDINGS

10. The charges levelled against the Noticee, and the documents / material available on record are carefully perused. The issues that arise for consideration in the present case are:

    (a) Whether Noticee has violated regulations 4(1)(c) , 4(1)(d), 4(1)(i) and 30(10) of LODR Regulations; regulation 30(7) and 4(1)(d) of LODR Regulations read with SEBI Circular dated November 21, 2019; regulation 30(2) read with

Schedule III of LODR Regulations and SEBI Circular dated October 18, 2019?

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

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

11. The relevant provisions are mentioned hereunder:

LODR Regulations

Principles governing disclosures and obligations.

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

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

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

(e)…….

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

Disclosure of events or information.

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

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

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

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

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

The text of the circular dated November 21, 2019:

https://www.sebi.gov.in/legal/circulars/nov-2019/disclosures-by-listed-entities-of-defaults-on-payment-of-interest-repayment-of-principal-amount-on-loans-from-banks-financial-institutions-and-unlisted-debt-securities_45036.html

The text of the Circular dated October 18, 2019:

https://www.sebi.gov.in/legal/circulars/oct-2019/resignation-of-statutory-auditors-from-listed-entities-and-their-material-subsidiaries_44703.html

ISSUE (a). Whether Noticee has violated regulations 4(1)(c) , 4(1)(d), 4(1)(i) and 30(10) of LODR Regulations; regulation 30(7) and 4(1)(d) of LODR Regulations read with SEBI Circular dated November 21, 2019; regulation 30(2) read with Schedule III of LODR Regulations and SEBI Circular dated October 18, 2019?

12. It is observed that adjudication proceedings was initiated in respect of the Noticee, Chairperson and Non-Executive Director Ms. Vinita Gupta, Executive Directors Mr. Sandeep Gupta and Mr. Sudhir Gupta. Ms. Vinita Gupta and Mr. Sandeep Gupta has settled all the charges against them vide settlement order dated July 5, 2023 and an adjudication order dated July 24, 2023 was passed in respect of Mr. Sudhir Gupta.

13. It is noted that SEBI was in receipt of complaints from Mr. Sudhir Gupta against the Noticee, Ms. Vinita Gupta and Mr. Sandeep Gupta alleging, *inter alia*, the following:

   a) Making baseless allegations against independent directors coercing them to resign;

   b) Misuse of position by Mr. Sandeep Gupta and taking all decisions on behalf of

Mr. Sushil Gupta (Chairman and managing Director)

c) Failure of the Chairperson – Ms. Vinita Gupta to convene a Board meeting to discuss financial status of the company

d) Failure of the company to make appropriate disclosure under LODR Regulations about deteriorating health of the erstwhile Chairman;

e) Appointment of new IDs who are not independent;

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

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

14. SEBI examined the complaint and observed certain non-compliances which is discussed hereunder:

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

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

16. Noticee submitted that being a juristic person it cannot function on its own and it was the duty of the Board of Directors and professionals including the Audit Committee who was responsible for such a function. Noticee submitted that in its letter dated June 25, 2021 it did not allege that the delay in conducting the audit has been from the Statutory Auditor's side since it was the Noticee who was not in a position to submit the financial statements on account of the deadlock created.

17. It was observed that the Noticee delayed submission of financial results for the period ended March 31, 2021. The Noticee vide letter dated June 25, 2021 submitted to the listing departments of the Bombay Stock Exchange (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") stated "…*you may please note that the Company is not in a position to submit Annual Audited Financial results for the period ended 31st March, 2021 within the timelines prescribed under regulation 33 of the Listing obligation/ SEBI Circulars, as the said results are yet to be finalised by the Statutory Auditors of the Company*."

18. Hence it is observed that the Noticee did not give a complete picture rather just mentioned that the statutory auditors failed to finalise the financial results on time. However, from the announcement dated September 15, 2021 made to BSE and NSE, it was observed that the statutory auditor in the resignation letter had stated that the Noticee failed to provide necessary support and relevant requested information despite multiple requests made by the auditors.

19. It is noted that comments on the following were sought from the Noticee by NSE, however, no response was received:

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

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

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

20. Therefore, it is clear that the Noticee failed to provide the requisite support to the statutory auditors and hence the auditors failed to finalize the financial results for the period ended March 31, 2021. However, Noticee misrepresented the reason of its failure to the stock exchanges.

21. The relevant provisions of LODR Regulations, i.e. regulations 4(1)(c), 4(1)(d), 4(1)(i) and 30(10) prescribes the principles governing disclosures and obligations which includes that the listed company shall refrain from misrepresentation and not provide misleading information and provide the relevant information in a timely manner. It is noted that the Noticee did not give the correct position and gave wrong explanation regarding its failure to submit the financial results for the period ended March 31, 2021. Further, in terms of regulation 30(10) of LODR Regulations, the listed entity shall provide specific and adequate reply to all queries raised by the stock exchange(s) with respect to any events or information. It is noted that the Noticee has not responded to the queries sought in relation to the resignation of statutory auditor and completion of audit, financial condition of the Noticee, etc. despite repeated reminders.

22. In view of the above, the allegation of violation of regulations 4(1)(c),4(1)(d), 4(1)(i) and 30(10) of LODR Regulations by the Noticee stands established.

B) Non-disclosure of information w.r.t. default of payment

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

24. Noticee submitted that it did not have any intention to hide the details about the default or the subsequent status of the same. However, due to the ongoing difficult position of the Noticee, it failed to update the stock exchanges and investors regarding the continuing default of repayment of loan with YBL.

25. From the material available on record, I find that Noticee had defaulted on payment of loan repayment of Rs. 267 Crore and YBL had taken possession of Hotel Hyatt Regency building and a plot of land situated closed to Chhatrapati Shivaji International Airport. It is noted that being engaged in tourism and hospitality business, the company was impacted by Covid 19 pandemic. This resulted in failure of payment of the loan to YBL.

26. Though Noticee made the initial disclosure of default on May 28, 2021, the subsequent disclosures were not made for quarter ended June 30, 2021 and September 30, 2021. It is noted that the LODR Regulation mandates that all listed companies shall make disclosures updating material developments on a regular basis. Further, SEBI circular dated November 21, 2019 mandates that listed companies to make disclosures in respect to default of repayment of loans from banks or financial institutions. It is observed that the disclosures were not made for the quarter ended June 30, 2021 and September 30, 2021. Being a listed company, Noticee has some duties and obligations towards its shareholders which is manifested by making timely disclosures of all material developments of the company. Noticee cannot take the excuse that there was no intention to willfully disobey the statutory requirements. Further as a principal, it was solely the responsibility of the Noticee to intimate the stock exchanges. The submission of

the Noticee that it was the duty of the Compliance Officer cannot be accepted. The Compliance Officer is merely an employee appointed by the Noticee and the responsibility of compliance with regulatory provisions cannot be passed down on him solely.

27. Regulation 30(7) and 4(1)(d) of LODR Regulations mandates listed companies to disclose material developments in a timely basis till the event is resolved. Further, SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 has prescribed formats for each instance of default and thereafter, if there is outstanding debt under default.

28. In the present case, the Noticee failed to make relevant disclosures regarding non-payment of loan repayment of loans to YBL for the quarter ended June 30, 2021 and September 30, 2021. Further, as per the newspaper article published in the Indian Express on November 3, 2021, YBL had taken possession of Hotel Hyatt Regency building and a plot of land situated closed to Chhatrapati Shivaji International Airport which was also not disclosed by the Noticee.

29. In light of the above, the allegation against the Noticee for violation of regulations 30(7) and 4(1)(d) of LODR Regulations and SEBI circular dated November 21, 2019 by the Noticee stands established.

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

30. It was alleged that the information disclosed by the Noticee regarding resignation of statutory auditor was incomplete. On seeking clarification, it was submitted that the company secretary did not receive response from the existing directors and hence could not respond to the queries of the exchange. It was further alleged that the Noticee has violated Sub-clause (7A) inserted under clause A in Part A of Schedule III under regulation 30(2) of LODR Regulations.

31. Noticee submitted that the statutory auditor resigned vide letter dated September 13, 2021 and it was intimated to the stock exchanges on September 15, 2021. SEBI circular dated October 18, 2019 stipulates that on resignation of the statutory auditor, the audit committee shall deliberate upon the concerns raised by the auditor and in case there is no mandate for audit committee, the Board of Directors shall ensure compliance with the circular. As the audit committee of the company

was not functional at the relevant period and the impasse situation between the management of the company, such deliberation was not possible.

32. It is observed that Sub-clause (7A) inserted under clause A in Part A of Schedule III under regulation 30(2) of LODR Regulations requires detailed reasons to be disclosed by the listed entities to the stock exchanges in case of resignation of the auditor of a listed entity as soon as possible but not later than twenty-four hours of receipt of such reasons from the auditor. Further, SEBI circular no. CIR/CFD/CMD1/114/2019 dated October 18, 2019 provides a format through which the said information should be shared with the stock exchange. It was noted by the stock exchanges that the information disclosed by the Noticee was incomplete. Vide letter dated September 16, 2021 Noticee attached the form as required under SEBI circular no. CIR/CFD/CMD1/114/2019 dated October 18, 2019. On perusal of the form, it is noted that the Noticee did not fill up the following columns:

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

33. It is noted that the Noticee submitted that it had disclosed additional information required vide its letter dated September 16, 2021 as per circular dated October 18, 2019. However, it is observed that on receipt of the intimation of the resignation of the statutory auditor, NSE, vide email dated September 20, 2021 raised the following queries:

"a. In case the information requested by the auditor was not provided, then following shall be disclosed; A) Whether the inability to obtain sufficient appropriate audit evidence was due to a management-imposed limitation or circumstances beyond the control of the

management; B) Whether the lack of information would have significant impact on the financial statements/results; C) Whether the auditor has performed alternative procedures to obtain appropriate evidence for the purposes of audit/limited review as laid down in SA 705 (Revised) D)Whether the lack of information was prevalent in the previous reported financial statements/results. If yes, on what basis the previous audit/limited review reports were issued.

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

34. Thus, the submission of the Noticee is not tenable. It is observed that while disclosing the information to the stock exchange Noticee was in a position to give complete information which it failed to do. Hence the stock exchanges sought complete information. Even after receiving the queries, Noticee did not provide the clarification. Further as per the circular dated October 18, 2019, no deliberation took place after the resignation of the statutory auditors. In view of the above, the allegation of violation of regulation 30(2) read with schedule III of LODR Regulations and SEBI circular dated October 18, 2019 stands established.

ISSUE (b). Do the violations, if any, attract monetary penalty under section 15A(b) of the SEBI Act on the Noticee?

35. As established Noticee has violated regulations 4(1)(c) , 4(1)(d), 4(1)(i) and 30(10) of LODR Regulations; regulation 30(7) and 4(1)(d) of LODR Regulations read with SEBI Circular dated November 21, 2019; regulation 30(2) read with Schedule III of LODR Regulations and SEBI Circular dated October 18, 2019.

36. In view of the violation as established above, the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) is referred to which 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…".*

37. In view of the above, it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15A(b) of the SEBI Act, which reads as under:

> ***Section 15A - Penalty for failure to furnish information, return, etc.***
> *15A. If any person, who is required under this Act or any rules or regulations made thereunder,—*
>
> *(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

ISSUE (c). If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

> ***Factors to be taken into account while adjudging quantum of penalty.***
>
> *15J.While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b)the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c)the repetitive nature of the default.*

39. It is noted that the available records do not quantify the disproportionate gain made by the Noticee or amount of losses suffered by the investors due to violation of the Noticee. It is noted from the submission of the Noticee that there was feud between the promoter-director of the Noticee. This fact has been taken into consideration while imposing the penalty. However, as a listed entity, Noticee had certain duties and obligations towards its shareholders of complete and true disclosures.

Misrepresenting facts and making incomplete disclosures calls for serious action. Disclosures are cornerstones of good corporate governance. In a disclosure based regime the essence is about timely and adequate disclosures which, if compromised with, may pose threat to orderly functioning of the securities markets and /or loss of investor confidence in the integrity of the securities market. Disclosures of material information was not made on more than one occasion.

ORDER

40. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in section 15J of the SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of the powers conferred under section 15-I of the SEBI Act read with Rule 5 of the AO Rules, penalty of Rs.5,00,000/- (Rupees Five Lakh only) is imposed on the Noticee. The said penalty is commensurate with the lapse/omission on the part of the Noticee.

41. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:
    ENFORCEMENT → Orders → Orders of AO → PAY NOW
    In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

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

BARNALI MUKHERJEE
Digitally signed by BARNALI MUKHERJEE
Date: 2024.12.17 14:34:57 +05'30'

Date: December 16, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**