BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/SV/VC/2024-25/30391)

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

In respect of
Pro Fin Capital Services Limited
(PAN: AAACP0251F)

In the matter of Pro Fin Capital Services Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted examination in the matter of Pro Fin Capital Services Limited (hereinafter referred to as the **'PFCSL'** or **'Company'** or **'Noticee'**).

2. Based on the findings of examination of PFCSL, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the provisions of Regulations 28(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **'LODR Regulations'**) and Regulation 164(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, (hereinafter referred to as **'ICDR Regulations'**).

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as the Adjudicating Officer, vide order dated January 12, 2024 under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules, 1995'**) read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 15HB of

the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/5707/2024 dated February 09, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the Adjudication Rules, 1995 read with Section 15-I of the SEBI Act, 1992, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15HB of the SEBI Act, 1992 for the alleged violations. I note that SCN issued to the Noticee was duly served upon the Noticee and it was acknowledged by the Noticee. Vide letter dated March 15, 2024, Noticee submitted its reply to the SCN. Further, Noticee also made additional submissions in the matter vide email / letter dated April 08, 2024. Moreover, Noticee was also advised to provide clarification w.r.t. the number of equity shares revoked, which was furnished by the Noticee vide e-mail dated May 29, 2024.

5. In the interest of natural justice, an opportunity of hearing on March 19, 2024 was granted to the Noticee vide Hearing Notice dated March 12, 2024. However, vide email dated March 18, 2024, Noticee stated its inability to appear for the scheduled hearing on March 19, 2024. Thus, one more opportunity of hearing on April 05, 2024 was granted to the Noticee in the instant matter. On April 05, 2024, Authorised Representative of the Noticee viz. i.e. Mr. L. Krishnamoorthy, (hereinafter referred to as **'AR'**) attended the hearing through video-conference on Webex platform and made the submissions on behalf of the Noticee. AR reiterated the submissions made by the Noticee vide letter dated March 15, 2024. AR further stated to make the additional submissions in the matter by April 10, 2024. Accordingly, vide email / letter dated April 08, 2024, Noticee furnished its submissions in the matter.

6. The allegations levelled against the Noticee in the SCN are summarised as under:

6.1. *“Noticee is an NBFC registered with RBI. Noticee is a company listed on BSE. Noticee vide undated letter received by SEBI on August 13, 2022 made an application to SEBI requesting condonation of delay in seeking in-principle approval from BSE for issuance of warrants under Regulation 28(1) of the LODR Regulations and to authorize BSE to accord listing and trading approval of the 3,25,00,000 equity shares issued and allotted on preferential basis. In this regard, comments of BSE were sought, which were furnished by BSE vide e-mail dated October 14, 2022. Regarding not obtaining in-principle approval from BSE, PFCSL had submitted the clarifications to BSE vide its letter dated August 30, 2022. Further, vide letter dated September 07, 2022 and September 14, 2022, Noticee also submitted its clarifications to BSE w.r.t. the observation that preferential issue was made at a price less than the minimum price as per ICDR Regulations. Vide letter dated November 18, 2022, SEBI rejected the application of the Noticee for condonation of non-compliance with Regulation 28(1) of the LODR Regulations and examined the matter further for non-compliances by the Company.*

6.2. *The chronology and corresponding background of the events related to issues and allotments of securities by the Noticee is given in the table below:*

Table No. 1

Date	***Event***
24/03/2021	*Resolution passed by board of directors of the Company inter alia approving the preferential issue of 70,00,000 convertible warrants*
03/05/2021	*Meeting of board of directors of the Company for revision of issue size from 70,00,000 convertible warrants to 54,00,000 convertible warrants*
24/05/2021	*Notice sent to shareholders inter alia seeking their approval for the proposed preferential issue of 54,00,000 convertible warrants*
24/05/2021	*Date by which application was required to be filed with the exchange seeking in-principle approval for issue of warrants as per the provisions of Regulation 160(f) of ICDR Regulations read with Regulation 28(1) of LODR Regulations*
23/06/2021	*Annual General Meeting of the Company was held for approving the preferential issue of 54,00,000 Convertible Warrants*
07/07/2021	*Resolution passed by board of directors of the Company for allotment of 32,50,000 convertible warrants to the promoters and non-promoter allottees*

Date	Event
22/04/2022	*Application seeking in-principle approval for issue of 32,50,000 convertible warrants to the stock exchange*
28/04/2022	*Record date for subdivision of equity shares of existing equity shares from every 1 equity share of ₹5/- each into 5 equity shares of ₹1/- each*
06/05/2022	*Resolution passed by board of directors of the Company for allotment of 3,25,00,000 equity shares to promoters and non-promoter allottees pursuant to the conversion of warrants*
10/05/2022	*Company filed listing application for 3,25,00,000 equity shares*

6.3. As detailed in above table, it was observed during examination that the board of directors of the Company passed a Resolution on March 24, 2021 approving the preferential issue of 70,00,000 convertible warrants. Thereafter, the issue size was revised from 70,00,000 convertible warrants to 54,00,000 convertible warrants in the board meeting dated May 03, 2021 and Noticee seeking shareholders approval for the proposed preferential issue of 54,00,000 convertible warrants was sent on May 24, 2021. Annual General Meeting of the Company was held on June 23, 2021 for approving the preferential issue of 54,00,000 Convertible Warrants. Thereafter, the resolution for allotment of 32,50,000 convertible warrants to promoters and non-promoters was passed by board of directors on July 07, 2021 and application seeking in-principle approval for issue of 32,50,000 convertible warrants was made to the stock exchange on April 22, 2022.

6.4. In this regard, BSE had submitted that the application by PFCSL seeking in-principle approval for issue of warrants was required to be filed with the exchange by May 24, 2021 in terms of the provisions of Regulation 160(f) of ICDR Regulations read with Regulation 28(1) of LODR Regulations.

6.5. Regarding not obtaining in-principle approval from BSE, PFCSL vide its letter dated August 30, 2022 had inter-alia submitted to BSE that "We admit there is delay in making the application for pre listing of warrants. The delay was due to the fact that the Company Secretary and Compliance officer was on Maternity leave at that time. Other staff members were taking care of compliances and further, other staff members were not familiar with the requirements and application formalities. Hence the delay."

6.6. *In view of the above, it is alleged that Noticee has issued and made the aforesaid allotment of convertible warrants without seeking 'in- principle' approval from the stock exchange as required under Regulation 28(1) of the LODR Regulations, therefore, it has violated the provisions of Regulation 28(1) of the LODR Regulations.*

6.7. *Further, it was observed during examination that Noticee had allotted the said convertible warrants at Rs. 31, however, BSE submitted that in terms of Regulation 164(1) of the ICDR Regulations the minimum issue price of convertible warrants comes to Rs. 32.74. In this regard, Noticee vide its letter dated September 14, 2022 to BSE had submitted that 'we agree to bring difference amount of Rs. 1.74 from the each allottees to whom company has allotted shares in conversion of warrants'. Further, vide email dated December 12, 2022, Noticee has stated that the company has not called for differential amount of Rs. 1.74 from the allottees till date. Therefore, it is alleged that the minimum issue price of convertible warrants arrived at and allotted by the PFCSL is less than the minimum issue price required as per ICDR Regulations and thus Noticee has violated Regulation 164(1) of the ICDR Regulations."*

7. Noticee furnished reply to the SCN vide letters dated March 15, 2024 and April 08, 2024. The reply of the Noticee is summarised as under:

7.1. *Non-Compliance of Regulation 28(1) of the LODR.*

(a) *"Regulation 28(1) provides as under:*
28(1) The listed entity before issuing securities, shall obtain an "in principle" approval from recognized stock exchange(s) in the following manner. Where the securities are listed only on recognized stock exchange(s) having nationwide trading terminals, from all such stock exchanges.

(b) *The emphasis is on the words "before issuing securities". On a plain reading, it would show that before issue of securities, the listed entity should obtain in principle approval from the stock exchange on which its securities are listed. The word "securities" is not defined in LODR. Regulation 2 of LODR says all other words and expressions used but not defined in these Regulations, but defined in SEBI Act, or the Companies Act 2013, SCRA 1956, Depositories Act 1996 and the rules, regulations made there under shall have the same meaning. Section 2(1)(i) of SEBI Act 1992 provides that "securities" shall have the meaning assigned to it in section 2 of SCRA 1956.*

(c) Section 2(h) of SCRA 1956 provides that "securities" include-

{1} shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate. The Section also lists other instruments/securities falling under the definition of "securities". Shares, scripts, bonds debenture etc are marketable. It also includes securities which are marketable "Marketable securities" would in commercial parlance, mean those securities which are tradable and transferable for consideration.

(d) Further, Section 28(1)(b) provides various categories of instruments to which the SCRA 1956 does not apply at all. Section 28(1)(b) is reproduced below:

28 (1)(b) The provisions of this Act shall not apply to:

Any convertible bond, or share warrant or any option or right in relation to thereto insofar as it entitles the person in whose favour any of the foregoing has been issued to obtain at his option from the company or other body corporate, issuing the same or from any of its shareholders or duly appointed agents shares of the company or other body corporate, whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.

(e) The warrants issued by the Company are not securities as they are not marketable, listable and tradeable and transferable. Thus, they do not fall within the definition of "securities" under Section 2(h) of SCRA 1956. The Company, in its letter addressed to SEBI emphasized this point. It also sent along with the letter, a copy of the warrant issued to one of the warrant holders. Thus the warrants issued by the Company per se do not become securities attracting the provisions of Regulation 28(1) of LODR.

(f) The Hon'ble Supreme Court in Sahara India Real Estate Corporation Ltd. Vs. SEBI (2012) 12 SCR 1, in para 111 of the judgment, in interpreting Section 2(h) of SCR Act, held as follows:

"Section 2{h} of the SCR Act gives emphasis to the words "other marketable securities of a like nature' which gives a clear indication of the marketability of the securities and gives an expansive meaning to the securities. Any security which is capable of being freely transferrable is marketable. The definition clause in Section 2(h) of SCR Act is a wide definition, an inclusive one which takes in hybrid also…….. "

(g) *The Companies Act 2013 defines securities in Section 2(81) as "securities means the securities as defined in clause (h) of Section 2 of SCRA, 1956. Unlike in Companies Act, 1956 there is no reference to "hybrid" in the Companies Act, 2013.*

(h) *Due to above facts, the Company applied to the BSE, for in principle approval before for issue and allotment of equity shares to those warrant holders who paid the balance amount and thus were entitled to the allotment of equity shares. But the Company's said application was not approved on the ground that it did not take in principle approval before issue of warrants.*

7.2. <u>Issue price as per Regulation 164(1) of ICDR</u>

(a) *The issue price was arrived as per Regulation 164(1) of ICDR then in force when the warrants were issued and that such price was arrived at correctly. The statement of calculation of the price as per Regulation then in force is enclosed. This has been verified by a Chartered Accountant. Therefore, there is no change in the price per share which is Rs. 31. The regulation 164(1) quoted in SCN, which became applicable much later, is not applicable in Noticees case.*

(b) *The misguidance/misinterpretation of the relevant regulations and various legal provisions, by the then Company Secretary, certain letters were issued to BSE in different context which are contradictory to what is stated hereinabove. The Company, having been advised now the correct legal position, requests to ignore such letters which are contrary to what is stated in this reply.*

7.3. <u>Additional submissions vide letter dated April 08, 2024:</u>

(a) ***Non Compliance of Regulation 28(1) of SEBI LODR**: Regulation 28(1) of SEBI LODR 2015 read with Regulation 160(f) of SEBI ICDR 2018 would become applicable in the event of issues like bonus issue, rights issue, issue of equity shares on preferential basis instead of warrants. In such cases the securities (not warrants) proposed to be issued will come under Regulation 28(1) of SEBI LODR.*

(b) ***Issue price:** During the virtual hearing, it has been admitted by Noticee that there has been error in arriving at the price of the issue. This is mainly due to the fact in calculating the weekly average price, price of high and low were taken into account and not the volume weighted average price.*

(c) *As BSE did not give listing approval for the shares issued to warrant holders and SEBI even did not condone the delay, the shares issued to warrant holders remain unlisted and consequently not tradable in stock exchange. In this background, the Board of directors of the Company at the meeting held on February 14, 2023, decided to revoke the allotment of equity shares to the warrant holders in the interest of investors. The board decision was communicated to BSE vide Company's letter dated February 14, 2023. Further, the Company has refunded to the warrant holders the moneys they paid to the Company for the preferential issue.*

7.4. <u>Clarification w.r.t. the number of equity shares revoked vide e-mail dated May 29, 2024:</u>

The Company has revoked allotment of 32,50,000 equity shares of Rs. 10 each (post-split, it would be 3,25,00,000 shares of Rs. 1 each).

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether the Noticee has violated the provisions of Regulations 28(1) of LODR Regulations and Regulation 164(1) of ICDR Regulations.

   II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

9. Before proceeding further, it is pertinent to refer to the relevant provisions of LODR Regulations and ICDR Regulations which are alleged to have been violated. The said provisions provide as under:

<u>LODR Regulations</u>:

In-principle approval of recognized stock exchange(s).

28. *(1) "The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognized stock exchange(s)......"*

<u>ICDR Regulations</u>:

Pricing of frequently traded shares

164. *(1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of 90 trading days or more as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of the following:*

a. the 90 trading days volume weighted average price of the related equity shares quoted on the recognised stock exchange preceding the relevant date; or

b. the 10 trading days volume weighted average prices of the related equity shares quoted on a recognised stock exchange preceding the relevant date.

[Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.]

10. Based on perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case, I record my findings hereunder:

Issue I. Whether the Noticee has violated the provisions of Regulations 28(1) of LODR Regulations and Regulation 164(1) of ICDR Regulations.

11. It was alleged in the SCN that the Noticee passed a resolution approving the preferential issue of convertible warrants and further passed another resolution for allotment of 32,50,000 convertible warrants to the promoters and non-promoters. SCN alleged that Noticee had issued and made the aforesaid allotment of convertible warrants without seeking 'in- principle' approval from the stock exchange as required under Regulation 28(1) of the LODR Regulations.

12. Regarding not obtaining 'in-principle' approval from BSE, Noticee submitted that as per Regulation 28(1) of the LODR Regulations the listed entity requires 'in

principle' approval from the recognized stock exchange, on which its securities are listed, before issuing securities. Noticee further submitted that 'securities' is defined in Section 2(h) of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **'SCRA, 1956'**) include shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature etc. Warrants issued by the Company are not securities as they are not marketable, listable, tradeable and transferable. Thus, warrants do not fall within the definition of "securities" under Section 2(h) of SCRA, 1956. In this regard, Noticee relied on the decision of the Hon'ble Supreme Court of India in the matter of Sahara India Real Estate Corporation Ltd. Vs. SEBI (2012) 12 SCR 1. Noticee further submitted that warrants issued by the Company per se do not become securities attracting the provisions of Regulation 28(1) of LODR Regulations. Regulation 28(1) of LODR Regulations read with Regulation 160(f) of ICDR Regulations would become applicable in the event of issues like bonus issue, rights issue, issue of equity shares on preferential basis instead of warrants.

13. With regard to the Noticee's contention that warrants do not fall within the definition of 'securities' under Section 2(h) of SCRA, 1956, I note that warrant is a type of security as per the definition of 'securities' given in Section 2(h) of SCRA, 1956. In my view warrant is a rights or interest in securities and hence the same is covered under Section 2(h)(iii) of SCRA, 1956 i.e. 'rights or interest in securities'. Therefore, the contention of the Noticee that warrants do not fall within the definition of 'securities' under Section 2(h) of SCRA, 1956, is not acceptable.

14. In this context, I also like to refer to the observation of Hon'ble Securities Appellate Tribunal in the matter of **Arun Kumar Vs. SEBI (Appeal No. 62 of 2008)** that *"<u>There is no doubt that a warrant is a security</u> which would entitle the holder to receive share(s) with voting rights in the future and is included in the word 'shares' as defined in the takeover code."*

15. Further, Noticee submitted that Section 28(1)(b) provides various categories of instruments to which the SCRA, 1956 does not apply at all. In this regard, I place

my reliance on the decision of the Hon'ble Supreme Court of India in the matter of **Sahara India Real Estate Corporation Ltd. Vs. SEBI (2012) 12 SCR 1,** wherein it was held that:

“Section 28(1)(b) makes it clear that the Act will not apply to the ‘entitlement’ of the buyer, inherent in the convertible bond. Entitlement may be severable, but does not itself qualify as a security that can be administered by the SCR Act, unless it is issued in a detachable format. Therefore, the inapplicability of SCR Act, as contemplated in Section 28(1)(b), is not to the convertible bonds, but to the entitlement of a person to whom such share, warrant or convertible bond has been issued, to have shares at his option. The Act is, therefore, inapplicable only to the options or rights or entitlement that are attached to the bond/warrant and not to the bond/warrant itself. The expression “insofar as it entitles the person” clearly indicates that it was not intended to exclude convertible bonds as a class. Section 28(1)(b), therefore, clearly indicates that it is only the convertible bonds and share/warrant of the type referred to therein that are excluded from the applicability of the SCR Act …………”

16. From above mentioned interpretation of the Section 28(1)(b) of the SCRA, 1956 by the Hon'ble Supreme Court of India, it is noted that the inapplicability of SCRA, as contemplated in Section 28(1)(b), is not to the convertible bonds, but to the entitlement of a person to whom such share, warrant or convertible bond has been issued, to have shares at his option. Further, it is observed that SCRA, 1956 is inapplicable only to the options or rights or entitlement that are attached to the bond/warrant and not to the bond/warrant itself. Section 28(1)(b) of the SCRA, 1956 indicates that it is only convertible bond or share warrant of the type referred to therein, which are excluded from the applicability of the SCRA, 1956 and not the warrants, which are covered in a separate category of securities in the definition contained in Section 2(h) of SCRA, 1956. Therefore, I hold that contention of the Noticee that SCRA, 1956 is not at all applicable to the warrants as per the exclusion given in Section 28(1)(b) of the SCRA, 1956, does not hold true.

17. I note that as per Regulation 28(1) of LODR Regulations "*"The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognized stock exchange(s)......"*

18. I note that Noticee's application seeking in-principle approval for issue of convertible warrants was required to be filed with the exchange by May 24, 2021 in terms of the provisions of Regulation 160(f) of ICDR Regulations read with Regulation 28(1) of LODR Regulations. However, Noticee has issued and made the aforesaid allotment of convertible warrants without seeking 'in- principle' approval from the stock exchange as required under Regulation 28(1) of the LODR Regulations.

19. I also note that earlier Noticee, vide its letter dated August 30, 2022, admitted the abovementioned violation and it had *inter-alia* submitted to BSE that *"We admit there is delay in making the application for pre listing of warrants. The delay was due to the fact that the Company Secretary and Compliance officer was on Maternity leave at that time. Other staff members were taking care of compliances and further, other staff members were not familiar with the requirements and application formalities. Hence the delay."*

20. In view of the above, I hold that the Noticee has failed to obtain the 'in-principle' approval from BSE for issue of convertible warrants and hence it violated the provisions of Regulation 28(1) of the LODR Regulations.

21. Further, it was alleged in the SCN that Noticee had allotted the aforesaid convertible warrants at Rs. 31, however, as per Regulation 164(1) of the ICDR Regulations the minimum issue price of convertible warrants was Rs. 32.74, thus Noticee has violated Regulation 164(1) of the ICDR Regulations.

22. In response to above allegations, Noticee submitted that there was error in arriving at the price of the issue. This was mainly due to the fact in calculating the weekly average price, price of high and low were taken into account and not the volume weighted average price. Noticee further submitted that as BSE did not give listing

approval for the shares issued to warrant holders and even SEBI did not condone the delay, the shares issued to warrant holders remain unlisted and consequently not tradable on the stock exchange. In this background, the Board of directors of the Company at the meeting held on February 14, 2023, decided to revoke the allotment of equity shares to the warrant holders in the interest of investors. The board decision was communicated to BSE vide Company's letter dated February 14, 2023. Further, the Company has refunded to the warrant holders the moneys they paid to the Company for the preferential issue.

23. I note that Noticee has admitted that there was error in arriving at the price of the issue as Noticee considered the weekly average price and not the volume weighted average price. Further, the Company has revoked the allotment of 32,50,000 equity shares of Rs. 10 each (post-split, 3,25,00,000 equity shares of face value of Rs. 1 each) to the warrant holders, in its board meeting held on February 14, 2023 and the board decision was disseminated to BSE vide company's letter dated February 14, 2023. I note that the revocation of the allotment of equity shares to the warrant holders does not absolve the Noticee from the violation committed by it, as the minimum issue price of convertible warrants arrived at and allotted by the company was less than the minimum price at which warrants were required to be allotted as per ICDR Regulations. Hence, Noticee was in violation of Regulation 164(1) of the ICDR Regulations for issue and allotment the said convertible warrants at Rs. 31.

24. However, since the company has refunded the amount paid for preferential issue to the warrant holders, the issue of calling for the differential amount of Rs. 1.74 from the allottees, as stated in the SCN, does not arise.

25. In view of the above, I hold that the Noticee has violated the provisions of Regulation 164(1) of the ICDR Regulations.

Issue II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

26. In the light of findings and observations against the Noticee as brought out in the foregoing paragraphs, it has been established that the Noticee has violated the regulatory provisions of Regulation 28(1) of the LODR Regulations and Regulation 164(1) of the ICDR Regulations.

27. Considering the material available on record, reply of the Noticee and findings made hereinabove and it has been held that Noticee has violated the provisions of the LODR Regulations and ICDR Regulations. The said violations make the Noticee liable for monetary penalty under the provisions of the SEBI Act, 1992.

28. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC), wherein, it was *inter-alia* 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...".

29. The aforesaid violations, makes the Noticee liable for penalty under Section 15 HB of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

    SEBI Act, 1992:

    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 which may extend to one crore rupees.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

30. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992, which reads as under: -

<u>SEBI Act, 1992:</u>

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.

[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

31. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance of the provisions of the SEBI Regulations is not available. With respect to the repetitive nature of the default, I do not find anything on record. In the present matter, Noticee was under a statutory obligation to abide by the provisions of LODR Regulations and ICDR Regulations, which it failed to do in relation to issue and allotment of securities. The said violations by the Noticee attracts monetary penalty. Therefore, I feel it appropriate to levy a penalty which is commensurate with the nature of violation, which acts as a deterrent factor for the Noticee and others in protecting the interest of investor in Securities market.

ORDER

32. Considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated hereinabove, the factors mentioned in 15J

of the SEBI Act, 1992 and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose a monetary penalty of ₹3,00,000/- (INR Three Lakh only) under Section 15HB of the SEBI Act, 1992, on the Noticee. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

33. 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

34. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

35. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai	**SHASHI KUMAR VALSAKUMAR**
Date: May 31, 2024	**ADJUDICATING OFFICER**