BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2022-23/21725]

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

In respect of

Setubandhan Infrastructure Limited

PAN AABCP3573F

FACTS OF THE CASE

1. Securities and Exchange Board of India ('SEBI') had conducted an examination of a listed company, Setubandhan Infrastructure Limited ('Noticee'/ 'Company') for the period from September 30, 2021 to November 9, 2021 ('examination period') to identify any alleged violations of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations') by it. During the course of examination, it was observed that Noticee has not disclosed material information

relating to initiation of forensic audit by SEBI and the administrative warning issued by SEBI for non-disclosure of the said initiation of forensic audit.

2. In this context, the Noticee is alleged to have violated Regulations 30(1) and (2) read with Schedule III Part A(A)(17) of the LODR Regulations read with Regulation 4(1)(d), (e), (f), (g) and (h) of the LODR Regulations and read with Clause 2 of the Listing Agreement.

3. On this background, SEBI initiated the instant adjudication proceeding against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer under Section 23I of Securities Contracts (Regulation) Act, 1956 ('SCRA, 1956') read with Rule 3 of Securities Contracts (Regulation)(Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ('Adjudication Rules') vide order dated June 07, 2022 to inquire into and adjudge under Section 23E of SCRA, 1956 for the alleged violations of Regulations 30(1) and (2) read with Schedule III Part A(A)(17) of the LODR Regulations read with Regulation 4(1)(d), (e), (f), (g) and (h) of the LODR Regulations and read with Clause 2 of the Listing Agreement by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing No. SEBI/EAD2/NH/VS/47291/1&2/2022 dated September 7, 2022 ('SCN') was issued to the Noticee under Rule 4 of the

Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 23E of SCRA, 1956 for the aforesaid alleged violations.

6. The allegations made against the Noticee in the said SCN are reproduced below:

   i. *A forensic audit was initiated by SEBI in respect of the Noticee for financial years ending March 31, 2017, March 31, 2018, March 31, 2019 and March 31, 2020 in order to conduct forensic audit of the consolidated financial statements of the Company for the aforementioned financial years, with a special focus, inter alia, on provisioning for bad debts, genuineness of trade receivables, diversion of funds and disclosed/potential related party transactions. The initiation of forensic audit as well as appointment of forensic auditor was communicated to the Noticee vide SEBI's letter no. SEBI/HO/CFID/CFID3/OW/P/2021/26732/2021 dated October 1, 2021. Upon examination of possible violation of the LODR Regulations by the Noticee during September 30, 2021 to November 9, 2021 ("examination period") due to the alleged non-disclosure by the Noticee to the exchanges regarding initiation of forensic audit, it was seen that despite receipt of SEBI's letter dated October 1, 2021, the Noticee did not make any disclosure regarding the same in terms of the LODR Regulations.*

   ii. *Vide e-mail dated November 20, 2021 to SEBI the Noticee stated, inter alia, that forensic audit initiation by SEBI did not fall within material information criteria as defined by the Company's policy on material transactions and Part A of Schedule III of the LODR Regulations*

iii. *Vide SEBI letter no. SEBI/CFD/CMD3/OW/36265/1/2021 dated December 8, 2021, SEBI warned the Noticee regarding the non-compliance occurring due to non-disclosure of forensic audit. Further, the Noticee was advised to make requisite disclosure immediately and to inform SEBI. Additionally, the Noticee was advised to place SEBI's letter dated December 8, 2021 before the Company's board of directors in the upcoming board meeting and to disseminate the letter dated December 8, 2021 to the stock exchanges. However, despite receipt of the SEBI letter no. SEBI/CFD/CMD3/OW/36265/1/2021 dated December 8, 2021 on December 9, 2021 by Speed Post, the Noticee did not make disclosure regarding initiation of forensic audit, or disseminate SEBI's warning letter dated December 8, 2021 to the stock exchanges.*

iv. *The Noticee vide its letter dated December 15, 2021 inter alia stated the following: -*

   a. *As per provisions of Regulation 30(1) of the LODR Regulations, every listed company shall make disclosures of any events or information which in the opinion of the board of directors of the listed company is material. Thus, the discretion of deciding materiality of any information lies with the Board of Directors of the company.*

   b. *As per provisions of Regulation 30(2) of the LODR Regulations read with Schedule A Part III A(A)(17) of the LODR Regulations, the list of items is mentioned which shall be considered material by a company.*

However, the said list does not specifically include "Appointment of Forensic Auditor by SEBI under Section 11C of the SEBI Act".

c. *The appointment of Forensic Auditor by SEBI is on grounds of suspicion regarding financial information and business transactions of the company cannot be considered as material information as per provisions of Regulation 30(1) and (2) read with Schedule A Part IIIA(A)(17) of the LODR Regulations as the suspicion has not been validated by any Authority or findings of any examination.*

d. *The Noticee is not aware of which provisions empower SEBI to direct a company to disclose information considered material by SEBI but which does not fall within the prescribed criteria of Regulations 30(1) and (2 read with Schedule A Part III A(A)(17) of the LODR Regulations.*

v. *Vide e-mail dated March 30, 2022 to SEBI, BSE provided the observations of the exchange on the Company's comments regarding non-compliance with Regulations 30(1) and (2) read with Schedule III Part A(A)(17) of the LODR Regulations. BSE stated that "As per Regulation 30 (2) read with the Events specified in Para A of Part A of Schedule III to the LODR Regulations are deemed to be material events and listed entity is required to make disclosure of such events to the exchange & the Company is required to submit the said disclosures". BSE also stated, inter alia, that the Noticee had failed to intimate the exchange regarding initiation of forensic audit within 24 hours of the event as required under Regulation 30 (2) read with Schedule III Part A(A)(17) of the LODR Regulations.*

vi. In view of the above, it is alleged that the Noticee who was required to disclose the fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same in terms of the LODR Regulations, failed to disclose the same within 24 hours of receipt of SEBI's letter no. SEBI/HO/CFID/CFID3/OW/P/2021/26732/2021 dated October 1, 2021 in terms of Regulation 30(6) of the LODR Regulations. Further, the Noticee did not disseminate SEBI's letter no. SEBI/CFD/CMD3/OW/36265/1/2021 dated December 8, 2021 to the stock exchanges. Therefore, it is alleged that the Noticee failed to disclose the fact and details of initiation of forensic audit, in alleged violation of Regulations 30(1) and (2) read with Schedule III Part A(A)(17) of the LODR Regulations read with Regulation 4 (1)(d), (e), (f), (g) and (h) of the LODR Regulations and read with Clause 2 of the Listing Agreement.

7. The Noticee vide letter dated October 17, 2022 *inter alia* made the following submissions in its reply to the said SCN:

i. As stated in the notice, we were in receipt of Notice of initiation of Forensic Audit in the company. However, the same was not intimated to stock exchanges as the company believed that we are not required to make any disclosure under Regulation 30 read with Schedule III Part A(A)(17) of the LODR Regulations. The provisions of Regulation 30 read with Schedule III Part A(A)(17) of the LODR Regulations, 2015 were amended w.e.f. 8th October, 2020 and included disclosure of initiation Forensic Audit specifically in mandatory disclosures.

ii. The company was distressed in the said period, and there was shortage of staff. The Secretarial Department of the company was not fully functional. The *updates in provisions were not in knowledge of the company and thus company was of view of not making said disclosure.*

iii. *There were numerous exchanges between Stock Exchange, SEBI and company through which the said provision was brought to the notice of the company. However, due to constraints of staff and unavailability of signing authorities due to health reasons in the said period, the said disclosure could not be filed.*

iv. *However, the company is willing to file the same if opportunity is provided to the company.*

v. *The company had no intent for hiding this material information from stakeholders, however due to genuine reasons of staff constraints and non-awareness of changes in SEBI (LODR) Provisions, the said disclosure could not be filed.*

vi. *The company is facing severe cash crunch and the pandemic has disrupted the business of company to greater extent. However, the company is genuinely trying to comply with all good governance provisions and bounce back in business.*

vii. *In the light of above circumstances, we request you to kindly condone the delay caused and allow us to file the said disclosure.*

8. In consonance with the Adjudication Rules, the Noticee was provided with the opportunity of hearing in the present matter. The hearing was first scheduled on October 27, 2022. The Noticee citing its inability to attend the hearing on October 27, 2022, requested for an adjournment. The said request was acceded to and the hearing was rescheduled to November 16, 2022. However, the hearing scheduled on November 16, 2022 was again adjourned to November 23, 2022 in the light of the request of the Noticee.

9. Subsequently, the hearing was conducted on the rescheduled date i.e. November 23, 2022. On the said date of hearing, the Authorized Representative ('AR') of the Noticee attended through video conference and reiterated the reply to SCN dated October 17, 2022 submitted by the Noticee. Further, on the request of the AR, time was granted to the Noticee till November 24, 2022 to make additional submissions including supporting documents, if any. The AR made the following submissions vide email dated November 24, 2022, on behalf of the Noticee, which is reproduced below:

   i. *My client states that Clause 17 (a) of Schedule III Part A (A) is very specific that the disclosure has to be made when the forensic audit is initiated by the entity. It is clear the Security & Exchange Board of India (SEBI) is a Regulatory Body and not an entity. Furthermore, on reading clause 17 (b) of Schedule III Part A(A), it clearly excludes Forensic Audit initiated by Regulatory/enforcement agencies. In view thereof, the Company is not under the Obligation to make disclosure of forensic audit initiated. However, without prejudice, my client had still shown its willingness to file the same if the opportunity is granted.*

ii. *Furthermore, both the sub-clauses i.e. 17 (a) and (b) of Schedule III Part A(A) are very specific which are to read as whole. Even otherwise, if both the sub-clauses are read in isolation, the same concludes that it was not mandatory for the Company to file any disclosure. The Sub-clauses of any clause have to be read as whole and it should not be construed in isolation. It is a well settled principle that a statute or a clause must be read as a whole and every provision must be construed with reference to the context and other clauses in the statute so as to make a consistent enactment.*

iii. *Without prejudice, my client states that the preliminary reply dated 17.10.2022 filed by my client be considered as part of this Written Submissions.*

ORDER OF NATIONAL COMPANY LAW TRIBUNAL DATED NOVEMBER 28, 2022

10. On perusal of the website of Hon'ble National Company Law Tribunal, I note that the Hon'ble National Company Law Tribunal, Mumbai Bench ('NCLT') has allowed the corporate insolvency resolution process under Section 7 of the Insolvency and Bankruptcy Code ('IBC') against the Noticee vide Order dated November 28, 2022 in C.P. No. 106/MB/2022. In this regard, it is noted that the Noticee has not provided any information regarding the corporate insolvency resolution process being allowed against it by the NCLT.

11. I note that the Hon’ble NCLT in the said Order dated November 28, 2022 has *inter alia* held that:

> *a. The above Company Petition No. (IB) 106 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Setubandhan Infrastructure Limited (formerly Known as Prakash Constrowell Ltd)*
>
> *…*
>
> *d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
>
> *…*
>
> *g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under*

sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

12. So the issue that arises is whether the present proceeding is barred by the above order of the NCLT. In this context, I note the decision of the Hon'ble Supreme Court in **Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101**, wherein the Hon'ble Supreme Court held as under:

"46. Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.

56.On the basis of the above discussions, following are our conclusions:

i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority..."

13. From the aforesaid judgment of the Hon'ble Supreme Court, it can be stated that there is no bar on SEBI to assess/determine the penalty to be imposed on an entity

in respect of which moratorium is imposed in terms of Sections 14 or 33(5) of the IBC.

14. I also note that the order of the Hon'ble Securities Appellate Tribunal in **Dewan Housing Finance Corporation Ltd v. SEBI** (Appeal No. 206 of 2020 decided on October 09, 2020) which dealt with similar issue has been challenged by SEBI before the Hon'ble Supreme Court and the same is pending. In view thereof, I note that the instant proceedings qua the Noticee can be continued to determine if the Noticee has violated the aforesaid provisions of law as alleged in SCN and if so, assess and determine the penalty.

15. Accordingly, I hereby proceed to decide the case on merits.

ISSUES FOR CONSIDERATION

I. Whether the Noticee has violated the provisions of the Regulations 30(1) and (2) read with Schedule III Part A(A)(17) of the LODR Regulations read with Regulation 4 (1)(d), (e), (f), (g) and (h) of the LODR Regulations and read with Clause 2 of the Listing Agreement?

II. Do the violations, if any, attract monetary penalty under Section 23E of the SCRA, 1956?

III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23J of the SCRA, 1956 read with Rule 5(2) of the Adjudication Rules?

16. At this juncture, it is relevant to note the provisions of law applicable to the present proceeding which are provided below:

LODR Regulations

"*Disclosure of events or information.*

30.(1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

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

..

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

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

"Schedule III

Part A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

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

17. Initiation of Forensic audit: In case of initiation of forensic audit, (by whatever name called), the following disclosures shall be made to the stock exchanges by listed entities:

a) The fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available;

b) Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any."

"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:

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

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders."

<u>"Clause 2 of the Listing Agreement (As specified in Annexure I of SEBI Circular dated October 13, 2015)</u>

"NOW THEREFORE in consideration of the aforesaid, the Issuer hereby covenants and agrees with the Exchange as follows:

2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:–

i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time.

ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.

iii. such other directions, requirements and conditions as may be imposed by SEBI / Exchange from time to time."

FINDINGS

17. From the material on record, I note the following with respect to correspondence between the Noticee and SEBI regarding the initiation of forensic audit:

Table 1

Date of Letter/email	**Details**	**Observation**
Letter dated **October 1, 2021** sent by SEBI to the Noticee	SEBI informed the Noticee that it had initiated a forensic audit in respect of the Noticee on October 1, 2021 for financial years ending March 31, 2017, March 31, 2018, March 31, 2019 and March 31, 2020 in order to conduct forensic	Noticee did not make any disclosure regarding the material event i.e. initiation of forensic audit in consonance with LODR Regulations.

	audit of the consolidated financial statements of the Company for the aforementioned financial years.	
Email dated **November 20, 2021** sent by the Noticee to the SEBI	The Noticee submitted to SEBI that forensic audit initiation by SEBI did not fall within material information criteria as defined by the Noticee's policy on material transactions and Part A of Schedule III of the LODR Regulations.	Noticee did not make any disclosure regarding the material event i.e. initiation of forensic audit in consonance with LODR Regulations.
Administrative warning dated **December 8, 2021** sent by SEBI to the Noticee	SEBI issued an administrative warning to the Noticee regarding the non-compliance occurring due to non-disclosure of forensic audit. Further, the Noticee was advised to make requisite disclosure immediately and inform SEBI in this regard.	Noticee did not make any disclosure regarding the material event i.e. initiation of forensic audit in consonance with LODR Regulations or disseminate SEBI's warning letter.
Letter dated **December 15,**	The Noticee submitted to SEBI *inter alia,* that appointment of	Noticee did not make any disclosure regarding the

2021 sent by the Noticee to SEBI	forensic auditor by SEBI on grounds of suspicion regarding financial information and business transactions of the company cannot be considered as material information.	material event i.e. initiation of forensic audit in consonance with LODR Regulations or disseminate SEBI's warning letter.

18. I note that vide e-mail dated March 30, 2022, BSE had informed SEBI that the Noticee had failed to intimate the exchange regarding initiation of forensic audit within 24 hours of the event as required under regulation 30(2) read with Schedule III Part A(A)(17)of the LODR Regulations.

19. In these circumstances, I note that the forensic audit of the consolidated financial statements of the Noticee was initiated by SEBI with a focus on provisioning for bad debts, genuineness of trade receivables, diversion of funds and disclosed/potential related party transactions. The said forensic audit so initiated clearly falls within the ambit of Clause 17 of Para A of Part A of Schedule III of LODR Regulations and hence, it was a material event in terms of regulation 30(2) of LODR Regulations read with Clause 2 of the Listing Agreement. Therefore, the Noticee being a listed company on the date of violation is mandated to disclose the initiation of the said forensic audit in consonance with regulation 30(6) read with regulation 4(1) of LODR Regulations. Further, I find that the Noticee has not disputed the service of letter dated October 1, 2021 sent by SEBI to the Noticee and administrative warning dated December 8, 2021 sent by SEBI to the Noticee.

20. However, from the perusal of the submissions of the Noticee, I note that the Noticee has admitted that it has not made requisite disclosure regarding initiation of forensic audit till date. Further, I note that the said non-compliance on the part of the Noticee has continued despite the issuance of administrative warning by SEBI.

21. The Noticee, in the course of his submissions, has, *inter alia* submitted following grounds as his defense:

    a. The Noticee was not aware of the amendment dated October 08, 2020 in LODR Regulations through which Clause 17 of Para A of Part A of Schedule III of LODR Regulations was inserted.
    b. The sub-clauses i.e. 17 (a) and (b) of Schedule III Part A(A) of LODR Regulations have to be read as a whole and on their co-joint reading, it becomes apparent that it was not mandatory for the Noticee to file any disclosure for initiation of forensic audit.
    c. The Clause 17(a) of Schedule III Part A(A) of LODR Regulations do not include the forensic audit initiated by SEBI.

22. I am recording my findings and observations on each of the above stated defense of the Noticee in the following paragraphs:

    a. The Noticee has contended that he was not aware of the amendment dated October 08, 2020 in LODR Regulations through which Clause 17 of Para A of Part A of Schedule III of LODR Regulations was inserted.

However, the said contention of the Noticee cannot be a valid defense *ignorantia juris non excusat*. A listed company cannot defend its non-compliance with law by stating that it was not aware of the amendment to the LODR Regulations. The obligations relating to disclosure for listed companies are clearly mandated and the listed companies are expected to keep abreast with the amendments made to securities laws, from time to time. Therefore, I do not find any merit in this contention of Noticee.

b. Secondly, the Noticee has contended that the sub-clauses i.e. 17 (a) and (b) of Schedule III Part A(A) of LODR Regulations has to be read as a whole and therefore, according to the Noticee, it was not mandatory for the Noticee to file any disclosure for initiation of forensic audit. In this aspect, I note that the Clause 17(a) and (b) of Para A of Part A of Schedule III of LODR Regulations operates at different stages of forensic audit. Clause 17(a) of Para A of Part A of Schedule III of LODR Regulations deals with the initiation of audit while Clause 17(b) of Para A of Part A of Schedule III of LODR Regulations deals with the final forensic audit report (other than for forensic audit initiated by regulatory/enforcement agencies). I note that a plain reading of Clause 17 of Para A of Part A of Schedule III of LODR Regulations leaves no iota of doubt that it was incumbent on a listed company to make disclosure regarding the initiation of the forensic audit by SEBI or any other entity within the time period prescribed under regulation 30(6) read with regulation 4(1) of LODR Regulations. Therefore, the contentions of the Noticee cannot be accepted.

c. Lastly, the Noticee has stated that Clause 17(a) of Schedule III Part A(A) of LODR Regulations is very specific as it deals only with the forensic audit initiated by 'entity'. In this background, the Noticee has argued that as SEBI is a regulatory body and not an entity, there lies no obligation on the Noticee to make disclosure of the forensic audit initiated by SEBI. In this regard, I hold that the term entity used in the said Clause is broad in nature which will include regulatory authorities also, within its ambit. Further, I observe that SEBI website contains 'Frequently Asked Questions (FAQs) On Disclosure of Information Related to Forensic Audit of Listed Entities' dated November 27, 2020[1] which, inter alia, provide for the following:

> <u>Frequently Asked Questions (FAQs) On Disclosure of Information Related to Forensic Audit of Listed Entities</u>
>
> *2. Whether forensic audits initiated by the company are to be disclosed under sub-clause 17?*
>
> *The fact of initiation of any forensic audit, (or an audit by whatever name called), by the management of listed entity, lenders, <u>regulatory / enforcement agencies for the purpose mentioned at point 1 above, are required to be disclosed.</u>*

Based on the foregoing reasons, I find no merit in this contention of the Noticee. Therefore it is very clear from the language of the LODR Regulations that the Noticee being a listed company is mandated to disclose initiation of forensic audit.

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[1] Available at https://www.sebi.gov.in/sebi_data/faqfiles/nov-2020/1606474249513.pdf. Last accessed on November 28, 2022.

23. The remaining submissions of the Noticee viz. shortage of staff and unavailability of the signing authority due to health reasons could best be considered as mitigating circumstances put forth for consideration in terms of Section 23J of the SCRA, 1956 for leniency, if any, in the quantum of penalty which may be determined and are addressed subsequently in the part of the order dealing with the penalty.

24. Therefore, I note that Noticee has not adduced any justifiable reasons for non-disclosure of initiation of forensic audit by SEBI.

25. Timely and adequate disclosures are important for effective functioning of the securities market. The Noticee being a listed Company is expected to carry out its conduct with utmost diligence and make material disclosures in a time bound manner as per the extant regulations. However, as established hereinabove, the Noticee has not made the necessary disclosure with regard to the initiation of forensic audit and issuance of administrative warning against it.

26. In this regard, I note that Hon'ble Securities Appellate Tribunal in the matter of **Coimbatore Flavors & Fragrances Ltd. v. SEBI** (Appeal No. 209 of 2014 order dated August 11, 2014) held that: *"True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Along the same lines, the Hon'ble Securities Appellate Tribunal in the matter of **Milan Mahendra Securities Pvt. Ltd. v. SEBI** (Appeal

No. 66 of 2003 order dated April 15, 2005) held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

27. In the light of the foregoing observations, I am of the considered view that the allegation of non-disclosure of forensic audit is established against the Noticee on the basis of material on record. Consequently, the Noticee has violated Regulations 30(1) and (2) read with Schedule III Part A(A)(17) of the LODR Regulations read with Regulation 4(1)(d), (e), (f), (g) and (h) of the LODR Regulations and read with Clause 2 of the Listing Agreement.

28. As it has been established that the Noticee has violated the above said provisions of law, the said Noticee is liable for determination and assessment of monetary penalty in terms of Section 23E of the SCRA, 1956.

29. Section 23E of the SCRA, 1956 reads as follows:

    <u>SCRA</u>

    "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.

30. While determining the quantum of penalty under Section 23E of the SCRA, 1956, the following factors stipulated in Section 23J of the SCRA, 1956 have to be given due regard:

<u>SCRA</u>

"23J. Factors to be taken into account while adjudging quantum of penalty.

(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."

31. I note that the material on record does not indicate the disproportionate gain or unfair advantage, if any, made by the Noticee or the loss, if any, suffered by the investors as a result of the failure of the Noticee. I also take into account that there is nothing on record to show that the Noticee was subjected to any other proceedings by the SEBI prior to the instant proceeding.

32. I have taken note of the submissions presented by the Noticee in the course of the hearing and written responses as mitigating circumstances. I note that the Noticee has stated the shortage of staff and non-availability of the signing authority due to health reasons in the relevant period as the reason for its failure to make necessary disclosure. I note that while at one hand the Noticee was claiming that the forensic audit is not a material event to disclose, on the other hand Noticee states non-availability of staff and other factors as reasons for non-disclosure

though he has not adduced any material in the course of proceeding to substantiate the aforesaid grounds. Hence, I note that the submissions by the Noticee cannot be considered as mitigating circumstances.

33. I also note that despite repeated communications from SEBI seeking the disclosure of the initiation of forensic audit, the Noticee, till date, has not made any disclosure regarding the same.

ORDER

34. As stated above in paragraph 13, in the light of the Hon'ble NCLT order dated November 28, 2022, the limited purpose of the instant proceeding is to only determine if the Noticee has violated the aforesaid provision of law as alleged in SCN and to assess and determine the penalty, if any.
35. In this background, after taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 23 I of the SCRA, 1956 read with Rule 5 of the Adjudication Rules, I hereby assess and determine a penalty of Rs. 5,00,000/- (Five Lakh only) on the Noticee for violating Regulations 30(1) and (2) read with Schedule III Part A(A)(17)of the LODR Regulations read with Regulation 4(1)(d), (e), (f), (g) and (h) of the LODR Regulations and read with Clause 2 of the Listing Agreement**.**
36. I note that on July 19, 2022, SEBI has appealed the order of Hon'ble SAT in the matter of **Suzlon Energy Ltd. v. SEBI** (Appeal No. 201 of 2018), in order to ascertain whether penalty can be imposed under Section 23E of SCRA, 1956 for violations of provisions of the LODR Regulations and the same is pending before the Hon'ble Supreme Court. Accordingly, the penalty imposed under Section 23E

of SCRA, 1956 in the instant matter shall also be subject to the outcome of the said appeal filed by SEBI before the Hon'ble Supreme Court.

37. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee viz. Setubandhan Infrastructure Limited and also to the Securities and Exchange Board of India.

Date: November 30, 2022 **N HARIHARAN**

Place: Mumbai **ADJUDICATING OFFICER**