BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/21615]

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

In respect of

Vivimed Labs Limited

[PAN: AAACV6060A]

In the matter of Vivimed Labs Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as ''**SEBI**'') on receiving a reference from National Stock Exchange of India Limited (hereinafter referred to as **"NSE"**) pertaining to Vivimed Labs Ltd (hereinafter referred to as **"Vivimed/the Company/Noticee"**), initiated an examination into the fund raising activities carried out by Noticee in its material subsidiary, Vivimed Labs (Mascarene) Limited (now known as Uquifa Sciences (Mascarene) Ltd) (hereinafter referred to as "**Uquifa Sciences/USML/By Name**") between September 25, 2017 to March 2019. Noticee is into the business of pharmaceuticals and is listed on both BSE Ltd (hereinafter referred to as **"BSE"**) and NSE (BSE and NSE are hereinafter collectively referred to as "**exchanges**"). The period of the aforementioned examination of SEBI was from September 25, 2017 to November 18, 2020 (hereinafter referred to as **"Examination Period"**).

2. During the aforementioned examination, SEBI observed that Noticee had failed to disclose/ made inadequate disclosures with regard to fund raising activities carried out by it in Vivimed Labs (Mascarene) Limited. Therefore, SEBI initiated adjudication proceedings under Section 23E of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCR Act**") for the alleged violations of Regulations 4(1)(d),4(1)(e) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **"LODR Regulations"**) and Regulation 30(2) read with Regulation 30(6) and Regulation 30(9) of LODR Regulations read with Clause 2 of the Listing Agreement read with SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated October 06, 2021, SEBI appointed the undersigned as Adjudicating Officer under Section 23 I of SCR Act and Rule 3 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 23E of the SCR Act, the aforementioned alleged violations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated February 02, 2022 (hereinafter referred to as **'SCN'**) was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provisions of Section 23E of SCR Act for the aforesaid violation alleged to have been committed by it.

5. The brief facts of the case and the allegations, as mentioned in the SCN are as follows:

   a) Noticee had carried out fund raising in its wholly owned subsidiary Vivimed Labs (Mascarene) Limited. The events of fund raising in the Vivimed Labs (Mascarene) Limited are as mentioned hereunder:

Table-1

Sl No.	Date of Investment	Amount of Investment	Mode of Investment	Comments
1.	September 25, 2017	USD 42.5 Million	Compulsory Convertible Preference Shares (hereinafter referred to as **CCPS**)	A press release was made specifying the investment amount and no further details were specified. The press release mentioned that the investment was made in Vivimed Labs (Mascarene) Limited which is a holding entity for company's API business entity UQUIFA. UQUIFA according to the press release, accounted for 60% of the company's total consolidated revenue.
2.	December 29, 2017	USD 7.5 Million	CCPS	A press release was made specifying the investment amount and no further details were specified.
3	March 28, 2019	USD 18.5 Million	Optionally Convertible Debentures (hereinafter referred to as **OCDs**)	No disclosure was made for the aforesaid transaction.

b) In addition to the above, certain agreements were entered into in relation to aforesaid events which are as listed below:

i. Shareholders and Share Subscription Agreement dated September 26, 2017;

ii. Agreement for additional investment in December 2017;

iii. Debenture Subscription agreement dated March 27, 2019.

c) Thereafter, the aforementioned subsidiary, Vivimed Labs (Mascarene) Limited, was disposed of in 2020 due to triggering of terms of shareholders agreement. Further to this, Noticee sought approval of shareholders for resultant dilution in shareholding. The said approval was sought from shareholders through postal ballot notice dated July 25, 2020 and some of the aforementioned details regarding fund raising activities in Vivimed Labs (Mascarene) Limited were specified in the said postal ballot notice.

d) Upon receiving the postal ballot notice, a complaint was made by a shareholder of Noticee regarding alleged non-disclosure by the Company with respect to above mentioned fund raising. The complaint dated November 11, 2020, *inter-alia*, alleged violation of section 102 of Companies Act, 2013, by Noticee due to non-disclosure of following matters in the explanatory statement of resolution:-

i. issue price of share of Vivimed Labs (Mascarene) Limited to Orbimed Asia III Mauritius limited

ii. original issue price of share Vivimed Labs (Mascarene) Limited to Vivimed Labs Mauritius Ltd

e) The aforementioned complaint was forwarded to NSE for examination. NSE, after examining the complaint, referred the matter to SEBI vide an exceptional report. NSE had raised reference to the events of fund raising at Vivimed Labs (Mascarene) Limited and their non-disclosure or inadequate disclosures in the said report.

f) NSE, after obtaining reply from the company, had provided following comments in the aforementioned exceptional report:-

i. Noticee had not disclosed about fund raising activities in Vivimed Labs (Mascarene) Limited.
ii. Noticee has contended that it is not material on standalone basis.
iii. The said entity is a material subsidiary (on a consolidated basis) and hence the disclosure of the aforesaid events (Fund raising/ related agreements) was required under Regulation 30 of LODR along with details of line items as per SEBI circular dated September 09, 2015.
iv. The disclosure of line items as per the aforesaid circular would have given complete details of conversion at the time of the issue of CCPS and OCD's which would help the investors know the possible future change in control of material subsidiary.

g) In this regard, reply was sought by SEBI from Noticee regarding details of disclosure made in relation to the aforementioned fund-raising activities carried out by Noticee. Noticee, vide its email dated February 13, 2021, forwarded the same reply to SEBI (dated November 23, 2020) that was submitted to NSE during examination. A summary of aforementioned Noticee's reply is as given hereunder:
i. Vivimed Labs (Mascarene) Limited has not been material subsidiary in terms of LODR Regulations. However, if the revenues generated on a consolidated basis by the wholly owned subsidiaries of Vivimed Labs (Mascarene) Limited are taken into account, then Vivimed Labs (Mascarene) Limited is a material subsidiary.
ii. As per Noticee, the shareholder agreements have not affected the management or the control of the Vivimed Labs (Mascarene) Limited.
iii. Further, upon conversion of the OCD due to trigger of conditions specified for conversion, the investor gave notice for conversion. Details of the disposal were disclosed in postal ballot notice.
iv. Company made disclosures of fund raising via press-releases. The OCDs and the other fund raised were disclosed as part of annual report in relevant places.
v. The OCD borrowing was non-material and in ordinary course of the business, and hence listed entity was not obligated for the disclosure under Regulation 30

of LODR Regulations Further, this borrowing was taken on record by the company on 30 May, 2019.

vi. All relevant disclosures have been made by the listed entity.

h) In light of above observations, SEBI alleged that Vivimed Labs (Mascarene) Limited was a material subsidiary of Noticee. On the basis of the foregoing observations and findings, It was alleged that since Vivimed Labs (Mascarene) Limited was a material subsidiary of Noticee, the events and details of fund raising at material subsidiary including details of the shareholders agreements as enumerated above, were needed to be disclosed within 24 hours of happening as per Regulation 30(2) read with Regulations 30(6) and 30(9) of LODR Regulations read with Regulation 4(1)(d) and 4(1)(e) LODR Regulations and SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015 which Noticee failed to do. In view of above, it was alleged in SCN that Noticee had violated Regulation 4(1)(d), 4(1)(e) of LODR and Regulation 30(2) read with Regulation 30(6) and Regulation 30(9) of LODR Regulations read with clause 2 of the Listing Agreement and read with SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015.

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (hereinafter referred to as '**SPAD**') as well as digitally signed email on February 03, 2022 and was duly served on Noticee. Noticee was given twenty one (21) days' time from the date of receipt of SCN to make its submissions in respect of the allegations made in the SCN. In this regard, Noticee vide its letter dated February 21, 2022, stated that due to Covid Pandemic, Noticee was functioning with limited staff and was not able to access requisite documents pertaining to alleged issues in SCN. Citing the aforesaid reason, Noticee requested for additional time for providing reply to the SCN. Further, Noticee vide the aforementioned letter also requested for inspection/copy of the following documents:
    a) Copy of the Complaint dated November 11, 2020.
    b) Exceptional Report filed by NSE with SEBI
    c) Copy of all the documents referred to and relied upon by NSE in the Exceptional Report.

d) Any other documents relied upon by SEBI and NSE which does not form part of the annexures to SCN.

7. With respect to the aforesaid request of Noticee, vide email dated March 02, 2022, Noticee was provided a copy of exceptional report received by SEBI from Noticee, and copy of the complaint dated November 11, 2020. It was also informed to Noticee vide the aforementioned letter that all the documents relied upon by the SEBI in the captioned matter had been already provided to it as annexures to SCN. Further, with regard to Noticee's request for "*copy of all documents referred to and relied upon by NSE in exceptional report",* I find that aforementioned request of Noticee was not only wide and vague in nature but was also irrelevant to the present adjudication proceedings. Therefore, the request for the same was not acceded to.

8. Thereafter, vide letter dated March 31, 2022 sent through email dated April 01, 2022, Noticee submitted that it was in the process of collating all necessary documents and date and was seeking legal advice with respect of allegations levelled in SCN. In light of the aforementioned reasons stated by Noticee in the aforesaid letter, Noticee sought extension of three weeks to file reply to SCN. The aforementioned request of Noticee was once again acceded to and vide email dated April 04, 2022, Noticee was granted time till April 14, 2022 for filing reply to SCN in the matter. Subsequently, Noticee filed its reply on April 14, 2022.

9. Thereafter, in the interest of natural justice, vide hearing notice dated July 21, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on August 04, 2022.The aforesaid hearing notice was sent to Noticee through digitally signed email dated July 21, 2022 and duly served upon it. Subsequently, vide its letter dated August 03, 2022 sent through email dated August 04, 2022, Noticee requested for adjournment of hearing scheduled on August 03, 2022 for four weeks stating that the Counsel engaged by Noticee in the present matter would not be available August 31, 2022. Considering the aforementioned request of Noticee, the hearing scheduled on August 04, 2022 was adjourned and vide email dated September 01, 2022, Noticee was informed that another opportunity of hearing had been granted to it on September 07, 2022. Noticee vide letter dated September 06, 2022, once again requested for adjournment of the aforementioned

hearing scheduled on September 07, 2022 to either on September 15, 2022 or September 16, 2022 as it's Counsel was not available on the said date. In light of the aforesaid request, vide email dated September 08, 2022, hearing in the matter was once again rescheduled to September 16, 2022 at 3.00 P M. Vide another email dated September 16, 2022, Noticee requested to reschedule the hearing in the matter to September 26, 2022 stating that Counsel for Noticee was unwell. The aforesaid request was acceded to and vide email dated September 20, 2022, Noticee was informed that hearing in the matter was rescheduled to September 27, 2022. Thereafter, another request for adjournment of the hearing was made by Noticee. In this regard, vide email dated September 27, 2022, hearing in the matter was adjourned to September 28, 2022.

10. On September 28, 2022, authorized representatives of Noticee (ARs), Mr Shyam Mehta, Mr Amit Jajoo and Mr Nirav Parmar appeared on behalf of Noticee for the hearing. During the hearing, ARs of Noticees reiterated submissions made by Noticee vide its reply dated April 14, 2022 and also stated the following :

    a) The issuance of CCPS on September 25, 2017 and December 29, 2017 cannot be considered as "sale or disposal of subsidiary" within the meaning of Regulation 30(2) of LODR Regulations and SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015.
    b) Further, adequate disclosures was made by Noticee with regard to issuance of CCPS by way of press releases. The aforementioned press releases provided as Annexure 2 to the SCN. Further, in the aforesaid press releases, contact details of representatives for Noticee was provided, in case if anyone seeks further information with relation to aforesaid press releases. Further, AR of Noticee has also submitted that in the press releases, Noticee has also disclosed that it had entered into "definitive agreements" with regard to aforementioned fundraising activities carried out by it.
    c) Noticee is not a material subsidiary within the meaning of Regulation 16(1)(c) of LODR Regulations as it was not in existence in the preceding accounting year.

d) Noticee admitted that no disclosure has been made by it with relation to issuance of OCDs as the same was not a material event and was done in ordinary course of business. Even if it is considered issuance of OCDs is a material event/information, when conversion of OCDs were triggered, Noticee had informed its shareholders regarding the same and this should be considered as mitigating factor.

e) There was no intention to suppress material information regarding fund raising activities/borrowing carried out by Noticee. No investor was aggrieved due to fundraising activities/borrowing carried out by Noticee.

11. During the hearing, AR sought a weeks' time from the date of hearing for making additional written submission in the matter summarizing the contentions raised by AR during hearing. In this regard, AR was advised to file additional written submission by September 29, 2022. Thereafter, vide email dated September 29, 2022, Noticee filed additional written submissions in the matter.

12. Noticee's reply to SCN dated April 14, 2022 and September 29, 2022 is summarized hereunder:

- *Vivimed Labs (Mascarene) Limited is not a material subsidiary of the Noticee in terms of Regulation 16(c) of LODR Regulations, since its incorporation i.e. 29 August 2017. On plain reading of Regulation 16 (1) (c) of LODR Regulations, it is obvious that the 'the income or net worth' as set out in the definition of material subsidiary implies the income or net worth of the subsidiary alone (or income or net worth of subsidiary calculated independently or on a standalone basis) and not on a consolidated basis of its wholly owned subsidiaries. It is only the income or net worth generated by Vivimed Labs (Mascarene) Limited (a foreign company) independently or on standalone basis (sans the income or net worth of its wholly owned subsidiaries), which would be considered as 'the income or net worth' for the purpose of LODR Regulations.*

- *Furthermore, as per the definition of material subsidiary as stated in Regulation 16(1)(c) of LODR Regulations, income or net worth of a subsidiary, has to be considered for the immediately preceding accounting year, for determining whether it*

is a material subsidiary or not. However, the fund-raising events in Vivimed Labs Mascarence Limited, whereby funds of USD 42.5 million and USD 7.5 million were invested in September 2017 and December 2017 and pertinently Vivimed Labs (Mascarence) Limited was incorporated on 29th August 2017. Therefore, it is not possible to determine the income or net worth of the Vivimed Labs Mascarence Limited as the company/ entity was not even into existence in the immediately preceding accounting year.

- *The reliance on the press release dated 25th September 2017 particularly the statement contained therein "UQUIFA contributes approximately 60% of the Company's total consolidated revenues and a higher proportion of the reported EBITDA" is incorrect and misconceived. The reference to 60% of the Company's total consolidated revenues contained in the press release dated 25th September 2017, in no uncertain terms means total consolidated revenue of Vivimed Labs (Mascarene) Limited generated through itself and through its wholly owned subsidiaries and mainly caters to the Generic API and CDMO API Segments of UQUIFA in Spain and Mexico and not in Vivimed Labs (Mascarene) Limited independently. Therefore, it is humbly submitted that the definition of "material subsidiary" does not apply to Vivimed Labs (Mascarene) Limited and the reliance on the press release dated 25th September 2017 or the statements reproduced hereinabove is completely misconstrued.*

- *Additionally, the reliance of SEBI on the Postal Ballot dated 25th July 2020, in concluding that Vivimed Labs (Mascarene) Limited is a material subsidiary of the Noticee, is absolutely flawed and irrelevant. The reason being that the borrowing was obtained by Vivimed Labs (Mascarene) Limited in the ordinary course of business and such borrowing was not a material event as per the policy of the Listed Entity or as per the SEBI LODR regulations and further the Noticee was not obligated to make any disclosure as per the extant SEBI LODR regulations. The reference to the net worth/revenue in the Postal Ballot dated 25 th July 2020 was with respect to the consolidated revenues/ net worth of all the subsidiaries and not only for Vivimed Labs (Mascarene) Limited. Further, with regards to the interpretation of SEBI to the statement made in the said Postal Ballot, it is pertinent to mention that the relevant*

period for consideration will be FY 2019-20 whereas the date of borrowing was 28th March 2019. Therefore, there is clear inconsistency in the findings of SEBI in the SCN and hence, the reliance by SEBI on the Postal Ballot dated 25th July 2017 is completely misplaced and irrelevant.

- *It is absolutely incorrect to say that due to fundraising activities in the Vivimed Labs (Mascarene) limited, "the control of the Subsidiary Company was transferred to the investor". It is pertinent to mention that by virtue of entering into (a) the Shareholders Agreement, the Share Subscription Agreement dated September 26, 2017 for the investment of USD 42.5 million, towards subscription of Series A Preference Shares; or (b) the documentation for the investment of additional amount of USD 7.5 million in December 2017; or (c) entering into the Debenture Subscription Agreement dated March 27, 2019 for the investment of USD 18.5 million towards Series A OCD, has not affected the management or the control of Vivimed Labs (Mascarene) Limited. The reason being, even upon investment of USD 50 million towards subscription of Series A Preference Shares, and convertible debt in the form of Series A OCD raised by Vivimed Labs (Mascarene) Limited, the Noticee still held 100% of the equity and voting shares of Vivimed Labs (Mascarene) Limited through its wholly owned subsidiary, Vivimed Labs Mauritius Limited. Therefore, merely upon the investment by the Investor into Series A Preference Shares or the lending of convertible debt in the form of Series A OCD, has affected the management or control of Vivimed Labs (Mascarene) Limited. Even as of the date of the present response, the management formed by the Noticee is still in charge of the day-to-day management of Vivimed Labs (Mascarene) Limited. It is also relevant to point out that disclosure is to be made on the occurrence of the event, as specified in the SEBI Regulations. In the present case, at the time of borrowing of 18.5 million by Vivimed Labs (Mascarene) Limited and even thereafter, the management and the control of the company was not affected. Therefore, it is submitted that the Noticee is not liable to disclose unless there is a change in management and control of the Vivimed Labs (Mascare) Limited. Therefore, the observation of SEBI in the SCN that "the control of the subsidiary was transferred to investor" is erroneous and misconceived.*

- *Further it is to be noted that, only upon the conversion of Series A OCD into equity shares and taking into account the shareholding of the Investor held as Series A Preference Shares, on a fully diluted basis, will the Investor hold 72.22% of the share capital of the Vivimed Labs (Mascarene) Limited. Vivimed Labs (Mascarene) Limited's business performance was impacted in F.Y. 2020 and it made net loss of Rs. 90.75 crore as disclosed in the Postal Ballot notice. This led to breach of financial covenants under the terms of the OCD agreement and triggered conversion. The Investor gave notice of its intention to exercise its option to convert OCD into Equity Shares.*
    - *Further, it is incorrect to suggest that the Noticee has not made disclosures about the investment by the Investor into Series A Preference Shares of Vivimed Labs (Mascarene) Limited. The disclosures made by the Noticee in the press releases made by the Noticee dated 26th September 2017 with respect to the investment of USD 42.5 million by the Investor towards Series A Preference Shares, and again on 1st January 2018 with respect to the investment of USD 7.5 million by the Investor towards Series A Preference Shares, was to maintain complete transparency in the fundraising transaction. All the relevant details regarding the fund-raising activities were made in the said press releases and the contact details of the concerned persons were provided for anyone who wants further information with respect to the same.*
- *As noted above, Vivimed Labs (Mascarene) Limited for its business operations has borrowed USD 18.5 million from the Investor. This borrowing was obtained by Vivimed Labs (Mascarene) Limited in the ordinary course of business, and such borrowing was not a material event as per the policy of the Noticee/Listed Entity or as per Regulations. Therefore, Noticee was not obligated to make a disclosure as per the extant regulations.*
- *Noticee has disclosed the investment obtained by Vivimed Labs (Mascarene) Limited from the Investor and the convertible debt in the Annual Report of F.Y.2019.*
- *Furthermore, it is pertinent to mention that the pictorial representation of corporate structure of Noticee including all the subsidiaries, as on date and Pictorial representation of the corporate structure of the Noticee at the time of first investment into Vivimed Labs (Mascarene) Limited 'on 25th September 2017 and also on*

subsequent investment events, depicts that the fundraising events has not affected the management or the control of Vivimed Labs (Mascarene) Limited.

- *It is submitted that Vivimed Labs (Mascarene) Limited is not a material subsidiary of the Noticee since its incorporation. However, as and by way of abundant caution and to maintain complete transparency, all the disclosures regarding the fund raising in Vivimed Labs (Mascarene) Limited have been disclosed in the press release and postal ballot notice, though the Noticee was not obligated to make any such disclosures, as there was no requirement for the same. Noticee had issued press release dated 26th September, 2017 and 1st January 2018 upon completion of the investment of USD 42.5 million and USD 7.5 million into Vivimed Labs (Mascarene) Limited by the Investor. It is submitted that, press release is an act of disclosure to ensure complete transparency to its shareholders, though there was not a mandatory disclosure requirement as per Regulation 30, SEBI LODR. Pertinently, any fund raising by the Listed Entity requires a prior intimation as per Regulation 29 of LODR Regulations. As the issuance of securities pertained to the subsidiary Vivimed Labs (Mascarene) Limited, a disclosure is needed only if such event is material in terms of the policy framed by the Noticee. Furthermore, it is submitted that investment by Investor, was made in the ordinary course of business for furthering the business objectives of Vivimed Labs (Mascarene) Limited, as determined commercially by the Board of Vivimed Labs (Mascarene) Limited.*

- *It is submitted that, the borrowing of USD 18.5 million from the Investor, was a convertible debt. This was duly taken on record by the board of the Noticee as on 30th May 2019. As this borrowing was obtained by Vivimed Labs (Mascarene) Limited in the ordinary course of business, and such borrowing was not a material event as per the policy of the Noticee / Listed Entity or as per the regulations under SEBI LODR. Therefore, the Noticee was not obligated to make any disclosure as per the extant regulations.*

- *It is submitted that the Noticee was not liable to disclose any information with respect to the fund raising activities in the subsidiary i.e. Vivimed Labs (Mascarene) Limited.*

However, as and by way of abundant caution and to maintain complete transparency in the activities of the subsidiary company, the Noticee had made disclosures through press release dated 25th September 2017 and 1st January 2018 and through Postal Ballot dated 25th July 2020. Assuming while not admitting that the Noticee was liable to make disclosures are per the SEBI Circular,in this regard, it is submitted that the Noticee has made all the disclosures as per the requirement under the SEBI Circular. In view of above, it is clear that the Noticee have made relevant disclosures in accordance with the SEBI Circular. It is pertinent to mention that the amount and percentage of the turnover or revenue or income and net worth could not have been disclosed in the aforesaid press release dated 25th September 2017 and 1 st January 2018 as Vivimed Labs (Mascarene) Limited was not even into existence in the immediately preceding accounting year as it has been incorporated on 25th August 2017.Secondly, there is no sale in the fund raising activities. The investment/ fund raising in the subsidiary i.e. Vivimed Labs (Mascarene) Limited, was made in the ordinary course of business for furthering the business and as determined commercially by the board of Vivimed Labs (Mascarene) Limited. It is submitted that there was no requirement for any disclosure at the time when borrowing of 18.5 million was obtained by Vivimed Labs (Mascarene) Limited as there was no sale which had arisen at the time of borrowing. It is further submitted that the Noticee is only liable to make disclosures upon the occurrence of an event (sale) and therefore the requirements under the SEBI Circular does not even apply to Noticee.

- *Pertinently, as there was breach of financial covenants under the terms of OCD Agreements which triggered conversion of CCPS to equity shares, the Noticee had given complete disclosure of the same in the Postal Ballot dated 25th July 2020. Hence, it is incorrect to say that the Noticee is in violation/ non-compliance of the requirements of the SEBI Circular.*
- *It is humbly submitted that the intention of the Noticee was to always present true and correct picture of the fundraising events in Vivimed Labs (Mascarene) Limited to its shareholders and from the submissions made hereinabove it is clear that the Noticee was not in violation of the alleged provisions of LODR Regulations. Therefore, the penalty as stated in Section 23E of the SCR Act, cannot be imposed on the Noticee.*

- *Further, with respect to the allegations of violation of Regulation 4(1)(d) and 4(1)(e) Regulation 30(2) read with Regulation 30(6) and Regulation 30(9) of LODR Regulations, Clause 2 of the Listing Agreement read with SEBI Circular No. CIR/ CFD/CMD/4/ 2015 dated 9th September 2015, it is reiterated that that V ivimed Labs (Mascarene) Limited is not a material subsidiary of the Noticee since its incorporation and none of the regulations as levelled in the SCN apply to the fund raising events as transpired. However, as and by way of abundant caution and to maintain complete transparency, all the disclosures required under Companies Act 2013 and LODR Regulations have been disclosed in the press release and postal ballot notice.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

13. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

I. Whether Noticee has violated Regulations 4(1)(d),4(1)(e) of LODR Regulations and Regulation 30(2) read with Regulation 30(6) and Regulation 30(9) of LODR Regulations read with Clause 2 of the Listing Agreement read with SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015?

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

III. If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

14. Before moving forward, it is pertinent to refer to the relevant provisions of LODR Regulations which were in force at the time of impugned transactions, which are reproduced as under:

LODR Regulations

Regulation 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.

Regulation 30(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:

Regulation 30(9): The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.

Regulation 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.

Listing Agreement

Clause 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.

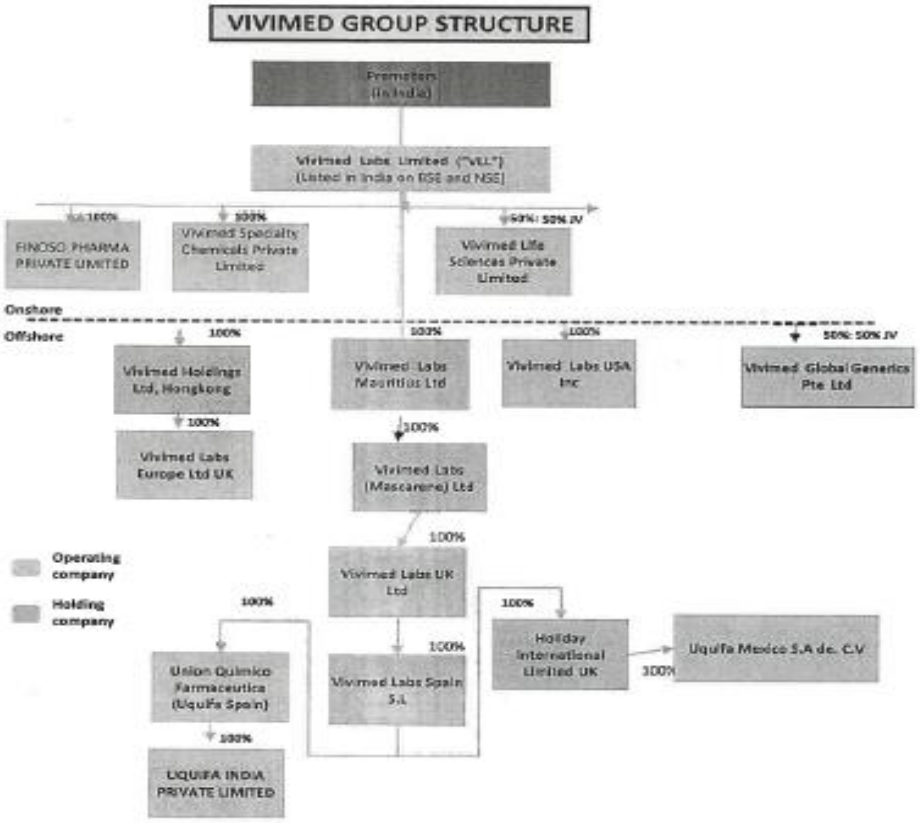
ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.

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

Issue No. I:- Whether Noticee has violated Regulations 4(1)(d), 4(1)(e) of LODR Regulations and Regulation 30(2) read with Regulation 30(6) and Regulation 30(9) of LODR Regulations read with Clause 2 of the Listing Agreement read with SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015?

15. It has been alleged in the SCN that Noticee failed to disclose/made inadequate disclosures with regard to fundraising activities carried by it in its material subsidiary, Vivimed Labs (Mascarene) Limited, and thereby violated Regulations 4(1)(d),4(1)(e) of LODR Regulations and Regulation 30(2) read with Regulation 30(6) and Regulation 30(9) of LODR Regulations read with Clause 2 of the Listing Agreement and read with SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015.

16. From the material placed on record, I note that Noticee is a pharmaceuticals and specialty chemicals company listed on both BSE and NSE and Vivimed Labs (Mascarene) Ltd was a step down wholly owned subsidiary of Noticee held through its wholly owned subsidiary, Vivimed Labs Mauritius Ltd. Vivimed Labs (Mascarene) Ltd. was incorporated in the republic of Mauritius on 29th August 2017. The corporate structure of Noticee prior to impugned fundraising activities is given below:



17. I note from the above pictorial representation that prior to the impugned fundraising activities, Vivimed Labs (Mascarene) Ltd., a step down wholly owned subsidiary of Noticee, had 6 (direct/indirect) wholly owned subsidiaries viz. Vivimed Labs UK Ltd., Vivimed Labs Spain S.L, Holiday International Limited UK, Unquifa Mexico S.A de. C.V, Union Quimico Farmaceutica(Uquifa Spain) and Uquifa India Private Limited.

18. I note from the submissions made by Noticee to SEBI vide its letter/email dated July 14, 2021 and email dated February 13, 2021 that during the period of examination, there were several fund rising activities carried out by Noticee in Vivimed Labs (Mascarene) Limited. The aforementioned funding was given by Orbimed Asia III Mauritus Limited (hereinafter referred to as "**Investor**"). I note from the material available on record that Investor had invested an aggregate of USD 68.5 million in Vivimed Labs (Mascarene) Limited between calendar year 2017 to calendar year 2019 by subscribing to series A compulsorily convertible cumulative preference shares (hereinafter referred to as "**CCPS**") and Optionally Convertible Debentures (hereinafter referred to as "**OCDs**") which were issued in accordance with the terms and conditions contained in the relevant subscription agreements. The aforementioned funding/borrowing activities undertaken by Noticee in Vivimed Labs (Mascarene) Limited is examined in detail in subsequent paragraphs.

19. From the perusal of press release dated September 26, 2017 issued by Noticee, I observe that on September 25, 2017, there was an investment of USD 42.5mn by Investor in Vivimed Labs (Mascarene) Limited. The relevant extract of the aforementioned press release is reproduced hereunder:

> "*Vivimed Labs Limited ("Vivimed" or the company), a Pharmaceuticals and Specialty Chemicals company, has signed definitive agreements to facilitate an investment of USD 42.5mn by OrbiMed Asia into the Company's subsidiary, Vivimed Labs Mascarene Ltd, the holding entity of the company's API business, UQUIFA "*
>
> *The proceeds of this fund raised will be utilised by the Company primarily for,*
>
> - *Debt reduction and optimisation of capital structure at the parent entity level*
> - *Investment in the API business for capacity augmentation and organic growth*

UQUIFA contributes approximately 60% of the company's total consolidated revenues and a higher proportion of the reported EBITDA."

20. I also observe from the aforementioned press release that apart from the name of Investor, amount of investment and purpose for which funds were raised, no other details were specified in it. I further note from Noticee's letter to NSE dated November 23, 2020 that the aforementioned investment of USD 42.5 million was towards subscription of CCPS in Vivimed Labs (Mascarene) Limited and that for the purpose of the aforementioned investment, Noticee, and the immediate holding company of Vivimed Labs (Mascarene) Limited i.e., Vivimed Labs Mauritius Limited, had entered into a shareholder's agreement and a share subscription agreement dated September 26, 2017 with Investor. I note from the material available on record that the aforesaid share subscription agreement prescribed the manner of subscription, the representations, warranties and conditions associated with the investment of USD 42.5 million towards subscription of CCPS (CCPS issued on September 25, 2017 is hereinafter referred to as CCPS1). Similarly, the aforementioned shareholders' agreement provided for the inter-se rights and obligations of the parties and the rules of governance of Vivimed Labs (Mascarene) Limited. The material terms of the aforementioned investment of USD 42.5 million towards subscription of CCPS1 as noted from Noticee's letter dated November 23, 2020 to NSE are as given hereunder:

    a) Dividends: Pre-determined cumulative dividend rate of 0.0001% (zero point zero zero zero one per cent) per annum.
    b) Conversion: The conversion of CCPS1 can be made based on the option of the holder i.e. Investor, by providing a 30 (thirty) days' notice to Vivimed Labs (Mascarene) Limited. Further, each Series A Preference Share shall convert into 0.013247 Equity Share.
    c) Valuation Protection: If Vivimed Labs (Mascarene) Limited offers a new investor or a third party any securities at a price less than the then effective conversion price of the CCPS1 then the holders of CCPS1 shall be entitled to a full ratchet basis anti-dilution protection.
    d) Adjustments. The terms provide for typical adjustments for stock splits, or consolidation and likewise adjustments.

e) Meeting and voting rights. The holders of CCPS1 shall be entitled to the same number of votes for each CCPS1 as a holder of 0.013247 Equity Share.

21. I note from Noticee's reply dated November 23, 2020 to NSE and reply dated February 13, 2021 to SEBI during examination that pursuant to investment of USD 42.5 million towards subscription of CCPS1, Investor held 36% of the share capital of the Vivimed Labs (Mascarene) Limited on a fully diluted basis. The aforementioned facts have also been admitted to by Noticee in its reply to SCN.

22. From the perusal of press release dated January 01, 2018 issued by Noticee, I note that Vivimed Labs (Mascarene) Limited received an investment of USD 7.5 Million on December 29, 2017 from Investor which was follow on to the earlier investment of USD 42.5 million in Vivimed Labs (Mascarene) Limited by Investor. I also note from Noticee's reply dated November 23, 2020 to NSE and reply dated February 13, 2021 to SEBI that the investment of USD 7.5 Million was also towards subscription of CCPS (CCPS issued on December 29, 2017 is hereinafter referred to as CCPS2). I also note from the aforementioned reply of Noticee that pursuant to the aforementioned investment, Investor held 39.83% of the share capital of the Vivimed Labs (Mascarene) Limited on a fully diluted basis. I note that Noticee had submitted during the examination that for the purpose of the aforementioned additional investment of USD 7.5 Million, Noticee, Vivimed Labs (Mascarene) Limited and Vivimed Labs Mauritius Limited, had entered into documentation with Investor and the terms of issuance of CCPS2 had remained the same as that of the earlier investment of USD 42.5 million. The aforementioned facts have also been admitted by Noticee in its reply to the SCN.

23. I note from the material available on record that on March 28, 2019, there was an investment of USD 18.5 million in Vivimed Labs (Mascarene) Limited by Investor. I also note that Noticee had entered into Debenture Subscription Agreement dated March 27, 2019 for the purpose of the aforementioned investment of USD 18.5 million in Vivimed Labs (Mascarene) Limited. I also note that investment of USD 18.5 million in Vivimed Labs (Mascarene) Limited by Investor was toward subscription of OCDs. The terms of the

aforementioned issuance of OCDs as noted from material available on record are as given hereunder:

a. Interest: On the principal amount outstanding, an interest at a rate equal to 0.0001%) (zero point zero zero zero one percent) per annum.
b. Conversion: The OCDs are convertible into equity shares upon occurrence of certain conditions or events such as material breach of covenant or warranties provided including breach of financial covenants, material default, initiation of winding up or insolvency proceedings, revocation or non-renewal of the requisite material permits or authorisations etc.
c. Upon occurrence of a conversion event, Investor has right to convert OCDs into equity shares and only upon the conversion of OCD into equity shares and taking into account the shareholding of the Investor held as CCPS, on a fully diluted basis, will the Investor hold 72.22% of the share capital of the Vivimed Labs (Mascarene) Ltd.
d. Prepayment of Debentures only with the written approval of the Investor.

24. I note from the Noticee's reply dated November 23, 2020 to NSE and reply dated February 13, 2021 to SEBI during examination that pursuant to the above fund raising, Investor held OCDs which if converted as per certain covenants of Debenture Subscription Agreement dated March 27, 2019, Investor would hold 72.22% in Vivimed Labs (Mascarene) Ltd on a fully diluted basis, considering the earlier capital held by Investor. I note from the reply of Noticee to SCN that in the calendar year 2020, due to breach of financial covenants under the terms of the Debenture Subscription Agreement dated March 27, 2019, Investor gave notice of its intention to exercise its option to convert OCDs into Equity Shares of Vivimed Labs (Mascarene) Ltd. In this regard, I note that Noticee had sought approval of its shareholders through postal ballot notice dated July 25, 2020 for dilution of shareholding of Noticee in Vivimed Labs (Mascarene) Ltd and its 8 wholly owned subsidiaries namely, Vivimed Labs UK Ltd, Vivimed Labs Spain S.L, Union Quimico Farmaceutica S.A.U (considered as material subsidiary by Noticee), Holiday International Limited UK, Uquifa Mexico S.A de. C.V, Soneas Chemicals Ltd, Soneas Research Ltd and UQUIFA India Private Ltd., as a result of Investor's intention to convert OCDs. From the perusal of the

aforesaid postal ballot notice, I observe that the same was issued by Noticee in order to comply with obligations laid down in Regulation 24(5) and Regulation 24(6) of LODR Regulations. In this context, I note that as per Regulation 24(5) of LODR Regulations, a listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding to less than 50% (fifty per cent) or cease the exercise of control over the subsidiary without passing a special resolution unless *inter-alia* the divestment is made under a scheme of arrangement duly approved by a Court/ Tribunal. Further, I note that under Regulation 24(6) of LODR Regulations, the sale, disposal, leasing of assets amounting to more than 20% (twenty percent) of the assets of the material subsidiary on an aggregate basis during a financial year, requires prior approval of the shareholders of the company by way of a special resolution unless inter-alia the sale/ disposal/ lease is made under a scheme of arrangement duly approved by a Court/Tribunal.

25. I also note from the aforesaid postal ballot notice that through the conversion of OCDs, Investor acquired controlling stake in of Vivimed Labs (Mascarene) ltd and its eight wholly owned subsidiaries. The relevant extract of the aforementioned postal ballot notice is reproduced hereunder:

" *The Investor had invested an aggregate of USD 68.5 million in USML between CY 2017 to CY 2019 by subscribing to series A compulsorily convertible cumulative preference shares ("Preference Shares") and the Debentures which were issued in accordance with the terms and conditions contained in the relevant subscription agreements. Now, the Investor wants to exercise its option of converting the Debentures into equity shares of USML which Will be at par with the Preference Shares and with similar rights as provided under the relevant subscription and shareholders' agreement. Pursuant to conversion of the Debentures, the total shareholding of the Investor in USML will increase to 72.22% on a Fully Diluted Basis, and the shareholding of VML will decrease to 27.78% on a Fully Diluted Basis. Pursuant to conversion of the Debentures, Vivimed Labs Limited, the ultimate parent company, through VML, will cede controlling stake in USML and 8 wholly owned subsidiaries of USML mentioned above*."

26. The SCN alleges that issuance of CCPS1 and CCPS2 and OCDs in March 28, 2019 in Vivimed Labs (Mascarene) Limited, which is considered to be a material subsidiary of Noticee, were material events/information pertaining to Noticee. At this juncture, I find it pertinent to examine the principles governing materiality of events/information as laid down in LODR Regulations in order to determine the issue involved in the present matter.

27. A perusal of principles governing disclosure under LODR Regulations show that LODR Regulations envisage adequate and timely information of material events/information pertaining to listed entity to stock exchange and investors in the securities market. In this context, I note that Regulation 30 along with schedule III of LODR Regulations spell out material events/information pertaining to listed entities and mandate disclosure of the same. Regulation 30(1) of LODR Regulations provides that a listed entity has to make disclosure of events/information which in the opinion of its board of directors is material. Apart from the disclosure of the aforementioned events/information, a listed entity is also obligated to disclose events deemed to be material under Regulation 30(2) of LODR Regulations which considers events specified in Para A of Part A of Schedule III to be material. Further, as per Regulation 30(3), a listed entity is also bound to disclose events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in Regulation 30(4) of LODR Regulations. I note that Regulation 30(4) of LODR Regulation lays down following criteria to be considered by a listed entity for determination of materiality of events/information:

(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

(b)the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

(c)In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

28. I also note that Regulation 30(6) of LODR Regulations lays downs the timeline for making disclosure of material events/information under LODR Regulations. Regulation 30(9) requires a listed entity to disclose all events or information with respect to subsidiaries which are material for the listed entity. Further, Regulation 30(12) of LODR Regulations lays down that a listed entity has to disclose an event or information which is available with it even though the same have not been indicated in Para A or B of Part A of Schedule III if the said information/event has material effect on it. In this regard, I note that Para C of Part A of Schedule III of LODR Regulations stipulates that any other information namely information relating to development that is likely to affect business, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts or any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities, shall have to be disclosed by the listed entity.

29. From the combined reading of the aforementioned provisions of LODR Regulations, I find that an information/event can be considered material event/information as per LODR Regulations, if the said event or information is :
    a) considered to be material by board of directors of listed entity [Regulation 30(1) of LODR Regulations]; or
    b) deemed to be material event/information within para A of Part A of Schedule III [Regulation 30(2) of LODR Regulations];or
    c) events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality specified in Regulation 30(4) of LODR Regulations [Regulation 30(3) of LODR Regulations];or
    d) Any other event or information [i.e. information other than that in Para A or B of Part A of Schedule III] which has material effect on listed entity] [Regulation 30(12) of LODR Regulations read with para C of Part A of Schedule III].

30. I note that SCN alludes to the fact that issuance of CCPS1 and CCPS2 on September 25, 2017 and December 29, 2017, respectively, were material events/information which fall

within the category "*sale or disposal of any unit(s), division(s) or subsidiary of the listed entity"* in the Clause 1 of Para A of Part A of Schedule III of LODR Regulations and Noticee was under an obligation to disclose it in accordance with Regulation 30(2) of LODR Regulations. It is alleged that Noticee had made inadequate disclosures regarding issuance of CCPS1 and CCPS2 and had not provide details with regard to sale/disposal of subsidiary as required under SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015. I note that in accordance with Regulation 30(2) of LODR Regulations read with Clause 1 of Para A of Part A of Schedule III of LODR Regulations "*Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring"* are deemed to be material events/information which listed entity have to disclose. In this regard, I also note that SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015, provides details regarding events specified in Part A of Schedule III of LODR Regulations which have to be disclosed to stock exchange. As per the aforesaid SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015, the following details with regard to sale or disposal of subsidiary are to be disclosed under Regulation 30(2) of LODR Regulations:-

a. the amount and percentage of the turnover or revenue or income and net worth contributed by such unit or division of the listed entity during the last financial year;
b. Date on which the agreement for sale has been entered into;
c. The expected date of completion of sale/disposal;
d. Consideration received from such sale/disposal;
e. Brief details of buyers and whether any of the buyers belong to the promoter/promoter group/group companies. If yes, details thereof;
f. Whether the transaction would fall within related party transactions? If yes, whether the same is done at "arm's length";

31. With regard to the allegations against it in the SCN, Noticee has contended that for issuance of CCPS1 and CCPS2, it was not under an obligation to make disclosure under Regulation 30 of LODR Regulations. In this regard, I note from Noticee's letter to SEBI dated November 23, 2020 and its reply to SCN that Noticee has considered the

aforementioned press releases regarding investment in Vivimed Labs (Mascarene) Limited as "*disclosure of purpose of transparency to its shareholders*" and "*not as a mandatory disclosure required as per Regulation 30 of LODR Regulations"*. Further, Noticee has contended that issuance of CCPS1 and CCPS2 to Investor cannot be categorized as "sale" of its subsidiary, Vivimed Labs (Mascarene) Limited, as per Clause 1 of Part A of Schedule III of LODR Regulations and it was merely fund raising activity in Vivimed Labs (Mascarene) Limited. Noticee, in its submissions, has also contended that even upon investment of USD 50 million towards subscription of CCPS1 and CCPS2 and convertible debt in the form of OCDs raised by Vivimed Labs (Mascarene) Limited, Noticee still held 100% of the equity and voting shares of Vivimed Labs (Mascarene) Limited through its wholly owned subsidiary, Vivimed Labs Mauritius Limited. Noticee has further contended that even as of the date of the present proceeding, the investment by Investor into CCPS1 and CCPS2 or the lending of convertible debt in the form of OCD, has not affected the management or control of Vivimed Labs (Mascarene) Limited. Noticee has also contended that even on the date of filing of reply to the SCN, the management formed by Noticee was still in charge of the day-to-day management of Vivimed Labs (Mascarene) Ltd. Noticee further contended that Noticee is not liable to disclose unless there was change in management or control of Vivimed Labs (Mascarene) Limited.

32. In this regard, I note that due to the issuance of CCPS1 and CCPS2, the Investor held 36% and 39.83%, respectively, of share capital of Vivimed Labs (Mascarene) Limited only on a fully diluted basis. Thus, prior to conversion of CCPS, Investor only had rights associated with a preference shareholder in Vivimed Labs (Mascarene) Limited. In light of the above, I am of the view that at the time of issuance of CCPS1 and CCPS2, Investor could not said to have acquired control or management of Vivimed Labs (Mascarene) Limited and thus, there was no change of control in Vivimed Labs (Mascarene) Limited at the time of issuance of CCPS1 and CCPS2. Considering the above, I am of view that issuance of CCPS1 and CCPS2 cannot be considered as "*sale or disposal of subsidiary"* within the meaning of Clause 1 of Para A of Part A of Schedule III of LODR Regulations at the respective time periods (i.e. at the time of issuance). Further, since the issuance of CCPS1 and CCPS2 on September 25, 2017 and December 29, 2017 respectively was not "*sale or disposal of*

subsidiary", the provision of Regulation 30(2) of LODR Regulations and SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015 as applicable to "*sale or disposal of a subsidiary*" would not be attracted for impugned acquisition of CCPS1 and CCPS2 by Investor on September 25, 2017 and December 29, 2017 respectively .

33. Regulation 30(9) of LODR Regulations requires a listed entity to disclose all events or information with respect to subsidiaries which are material for the listed entity. In this regard, the SCN has alleged that Vivimed Labs (Mascarene) Ltd was a material subsidiary of Noticee and being its material subsidiary, Noticee was under an obligation to disclose the events and details of fund raising in Vivimed Labs (Mascarene) Ltd in terms of Regulation 30(9) of LODR Regulations.

34. With regard to the allegations in SCN, Noticee has contended that for issuance of CCPS1 and CCPS2, it was not under an obligation to make disclosure under Regulation 30 of LODR Regulations. Noticee has further contended that as per Regulation 16(1)(c) of LODR Regulations, income or net worth of a subsidiary, has to be considered for the immediately preceding accounting year, for determining whether it is a material subsidiary or not. Noticee in this regard has stated that the fund raising events in Vivimed Labs (Mascarence) Ltd were carried out in September 2017 and December 2017 and Vivimed Labs (Mascarene) Ltd was incorporated only on 29th August 2017 and has, therefore, contended that since Vivimed Labs (Mascarence) Limited was not into existence for determining the income or net worth in the preceding year, the allegation in the SCN that Vivimed Labs (Mascarence) Limited is a material subsidiary of Noticee is misconstrued.

35. In order to address the aforesaid contentions of Noticee, I find it necessary to refer to the definition of "material subsidiary" as laid down in Regulation 16(1)(c) of LODR Regulations which is reproduced hereunder:

> *"material subsidiary" shall mean a subsidiary, whose income or net worth exceeds *[twenty] percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year "*
>
> **substituted with the word "ten" w.e.f. April 01, 2019"*

36. As already noted, the impugned issuance of CCPS1 and CCPS2 occurred on September 25, 2017 and December 29, 2017 respectively. The income or net worth of Vivimed Labs (Mascarene) Limited and Noticee during the previous accounting years of the aforementioned issuance of CCPS1 and CCPS2 i.e. financial years 2016-2017 are not available on record. Having regard to the definition of "material subsidiary" as stated in Regulation 16(1)(c) of LODR Regulations and considering that the income or net worth of the subsidiary, i.e. Vivimed Labs (Mascarene) Limited was not available on account of the subsidiary being not into existence at the time of CCPS1 and CCPS2 , I am inclined to agree with the aforementioned contention of Noticee that Vivimed Labs (Mascarene) Limited was not a material subsidiary of Noticee since Vivimed Labs (Mascarence) Limited was not into existence at the time of issuance of CCPS1 and CCPS2. Therefore, I hold that there is merit in the argument of Noticee that at the time of issuance of CCPS1 and CCPS2, Vivimed Labs (Mascarence) Limited could not have been considered a material subsidiary of Noticee.

37. However, considering that Regulation 30(9) of LODR Regulations places stress on materiality of the events or information relating to a subsidiary of listed entity, at this juncture, I find it pertinent to examine whether the aforesaid events could be said to be material events or information for the purpose of disclosure by Noticee under the provisions of LODR Regulations. With regard to the above, I note from the submissions of Noticee that its board of directors has not considered issuance of CCPS 1, CCPS2 and OCDs in Vivimed Labs (Mascarene) Ltd to Investor as material information. Further, I note that issuance of CCPS1, CCPS2 and OCDs of a listed entity in its subsidiary/material subsidiary has not been indicated as material event/information under para A or B of Part A of schedule III of LODR Regulations. However, as earlier stated in the order, Regulation 30(12) of LODR Regulations provides that events other than that given in para A or B of Part A of Schedule III of LODR Regulations can also be considered as material. In this regard, I also refer to para C of Part A of Schedule III of LODR Regulations which, *inter alia,* states that any other information which is exclusively known to a listed entity and which may be necessary to enable the holders of securities of listed entity to appraise its position

and to avoid the establishment of a false market in such securities can also be considered as material information and would have to be disclosed adequately to stock exchange.

38. I note from the material available on record that Noticee had already disclosed to exchanges about investment of USD 42.5 Million and USD 7.5 Million by Investor by way of press releases dated September 25, 2017 and December 29, 2017 respectively. In this regard, Noticee has contended that the investment/ fund raising in Vivimed Labs (Mascarene) Limited was not a material event as the same was made in the ordinary course of business for furthering the business and as determined commercially by the board of Vivimed Labs (Mascarene) Limited and cannot be considered to be material for Noticee. Noticee has further contended that issuance of CCPS1 and CCPS2 has not affected the management or control of Vivimed Labs (Mascarene) Limited and hence cannot be considered to be material. I note that on one hand, Noticee is contending that aforementioned investment was done in ordinary course of business and was not material but on the other hand, Noticee considered the event material enough to merit a press release for the attention of its shareholders and potential investors. I am of view that an investment of USD 42.5 Million and USD 7.5 Million by Investor towards subscription of CCPS1 and CCPS2 respectively, in Vivimed Labs (Mascarene) Limited amounts to significant investment in Vivimed Labs (Mascarene) Limited. In this context, I also find it relevant to note from press release dated September 26, 2017 issued by Noticee that Vivimed Labs (Mascarene) Limited was holding entity of the Noticee's API business, UQUlFA and UQUIFA contributes approximately 60% of the Noticee's total consolidated revenues and a higher proportion of the reported EBITDA. Besides, as already established, pursuant to issuance of CCPS on September 25, 2017 and December 29, 2017, Investor held 36% and 39.83% of the share capital of Vivimed Labs (Mascarene) Limited on a fully diluted basis. Considering the contribution of Vivimed Labs (Mascarene) Limited and its wholly owned subsidiaries to consolidated income of Noticee, any significant dilution/potential dilution in shareholding of Noticee in Vivimed Labs (Mascarene) Limited can be considered as relevant information to holders of securities of Noticee. Therefore, I find that issuance of CCPS1 on September 25, 2017 and CCPS2 on December 29, 2017 was an information exclusively known to the listed entity which was necessary to enable

the holders of its securities to appraise its position and to avoid the establishment of a false market in such securities. Considering the above, I find that the issuance of CCPS1 and CCPS2 on September 25, 2017 and December 29, 2017, respectively, amounted to material event/information as per Para C of Part A of Schedule III of LODR Regulations. In light of the above, I find contention of Noticee that issuance of CCPS1 and CCPS2 were done in ordinary course of business and therefore the same was not material, cannot be accepted.

39. Since it is already established that issuance of CCPS1 and CCPS2 to Investor amounted to material information, the contention of Noticee that the board of directors of Noticee did not consider the same as material or the same was not material under LODR Regulations also does not stand.

40. Further, I find that since the issuance of the aforesaid securities amounted to information pertaining to subsidiary which was material to Noticee, Noticee was under an obligation to disclose the same under Regulation 30(9) of LODR Regulations.

41. Additionally, I note that material terms regarding the issuance of CCPS1 and CCPS2, like conversion, dilution of shareholding etc. are contained in the shareholder agreement and share subscription agreement dated September 26, 2017 and Agreement for additional investment in December 2017 respectively. Considering the above, I find that the contents of the shareholder's agreement and share subscription agreement dated September 26, 2017 and Agreement for addition was an information exclusively known to Noticee which was necessary to enable the holders of its securities to appraise its position and to avoid the establishment of a false market in such securities. Thus, I find that shareholder agreement and share subscription agreement dated September 26, 2017 and Agreement for additional investment in December 2017 contained material information relating to Noticee which amounted to material event/information as per Para C of Part A of Schedule III of LODR Regulations. Therefore, Noticee was liable to disclose the material details contained in the aforesaid shareholder and share subscription agreement dated September

26, 2017 and Agreement for addition investment in December 2017 in accordance with Regulation 30(9) of LODR Regulations.

42. As noted earlier, Vivimed Labs (Mascarene) Limited had also issued OCDs to Investor worth USD 18.5 million on March 28, 2019. Noticee in its reply to the SCN has contended that Vivimed Labs (Mascarene) Limited was not a material subsidiary of Noticee in terms of Regulation 16(c) of LODR Regulations. Noticee has also contended that 'income or net worth' as set out in Regulation 16(c) of LODR Regulations implies the income or net worth of the subsidiary alone (or income or net worth of subsidiary calculated independently or on a standalone basis) and not on a consolidated basis of its wholly owned subsidiaries. Noticee has further contended that the income of Vivimed Labs (Mascarene) Limited on a standalone basis i.e. without calculating income of its subsidiaries did not exceed the threshold of income prescribed under Regulation 16(1)(c) of LODR Regulations and hence it cannot be considered as material subsidiary under Regulation 16(1)(c) of LODR Regulations.

43. On perusal of the aforementioned Regulation 16(1)(c) of LODR Regulations, I find that for determining whether subsidiary is a material subsidiary, Regulation 16(1)(c) of LODR Regulations does not specify whether the income of the subsidiary has be calculated on standalone basis or its income on consolidated basis (i.e. including income of subsidiaries of aforementioned subsidiary) has to be considered. In this regard, I note from the postal ballot notice dated July 25, 2020 issued by Noticee to its shareholders that because of the conversion of OCDs, Noticee had ceded controlling stake not only in Vivimed Labs (Mascarene) Limited but also in wholly owned subsidiaries of Vivimed Labs (Mascarene) Limited. Therefore, I find that due to dilution of shareholding in Vivimed Labs (Mascarene) Limited, Investor also acquired controlling stake in wholly owned subsidiaries of Vivimed Labs (Mascarene) Limited.

44. I further observe from Noticee’s submissions that with regard to the query posed to Noticee by NSE for the purpose of determining whether Vivimed Labs (Mascarene) Limited was a material subsidiary of Noticee, Noticee had replied that:

*"…….if the revenues generated (on a consolidated basis) by the wholly owned subsidiaries of Uquifa Sciences are taken into account, then Uquifa Sciences (along with all its wholly owned subsidiaries) is a material subsidiary of Vivimed Labs Limited ("**Listed Entity**"). As noted above, on a standalone basis, Uquifa Sciences, a foreign company, is not a material subsidiary of the Listed Entity. Uquifa Sciences may be considered a material subsidiary only if the revenues generated on a consolidated basis along with all wholly owned subsidiaries of Uquifa Sciences are taken into account."*

45. From the above, I note that Noticee has itself admitted to the fact that Vivimed Labs (Mascarene) Limited was a material subsidiary of the Company, if revenues generated by wholly owned subsidiaries of Vivimed Labs (Mascarene) Limited were considered on consolidated basis. Even though Regulation 16(1)(c) of LODR Regulations is silent on the aspect of subsidiaries of a subsidiary for the purpose of determining the "income", the fact that Vivimed Labs (Mascarene) Limited would be a material subsidiary if the calculations are done on a consolidated basis (i.e. by considering the revenue of its wholly owned subsidiaries) itself is of relevance in the present matter. As noted earlier, the postal ballot notice dated July 25, 2020 issued by Noticee to its shareholders shows that because of the conversion of OCDs, Noticee had ceded controlling stake not only in Vivimed Labs (Mascarene) Limited but also in wholly owned subsidiaries of Vivimed Labs (Mascarene) Limited. Therefore, I find that due to dilution of shareholding in Vivimed Labs (Mascarene) Limited, Investor also acquired controlling stake in wholly owned subsidiaries of Vivimed Labs (Mascarene) Limited. I also note that in the aforementioned postal ballot notice, Noticee had considered Vivimed Labs (Mascarene) Limited along with its 8 wholly owned subsidiaries (on consolidated basis) as material subsidiary. Therefore, I find that in the instant matter, there is no need to undertake a hair splitting exercise over interpretation of "income" of subsidiary as stated in Regulation 16(1)(c) of LODR Regulations. Therefore, I am inclined to the view that at the time of issuance of OCDs i.e. on March 28, 2019, Vivimed Labs (Mascarene) Limited can be definitely said to have been material subsidiary of Noticee, when the income, as set out in Regulation 16 (1)(c) of LODR Regulations, are considered on a consolidated basis.

46. I am of the view that the fact of a subsidiary being a material subsidiary can be considered to be one of the criteria for determining whether an event or information originating out of such subsidiary is material for the listed entity or not. Noticee in its reply to SCN has contended that the borrowing of USD 18.5 million from the Investor by way of OCDs, was a convertible debt and this was duly taken on record by the board of the Noticee as on 30th May 2019. Noticee has further contended that the borrowing was obtained by Vivimed Labs (Mascarene) Limited in the ordinary course of business, and such borrowing was not a material event as per the policy of the Noticee / Listed Entity or as per the LODR regulations and therefore, the Noticee was not obligated to make any disclosure as per the extant regulations. As already noted due to conversion of OCDs, total shareholding of the Investor in Vivimed Labs (Mascarene) Limited increased to 72.22% on a fully diluted basis, and the shareholding of Vivimed Labs Mauritius Ltd decreased to 27.78% on a fully diluted basis and Investor acquired controlling stake in the Vivimed Labs (Mascarene) Limited and its eight wholly owned subsidiaries. Considering that Vivimed Labs (Mascarene) Limited was material subsidiary of Noticee when its income is calculated on a consolidated basis at the time of issuance of OCDs to Investor, I am of view that any development of this nature, i.e., issuance of debt which if converted could lead to Investor potentially acquiring a majority stake in the subsidiary, consequently leading to Noticee's stake being reduced to a minority, would be definitely a material event. Considering the above, I find that issuance of OCD on March 28, 2019 of OCD on March 28, 2019 was an information exclusively known to Noticee which was necessary to enable the holders of its securities to appraise its position and to avoid the establishment of a false market in such securities. Therefore, I am of view that issuance of OCD on March 28, 2019 in Vivimed Labs (Mascarene) Ltd to Investor was a material event/information in terms of Para C of Part A of Schedule III of LODR Regulations. Since issuance of OCD on March 28, 2019 was material information pertaining to the material subsidiary of Noticee, Vivimed Labs (Mascarene) Ltd, Noticee was under an obligation to disclose the same to exchanges in accordance with 30(9) of LODR Regulations.

47. This is also borne out by the subsequent development which had material impact on the Noticee. I note from Noticee's email dated July 14, 2021 to SEBI during investigation that

for the financial year 2019-20 that Vivimed Labs (Mascarene) Limited contributed Rs 810.21 Cr to the total revenue of Noticee and PAT of Rs 91.15 Cr (Loss). I also note from the postal ballot notice dated July 25, 2020 issued by Noticee to its shareholders that Vivimed Labs (Mascarene) Ltd (along with its subsidiaries) contributed to 75.97% of consolidated revenue and approx. 105% of consolidated net worth /'Equity Attributable to Owners of the Company' of Noticee as on March 31, 2020.

48. Additionally, I note that material terms regarding the issuance of OCDs like covenants triggering conversion of OCDs etc. are contained in the Debenture Subscription Agreement dated March 27, 2019. Considering the above, I find that the contents of Debenture Subscription Agreement dated March 27, 2019 was an information exclusively known to Noticee which was necessary to enable the holders of its securities to appraise its position and to avoid the establishment of a false market in such securities. Thus, I find that Debenture Subscription Agreement dated March 27, 2019 contained material information relating to Noticee which amounted to material event/information in terms of Para C of Part A of Schedule III of LODR Regulations. Since Debenture Subscription Agreement dated March 27, 2019 was a material information pertaining to the material subsidiary of Noticee, Vivimed Labs (Mascarene) Ltd, Noticee was under an obligation to disclose the same to exchanges in accordance with 30(9) of LODR Regulations.

49. It has been alleged in the SCN that Noticee failed to disclose the aforesaid events, as required under Regulation 30(6) of LODR Regulations. I find that Regulation 30(6) of LODR Regulations lays down the timeline for listed entities to make disclosure of material events/information under LODR Regulations. Regulation 30(6) of LODR Regulations is reproduced hereunder:

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: Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within [the timelines specified therein]**

[Substituted for the "thirty minutes of the conclusion of the board meeting." by the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5.5.2021.]

50. At this juncture, I also find it pertinent to refer to Regulation 4 of LODR Regulations which lays down the basic principles governing disclosures and obligations. In this regard, I note that in absence of specific guidelines or in case of ambiguity, these principles are meant to act as a guide to listed entities. Regulation 4(1)(d) of LODR Regulations lays down that listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors. I also note that Regulation 4(1)(e) of LODR Regulations states that listed entity shall ensure that disseminations made under provisions of LODR regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

51. As already noted, the issuance of CCPS1 and CCPS2 and OCDs in Vivimed Labs (Mascarene) Ltd to Investor and the associated agreements to the aforementioned funding namely Debenture Subscription Agreement dated March 27, 2019, shareholder and share subscription agreement dated September 26, 2017 and Agreement for additional investment in December 2017 were material events within the purview of Part A of Schedule III of LODR Regulations i.e. information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities. Therefore I find that Noticee was under obligation to disclose issuance of CCPS1, CCPS2, and OCDs in Vivimed Labs (Mascarene) Ltd and material details contained in Debenture Subscription Agreement dated March 27, 2019, shareholder and share subscription agreement dated September 26, 2017 and Agreement for additional investment in December 2017 within 24 hours of issuance of CCPS1, CCPS2 and OCDs/ entering into

the aforesaid agreements in accordance with Regulation 30(6) of LODR Regulations read with Regulation 30(9) of LODR Regulations.

52. I note that Noticee in its reply to SCN has contended that it had made relevant disclosures for investment of USD 42.5mn and USD 7.5 million made by Investor by way of press releases dated September 26, 2017 and January 01, 2018.

53. With regard to the aforementioned contention of Noticee, I observe from the website of exchanges that Noticee had made press releases dated September 26, 2017 (Exchange received time (BSE): 26-09-2017,09.06:49, Exchange Disseminated Time 26-09-2017 09:06:57) and January 01, 2018 (Exchange Received Time(BSE) 01-01-2018 09:15:40 Exchange Disseminated Time 01-01-2018 09:15:44) to exchanges. I note from the perusal of press releases dated September 26, 2017 and January 01, 2018 that Noticee had disclosed only that it had entered into definitive agreements to facilitate the investment of USD 42.5 million and additional investment of USD 7.5 million in Vivimed Labs (Mascarene) Limited by Investor in the press releases dated September 26, 2017 and January 01, 2018 respectively. I observe from the website of stock exchanges that for the investment made by Investor in Vivimed Labs (Mascarene) Limited on September 25, 2017 and December 29, 2017, Noticee had made disclosure to BSE on September 26, 2017 and January 01, 2018 respectively. As already noted, as per Regulation 30(6) of LODR Regulations, Noticee was obligated to make disclosures pertaining to material events within 24 hours of occurrence of material event or information. In this regard, since Noticee made disclosure of investment made on December 29, 2017 only on January 01, 2018, I find that Noticee had not complied with requirements under Regulation 30(6) of LODR Regulation i.e. disclosure within 24 hours of material event . I also note that material available on record does not show any reason/explanation for delay in disclosure of investment made on December 29, 2017 by Noticee.

54. On perusal of aforementioned press releases, I note that crucial details like investment of USD 42.5 million and additional investment of USD 7.5 million in Vivimed Labs (Mascarene) Limited were by way of subscription of CCPS1 and CCPS2 by Investor, Investor's

shareholding on diluted basis in Vivimed Labs (Mascarene) Limited as a result of issuance of CCPS1 and CCPS 2 were not disclosed by Noticee in its press releases dated September 26, 2017 and January 01, 2018. As already stated, as per Regulations 4(1)(d) and 4(1)(e) of LODR Regulations, disclosures to be made to stock exchanges need to be adequate and explicit. In light of the above, I find that the disclosures made by Noticee vide press releases dated September 25, 2017 and December 29, 2017 that it had entered into definitive agreements to facilitate the investment of USD 42.5 million and additional investment of USD 7.5 million in Vivimed Labs (Mascarene) Limited were not adequate and explicit and not as envisaged in the principles laid down in the aforesaid Regulations.

55. Noticee has also contended that all the relevant details of investment made on September 25, 2017 and December 29, 2017 had been disclosed in the aforementioned press release and the contact details of the concerned persons were provided for anyone who wants further information with respect to the same. Having regard to the principles laid down in Regulation 4(1)(d) and 4(1)(e) of LODR Regulations, I am of view that Noticee cannot escape its obligation to make disclosures of material events simply by stating that contact details of the concerned persons were provided in the aforementioned press releases for anyone who wants to have further information with respect to the same. I also note that apart from press releases dated September 26, 2017 and January 01, 2018, with regard to Investment of USD 42.5 Million and investment of USD 7.5 Million respectively by Investor, no other disclosure has been made by Noticee with regard to the aforementioned investments/subscription of CCPS1 and CCPS2 made by Investor. In light of the above, I find that the aforesaid contentions of Noticee are devoid of merit.

56. I also note that there has been no disclosure regarding issuance of OCDs in March 28, 2019 to stock exchanges by Noticee. This has also been admitted by Noticee in its letter to NSE on November 23, 2020. I also note from material available on record that there was no disclosures were made regarding the Shareholders Agreement and Share Subscription Agreement dated September 26, 2017, Agreement for Additional investment in December 2017 and Debenture Subscription Agreement dated March 27, 2019 by Noticee to exchanges.

57. In this regard, Noticee in its reply has contended that it had disclosed the investment obtained by Vivimed Labs (Mascarene) Limited from the Investor through CCPS1, CCPS2 and OCDs in its Annual Report of F.Y.2019. With regard to above, I note that Regulation 30(6) of LODR Regulations lays down specific manner of disclosure of material events and therefore, the disclosures which Noticee made in its Annual Report is of no relevance since it does not conform to the stipulated norms. Further, no evidence has been placed on record by Noticee to indicate that it had made requisite disclosures regarding Shareholders and Share Subscription Agreement dated September 26, 2017; Agreement for additional investment in December 2017 and Debenture Subscription agreement dated March 27, 2019. In light of the above, I find that contention of Noticee that it had made relevant disclosures for the investments carried out in Vivimed Labs (Mascarene) Limited cannot be accepted.

58. Further, Noticee has contended that it had given complete disclosure of fundraising activities carried out in Vivimed Labs (Mascarene) Limited including disclosure of issuance of OCDS in its Postal Ballot Notice dated July 25, 2020. With regard to the aforementioned contention, I note that disclosure of material events has to be done in the manner laid down in the LODR Regulations. Noticee was under an obligation to disclose OCDs and CCPS1 and CCPS2 to exchanges within 24 hours of their issuance. I note that disclosure of the issuance of OCDs at the time of Postal Ballot dated July 25, 2020 came at a very last stage. LODR Regulations stresses on providing adequate and timely disclosure of the information to recognized stock exchange(s) and investors. The aforementioned principle is also encapsulated in Regulation 4(1)(d) of LODR Regulations. I am of view that the aforementioned postal ballot notice stating that as a result of fund raising activities carried out in the Vivimed Labs (Mascarene) Limited, Noticee had ceded controlling stake in Vivimed Labs (Mascarene) Limited and its eight wholly owned subsidiaries to Investor cannot be considered to be a disclosure in terms of Regulation 30(6) of LODR Regulations and within the timelines specified therein. In light of the above, I find that aforementioned contention of Noticee cannot be accepted.

59. In light of the above, I find that by not disclosing about issuance of CCPS1 and CCPS2, OCDs, Shareholders Agreement and Share Subscription Agreement dated September 26, 2017, Agreement for Additional investment in December 2017 and Debenture Subscription Agreement dated March 27, 2019, Noticee has violated Regulation 30(6) and 30(9) of LODR Regulations read with Regulations 4(1)(d) and 4(1)(e) of LODR Regulations.

60. I note that in terms of clause 2 of Listing Agreement, the listed company i.e. the Noticee was mandated to comply with the provisions of LODR Regulations and other applicable regulations/guidelines/circulars as may be issued by SEBI from time to time. As the Noticee has violated provisions of LODR Regulations issued by SEBI, I find that Noticee has failed to comply with Clause 2 of Listing Agreement.

61. In light of the observations in the preceding paragraphs, I find that allegation in the SCN that Noticee has violated Regulation 30(6) and 30(9) of LODR Regulations read with Regulations 4(1)(d) and 4(1)(e) of LODR Regulations and Clause 2 of the Listing Agreement stands established.

Issue No. II- Does the violation attract monetary penalty under Section 23E of SCR Act?

62. I note that timely disclosure of relevant information by listed companies is essential for maintaining transparency about the affairs of the Company which helps in eliminating information asymmetry. Moreover, correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision.

63. The Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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.....".*

64. Therefore, in view of the above judgment and considering that Noticee violated Regulation 30(6) and 30(9) of LODR Regulations read with Regulations 4(1)(d) and 4(1)(e) of LODR Regulations and Clause 2 of the Listing Agreement stands established, I find that Noticee would be liable for monetary penalty under Section 23E of SCR Act. The text of Section 23E of SCR Act is reproduced below:

SEBI Act

SCR Act
PENALTIES AND PROCEDURE
Penalties
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, 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.

65. With regard to imposition of penalty on Noticee under Section 23E of SCR Act for violation of listing agreement, I note that imposition of monetary penalty under Section 23E of SCR Act by a adjudicating officer of SEBI was set aside by Hon'ble SAT in Suzlon Energy Ltd and Anr vs. SEBI (Decision dated May 03, 2021, Appeal No. 201 of 2018). I note that the said order has been challenged by SEBI in its appeal before the Hon'ble Supreme Court in Civil Appeal No. 4741 of 2021 titled SEBI vs. Suzlon Energy Ltd & Anr and the matter is pending. I also note that Hon'ble SAT in its earlier decisions in the matters of M/s. NDTV vs. SEBI (Appeal No. 358 of 2015 –Hon'ble SAT's order dated 07.08.2019) and Oasis Securities Ltd. & Ors. vs. SEBI (Appeal No. 316 of 2018 –Hon'ble SAT's order dated 17.03.2020) had upheld the imposition of penalty under Section 23E of SCR Act on the appellant companies therein for violation of clauses of Listing agreement. Since the legal issue regarding Section 23E of SCR Act is under appeal, the enforcement of penalty under

Section 23E of SCR Act on Noticee shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

Issue No. III- What should be the quantum of monetary penalty?

66. While determining the quantum of penalty under Section 23E of SCR Act, it is important to consider the factors as stipulated in Section 23J of the SCR Act which reads as under:-

Factors to be taken into account by adjudicating officer.

23J. While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default; (c) the repetitive nature of the default.

67. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 23-J of the SCR Act, stated as above. It is noted that from the material made 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 the default by the Noticee in this case cannot be computed. Further, the records do not show any repetitive default of this nature by the Noticee. At the same time, I also cannot lose sight of the fact that Noticee has failed to make the mandatory disclosure of the material event pertaining to the fund raising activities/borrowings made by it in Vivimed Labs (Mascarene) Limited under the provisions of the LODR Regulations. Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, has held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. 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." Hon'ble SAT, in the aforesaid order, has articulated the importance of true and timely disclosures. Therefore, such default on the part of the Noticee should be dealt with sternly which would also serve as effective deterrence.

ORDER

68. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 23J of the SCR Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 23-I of the SCR Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 5,00,000/-(Rupees Five Lakh only) on Noticee i.e., Vivimed Labs Limited under the provisions of Section 23E of SCR Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

69. Payment of penalty can be 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.

70. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

71. As mentioned earlier in the order, the enforcement of this order shall be subject to the outcome of the appeal in Suzlon Energy Ltd and Anr vs. SEBI before the Hon'ble Supreme Court.

72. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: November 29, 2022 **ADJUDICATING OFFICER**