BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. AS/AK/2022-23/21289

UNDER SECTION 23–I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 AND RULE 5 OF SECURITIES CONTRACT (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of

TARC Ltd

(PAN: AAOCA7650B)

In the matter of TARC Ltd

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had received a complaint dated September 02, 2021 (hereinafter **"Complaint"**), wherein it was alleged that TARC Ltd (hereinafter referred as **"TARC/Noticee/Company"),** has been declared as NPA by Yes Bank in quarter ended June 30, 2021, but the Noticee failed to disclose the same to the stock exchange. Based on the aforesaid complaint, examination for the period December 18, 2020 (being date of listing on exchange) to March, 2022 (hereinafter referred to as "Examination Period") was conducted by SEBI to identify any alleged violations of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**) and of the SEBI Circular SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 (hereinafter referred as "**SEBI Circular**"). Based on the examination, it was observed that Noticee has failed to disclose material information related to defaults on loans from banks and financial institutions and failed disclose the defaults in the required format, thus it was alleged that TARC has violated the provisions of Regulation 30(1) read with regulation 30(2) and 30(6) of LODR Regulations and Schedule III part A Para A(6) of the LODR

Regulations, read with clause 2 of Listing Agreement; and Para 3(B), C(2) and 5 of the SEBI Circular read with regulation 30 of LODR Regulations and read with clause 2 of Listing Agreement.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the above, SEBI initiated adjudication proceedings under Section 23E of the SCRA, 1956 against Noticee for the aforesaid alleged violations and the undersigned was appointed as the Adjudicating Officer ('**AO**') vide Communiqué dated May 25, 2022, under Section 23 I of the SCR Act, 1956 and Rule 3 of the Securities contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("**SCR Adjudication Rules**") read with Section 19 of SEBI Act, 1992, to enquire into and adjudge the alleged violation of provisions of regulation 30(1) read with regulation 30(2) and (6) of LODR Regulations and with Schedule III part A Para A of the LODR Regulations read with clause 2 of Listing Agreement and also of Para 3(B), C(2) and 5 of the SEBI Circular read with regulation 30 of SEBI LODR Regulations and read with clause 2 of Listing Agreement by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as *"SCN"*) bearing ref. no. EAD-8/AS/RM/25773/1/2022 dated June 23, 2022 was served on the Noticee under Rule 4(1) of the SCR Adjudication Rules read with Section 23 I of the SCR Act, 1956, to show cause as to why an inquiry should not be held against it and penalty should not be imposed on it under Section 23 E of the SCR Act, 1956 for the alleged violations specified in the said SCN.

4. The SCN issued to the Noticee *inter alia* mentioned/alleged the following:

    i. *TARC Limited (formerly Anant Raj Global Limited) is a company demerged out of Anant Raj Limited pursuant to order dated August 24, 2020 passed by Hon. NCLT, Chandigarh Branch under the composite scheme of* *arrangement for amalgamation and demerger between Anant Raj Agencies Private limited and Anant Raj Limited.*

ii. *SEBI received a complaint dated September 02, 2021, wherein it was alleged that Noticee has been declared as NPA by Yes Bank in quarter ended June 30, 2021, but the company failed to disclose the same to the stock exchange, resulting in non- disclosure of material information which have a major bearing on the functioning of the company thereby depriving the shareholders to take judicious decision on their investment in the company.*

iii. *In light of the allegations in the Complaints, SEBI conducted examination to identify non-compliance if any by Noticee, of LODR Regulations 2015 and SEBI Circular. During the examination, the aforesaid complaint was forwarded to NSE and BSE for their examination. NSE and BSE after examining the Complaint and obtaining replies from the Company, submitted their comments to SEBI.*

iv. *NSE in its reply has inter alia submitted that, the Company was required to submit the disclosures pursuant to SEBI Circular, but has failed to submit it. The trigger point for submission is when the default is committed and not when the creditor calls for the amount. Majority of the defaults by the Noticee were repaid post 30 days, which mandated the Company to submit the disclosures as per the specified format.*

v. *BSE in its reply has inter alia submitted that, from the Annual report otf the Noticee and letter dated May 28, 2021 submitted by it to Yes bank, it was observed that, Company has defaulted in repayment of various loans. Noticee has applied to Yes Bank to restructure the credit facilities and has intimated on December 17 2021 regarding initiation of restructuring proposal with Yes bank. However, the Company has failed to disclose the default as required under LODR Regulations.*

vi. *Since the loan referred in the Complaint was obtained from Yes Bank Limited, comments were also sought by SEBI from Yes Bank. Yes Bank, interalia, submitted that, Account of TARC Limited was declared as NPA on Nov 3, 2020 and the current status of account is NPA and the restructuring proposal is under evaluation as per the extant RBI Guidelines.*

vii. *That in addition to the defaults related to Yes Bank, the annual report of TARC Limited for FY 2020-21 contained following disclosure in the Independent Auditor's Report section :*

"In our opinion and according to the information and explanations given to us, the Company has not been regular in repayment of dues to bank, non-banking financial companies and housing finance companies. The details of default in repayment of dues (other than those made good during the year or restructured under moratorium scheme by Reserve Bank of India or Government of India due to Covid-19) to banks, financial institutions, non-banking financial companies and housing finance companies as at balance sheet date are as under :-

Table : 1

Name of Institution	***Amount of Default as at March 31, 2021 (Rs. in Lakhs)***		***Period of Default (in days)***
	Principal	***Interest***	
ART housing Finance	*274.80*	*9.24*	*28-56 days*
JM Financial Credit Solution Ltd.	*-*	*656.71*	*1-59 days*
HERO Fincorp Ltd.	*1118.29*	*482.49*	*28-56 days*
HERO Housing finance Ltd.	*-*	*23.18*	*0-30 days*
*Yes Bank**	*3187.50*	*1716.50*	

** "According to information & explanation given to us, the company has filed restructuring under DCCO guidelines of RBI proposal (refer Note no.-15(viii)) and is pending for approval as at balance sheet date.***"**

viii. *Comments were also sought from the Noticee by SEBI. In this regard, Company has submitted that before the demerger, M/s Anant Raj Global Limited had availed of the credit facilities from Yes Bank and pursuant to scheme of arrangement, some part of credit facilities transferred to company. Company further informed that, ever since transfer of credit facilities availed from Yes Bank in favor of company, company is in regular discussions with Yes Bank and at no point of time Yes Bank have informed about declaration of account as NPA.*

ix. *Company further submitted that the company has received three communications dated August 26, 2021, January 14, 2022 and January 27, 2022 from Yes Bank highlighting latest position of overdue balance. Company informed that certain payment in respect of loans were not made as per schedule to banks/financial institution since company is in advance stage of discussion for full and final settlement of debts on a consolidated basis.*

x. *With regard to compliance with regulation 30(1) read with regulation 30(2) and (6) of LODR Regulations, company submitted that it has duly complied with regulation 30(1), 30(2) and 30(6) read with schedule III of LODR regulations and made regular disclosures of all the material events in respect of which the company is required to make mandatory disclosures.*

xi. *Company also submitted that:*

a. *The annual report for FY 2020-21 of the company provides all the information in relation to the loan obligation of company.*

b. *In respect of default for the purpose of disclosure, unless coercive action is taken by the lenders in respect of default in payment obligation or a default notice is sent, we understand that there would be no occasion to disclose as the lender would have waived its right and no prejudice will be caused to the company or its stakeholder.*

c. *Company assured that any omission on the part of company are inadvertent and it will make all disclosures as required under all circulars, regulations* *and guidelines and it has no intention to breach any disclosure or other obligation.*

xii. *Company in its reply also acknowledged that certain payment in respect of loans have not been made as per schedule to banks/financial institution.*

xiii. *Yes Bank has informed the company that facilities availed by company turned NPA and as on date of letter and principal outstanding under the facilities is Rs 2,451,647,654.26. Also, overdue as on August 23, 2021 is Rs 1,163,985,119.58 which includes Rs 931,693,105.58 outstanding for more than 90 days. Similar intimation were given by Yes Bank to company vide its letters dated Jan 14, 2022 and Jan 27, 2022, highlighting current position of overdues.*

xiv. *It is noted that the default for the purpose of SEBI Circular no. SEBI/HO/CFD/CMD1/CIR/P/2019 /140 dated November 21, 2019 shall mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable ('pre-agreed payment date'). The trigger point for submitting the aforesaid disclosure is when a default is committed by the company instead of action taken by lender for default in loan.*

xv. *Based on the above it was alleged that, company has defaulted in repayment of loans taken from Yes Bank, Hero Fincorp limited, L&T Finance Ltd, L&T Infrastructure Finance Co. limited and Hero Housing Finance Ltd. Further, the above mentioned disclosures continued for more than 30 days. However, no disclosures were filed by the company in this regard. Details of default in repayment of loan which required disclosure under LODR Regulations and SEBI Circular is as follows:*

Table 2 Term loan of INR 100 Crores availed from Hero Fincorp Ltd.

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***

1	*03-Jan-21*	*02-Mar-21*	*03-Feb-21*	*No*
2	*03-Feb-21*	*31-Mar-21*	*06-Mar-21*	*No*
3	*03-Mar-21*	*30-Apr-21*	*03-Apr-21*	*No*
4	*03-Apr-21*	*09-Jun-21*	*04-May-21*	*No*
5	*03-May-21*	*31-Jul-21*	*03-Jun-21*	*No*
6	*03-Jun-21*	*31-Aug-21*	*04-Jul-21*	*No*
7	*03-Jul-21*	*03-Sep-21*	*03-Aug-21*	*No*
8	*03-Oct-21*	*21-Dec-21*	*03-Nov-21*	*No*
9	*03-Nov-21*	*31-Jan-22*	*04-Dec-21*	*No*
10	*03-Dec-21*	*01-Mar-22*	*03-Jan-22*	*No*

Table 3 Term loan of INR 50 crores availed from Hero Fincorp Ltd.

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*03-Jan-21*	*02-Mar-21*	*03-Feb-21*	*No*
2	*03-Feb-21*	*31-Mar-21*	*06-Mar-21*	*No*
3	*03-Mar-21*	*30-Apr-21*	*03-Apr-21*	*No*
4	*03-Apr-21*	*09-Jun-21*	*04-May-21*	*No*
5	*03-May-21*	*31-Jul-21*	*03-Jun-21*	*No*
6	*03-Jun-21*	*31-Aug-21*	*04-Jul-21*	*No*
7	*03-Jul-21*	*03-Sep-21*	*03-Aug-21*	*No*
8	*03-Oct-21*	*21-Dec-21*	*03-Nov-21*	*No*
9	*03-Nov-21*	*31-Jan-22*	*04-Dec-21*	*No*
10	*03-Dec-21*	*01-Mar-22*	*03-Jan-22*	*No*

Table 4 Term loan of INR 61 crores availed from Hero Fincorp Ltd.

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*03-Jan-21*	*02-Mar-21*	*03-Feb-21*	*No*
2	*03-Feb-21*	*31-Mar-21*	*06-Mar-21*	*No*
3	*03-Mar-21*	*30-Apr-21*	*03-Apr-21*	*No*
4	*03-Apr-21*	*09-Jun-21*	*04-May-21*	*No*

5	03-May-21	31-Jul-21	03-Jun-21	No
6	03-Jun-21	31-Aug-21	04-Jul-21	No
7	03-Jul-21	03-Sep-21	03-Aug-21	No
8	03-Oct-21	21-Dec-21	03-Nov-21	No
9	03-Nov-21	31-Jan-22	04-Dec-21	No
10	03-Dec-21	01-Mar-22	03-Jan-22	No

Table 5 Term loan of INR 25 crores availed from Hero Fincorp Ltd.

S No.	*Due date of payment*	*Actual date of payment*	*Date by which disclosure was required to be made*	*Whether disclosure filed by the company*
1	03-Jan-21	02-Mar-21	03-Feb-21	No
2	03-Feb-21	31-Mar-21	06-Mar-21	No
3	03-Mar-21	30-Apr-21	03-Apr-21	No
4	03-Apr-21	09-Jun-21	04-May-21	No
5	03-May-21	31-Jul-21	03-Jun-21	No
6	03-Jun-21	31-Aug-21	04-Jul-21	No
7	03-Jul-21	03-Sep-21	03-Aug-21	No
8	03-Oct-21	21-Dec-21	03-Nov-21	No
9	03-Nov-21	31-Jan-22	04-Dec-21	No
10	03-Dec-21	01-Mar-22	03-Jan-22	No

Table 6 Term loan of INR 15 crores availed from Hero Fincorp Ltd.

S No.	*Due date of payment*	*Actual date of payment*	*Date by which disclosure was required to be made*	*Whether disclosure filed by the company*
1	03-Jan-21	02-Mar-21	03-Feb-21	No
2	03-Feb-21	31-Mar-21	06-Mar-21	No
3	03-Mar-21	30-Apr-21	03-Apr-21	No
4	03-Apr-21	09-Jun-21	04-May-21	No
5	03-May-21	31-Jul-21	03-Jun-21	No
6	03-Jun-21	31-Aug-21	04-Jul-21	No
7	03-Jul-21	03-Sep-21	03-Aug-21	No
8	03-Oct-21	21-Dec-21	03-Nov-21	No
9	03-Nov-21	31-Jan-22	04-Dec-21	No
10	03-Dec-21	01-Mar-22	03-Jan-22	No

Table 7 Term loan of INR 8 crores availed from Hero Fincorp Ltd.

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*03-Jan-21*	*02-Mar-21*	*03-Feb-21*	*No*
2	*03-Feb-21*	*31-Mar-21*	*06-Mar-21*	*No*
3	*03-Mar-21*	*30-Apr-21*	*03-Apr-21*	*No*
4	*03-Apr-21*	*09-Jun-21*	*04-May-21*	*No*
5	*03-May-21*	*31-Jul-21*	*03-Jun-21*	*No*
6	*03-Jun-21*	*31-Aug-21*	*04-Jul-21*	*No*
7	*03-Jul-21*	*03-Sep-21*	*03-Aug-21*	*No*
8	*03-Oct-21*	*21-Dec-21*	*03-Nov-21*	*No*
9	*03-Nov-21*	*31-Jan-22*	*04-Dec-21*	*No*
10	*03-Dec-21*	*01-Mar-22*	*03-Jan-22*	*No*

Table 8 Term loan of INR 50 crores availed from L&T Finance Ltd.

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*15-Apr-21*	*23-Jun-21*	*16-May-21*	*No*
2	*15-May-21*	*28-Jun-21*	*15-Jun-21*	*No*
3	*15-Jun-21*	*03-Aug-21*	*16-Jul-21*	*No*
4	*15-Oct-21*	*20-Nov-21*	*15-Nov-21*	*No*
5	*15-Dec-21*	*28-Feb-22*	*15-Jan-22*	*No*
6	*15-Jan-22*	*09-Mar-22*	*15-Feb-22*	*No*

Table 9 Term loan of INR 90 Crore availed from L&T Finance Ltd.

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*15-Apr-21*	*23-Jun-21*	*16-May-21*	*No*
2	*15-May-21*	*28-Jun-21*	*15-Jun-21*	*No*
3	*15-Jun-21*	*03-Aug-21*	*16-Jul-21*	*No*
4	*15-Oct-21*	*20-Nov-21*	*15-Nov-21*	*No*

5	*15-Dec-21*	*28-Feb-22*	*15-Jan-22*	*No*
6	*15-Jan-22*	*09-Mar-22*	*15-Feb-22*	*No*

Table 10 ***Term loan of INR 125 crores availed from L&T Infrastucture Finance Co. Ltd.***

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*15-Apr-21*	*19-May-21*	*16-May-21*	*No*
2	*15-Dec-21*	*28-Feb-22*	*15-Jan-22*	*No*
3	*15-Jan-22*	*09-Mar-22*	*15-Feb-22*	*No*

Table 11 ***Term loan of INR 115 crores availed from L&T Finance Co. Ltd.***

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*15-Apr-21*	*19-May-21*	*16-May-21*	*No*
2	*15-Dec-21*	*28-Feb-22*	*15-Jan-22*	*No*
3	*15-Jan-22*	*09-Mar-22*	*15-Feb-22*	*No*

Table 12 ***Term loan of INR 20 Cr. availed from Hero Housing Finance Ltd.***

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*08-Sep-21*	*24-Dec-21*	*09-Oct-21*	*No*

Table 13 ***JM FINANCIAL CREDIT SOLUTIONS LIMITED (175Cr)***

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***

1	*31-Jan-21*	*30-Mar-21*	*03-Mar-21*	*No*

Table 14 ***JM FINANCIAL CREDIT SOLUTIONS LIMITED (30Cr)***

S No.	***Due date of payment***	***Actual date of payment***	***Date by which disclosure was required to be made***	***Whether disclosure filed by the company***
1	*31-Jan-21*	*30-Mar-21*	*03-Mar-21*	*No*

xvi. *Based on the above details, it was alleged that, during the period of examination, company defaulted in repayment of loan on 81 occasions apart from nondisclosures of defaults w.r.t. Yes bank, which required disclosures as per LODR Regulations and SEBI Circular. However, no such disclosures were filed by the company.*

xvii. *Apart from defaults covered above, it was alleged that Company also defaulted in repayment of loan taken from Yes Bank limited, and no disclosure was filed by the Noticee in this regard. As on March 28, 2022, position of loan taken from Yes Bank was as follows:*

Table 15 *(Rs in Cr)*

Particulars	***Principal***	***Interest***	***Total***
Total amount outstanding	*230.00*	*41.96*	*271.96*
Out of total amount outstanding, amount of default	*101.21*	*41.96*	*143.17*

xviii. *In view of the above it was alleged that the Company did not make disclosures with regards to all the defaults as mentioned in its annual report and as submitted to SEBI in its replies despite receiving specific queries from SEBI in this regard. The above disclosures are essential for investor or potential investor of the Company for making an informed decision. The Company by failing to make disclosures has allegedly tried to conceal the* *delinquency level at the Company and hindered investors from taking informed decisions.*

xix. *It was also alleged that, Noticee failed to disclose various defaults in repayment of loan with Yes Bank, Hero Fincorp limited, L&T Finance Ltd, L&T Infrastructure Finance Co. limited and Hero Housing Finance Ltd. within 24 hours from the 30th day of the default, as well as failed to disclose about loan repayment defaults despite receipt of the Yes Bank letter communicating overdue loan; therefore Noticee allegedly has violated regulation 30(1) read with regulation 30(2) and 30(6) of LODR Regulations and with Schedule III part A Para A of the LODR Regulations read with clause 2 of Listing Agreement.*

xx. *Further, Company's disclosure dated March 28, 2022 for default in repayment of loan taken from Yes Bank was not submitted in the format, as prescribed under SEBI Circular. In view of the above it was alleged that, Noticee failed to make disclosure regarding defaults in the format prescribed under SEBI Circular, therefore the Noticee allegedly has violated Para 3(B), C (2) and 5 of the SEBI Circular dated November 21, 2019 read with regulation 30 of LODR Regulations read with clause 2 of Listing Agreement.*

5. The SCN was duly served upon the Noticee through SPAD and in response to this, the Noticee vide letter dated July 11, 2022, submitted its response in the matter *inter alia* seeking inspection of documents.

6. Based on the request, inspection of the documents in the matter was conducted on July 29, 2022. Further, in the interest of natural justice, an opportunity of submitting reply to the SCN and personal hearing was granted to the Noticee on September 09, 2022 vide the email dated August 19, 2022. The Noticee submitted its reply vide email/letter dated September 5, 2022 and *interalia* requested for the adjournment of the said personal hearing. Based on the request, hearing was rescheduled and conducted on September 13, 2022.

7. The Noticees were represented by Authorized representative (ARs) i.e. Advocate Mr. Somasekhar Sundaresan, Advocate Mr.Saket Shukla, Advocate Mr. Akshay Sachthey, Advocate Ms. Madhavi Doshi, Advocate Ms. Shivani Malik and CS Mr. Amit Narayan. The ARs attended the hearing on behalf of the Noticee and reiterated the submissions made by the Noticee vide email/letter dated September 05, 2022. The Noticee also made additional submissions vide email/letter dated September 20, 2022.

8. The submissions made by the Noticee vide reply dated September 5, 2022 and September 20, 2022 are *inter alia* as under:

i. *The Noticee has always ensured full transparency and has duly disclosed all material information to its investors and stakeholders and has remained compliant with applicable laws.*

ii. *The Noticee has continued to make payments to its lenders including those under the loans referred to in the Notice, during FY 2019-20 and 2020-21, and resultantly, lenders have been cooperative and did not call or notify us of any defaults. Therefore, in the circumstances, we believed bona fide (which belief arose from prevailing facts and events), that the lenders had effectively agreed not to enforce against us and had deemed to extend the deadlines for payment of dues under the said loans.*

iii. *In respect of the Yes Bank loan, we had applied for a restructuring proposal on 30 March 2021 (submitted vide letter dated 28 May 2021). This information was disclosed by the Noticee in its Annual Report for the FY 2020-21 and in disclosure dated 17 December 2021 to the stock exchanges. It was also subsequently disclosed to the stock exchanges vide notifications dated 28 March and 8 April 2022 pursuant to the SEBI Circular and Regulation 30 of the LODR Regulations. It is noteworthy that in our restructuring proposal contemplated a change in the scope of a loan and therefore the loan could be restricted without qualifying an NPA. We had also made a payment of INR 5 crores to Yes Bank in connection with the restructuring proposal in order to show our bona fides.*

iv. *In September 2021, the Noticee sold warehouse assets and made part payment to the tune of INR 85 Crores towards loans of Hero Fincorp Ltd., Hero Housing Finance Limited and JM Financial Credit Solutions Ltd, to demonstrate bonafides in repaying the lenders in full. The net result is that the Noticee has been able to repay all loans/ facilities availed by us, in full, with interest, without the lenders suffering any haircuts. We have not availed any settlement or been given any haircut to any lender and every single rupee due on every one of the existing loans availed by TARC, has been repaid by TARC to each of its relevant lenders.*

v. *In fact, a disclosure dated 2 May 2022 in this regard has already been made by the Noticee to the stock exchanges which informs the shareholders that the Noticee has successfully raised INR 1,330 crores which has been used to retire the entire loan portfolio of the Noticee and all existing loans stand repaid.*

vi. *It is humbly submitted that the Noticee has had the bona fide belief that there was no default or non-compliance on our part in complying with the requirements of the SEBI Circular or LODR Regulations. Paragraphs 3 (B), C (2) and 5 of the SEBI Circular require listed entities to make disclosures of a "default" on loans within 24 hours from the 30th day of default, and on a quarterly basis, if the default continues beyond 30 days. The term "default" is defined as "non-payment of the interest or principal amount in full on the date when the debt has become due and payable ('preagreed payment date')..." The regulatory objective behind the SEBI Circular was that when lenders have declared a loan to be a non-performing asset ("NPA"), if a listed company does not make the matter public, then its shareholders would be unaware of the default. In the instant case, no lender, to the Noticee's knowledge, had declared the facilities to be an NPA at the relevant time. Only one lender, Yes Bank, as it transpired, had declared the facility to be an NPA but we were in discussions with this lender about restructuring and had also taken steps towards this end as stated above. The Noticee relied on the order of the Supreme Court of India in the matter of Jagad Bandhu Chatterjee v. Nilima Rani and Ors. (1969) 3 SCC 445.*

vii. *The lenders through their conduct, waived their rights, and therefore did not call the defaults of the loans.*

viii. *We submit that there has been no violation of Regulations 30 (1) read with 30 (2) and 30 (6) of the LODR Regulations. For a 'default' to occur, there must be a debt which has become 'due and payable'. The Noticee relied on the judgement in the matter of Krishna Kilaru and Another v. Maytas Properties Limited Rep., by its Managing Director, Hyderabad, MANU/AP/0745/2012*

ix. *We refer to the Adjudicating Authority's decision in the matter of D.S. Kulkarni Developers Ltd. (Adjudication Order No: Order/KS/VC/2019-20/6636), which has held that while delays/ defaults by listed entities in payment of loans are a material event under Schedule III of LODR Regulations, 'it is necessary to understand the specific instances of defaults in order to judge the gravity of the matter'. It is submitted that in the present circumstances, the Noticee was of the bona fide belief that there was no material event that required disclosure.*

x. *Except the loan availed from Yes Bank, none of the loan accounts are known to have been declared as NPA by the lenders and the lenders have not treated the loans as defaulted.*

xi. *We applied for extension of DCCO for our loan with JM Financial Credit Solutions Limited and the lender approved extension of our repayment schedule for the said loan vide letter dated 10 November 2021.*

xii. *Details of restructuring of the Yes Bank loan were already been disclosed in the annual report of the Noticee for the FY 2020-21 and only the format of the disclosure is in question.*

xiii. *In the present case, no investors or lending institutions of the Noticee have suffered and neither have the shareholders or other stakeholders faced any adverse consequences of the postponement in our loan repayment dates.*

xiv. *The Notice alleges that the 28 March 2022 disclosure was not submitted in the correct format as required under para 3(B), C(2) and 5 of the SEBI Circular. It is submitted that the same was not done since the restructuring proposal of the Noticee was under consideration by Yes Bank and the bank was not insisting on the existing repayment schedule being followed. Therefore, the details as to the due date of payment under the loan and related aspects was not clear.*

xv. *We have always been ready and willing to make such disclosures as your good office requires and basis our bona fide understanding, we disclosed* *defaults for the month ended 28 February 2022 and quarter ended 31 December 2021. Further, quite contrary to the allegations made in the Notice, as on date, the Noticee has proceeded to settle and clear its dues from each of the lenders stated in the Notice by making full repayment of its existing loans. It is most humbly submitted that this itself shows that no doubts can be cast over the Noticee's intent which has always been to try and settle its dues and protect the interests of all stakeholders. Reliance is placed on Terrascope Ventures Limited v. SEBI (Appeal No. 116 of 2021) passed by the Securities Appellate Tribunal, Mumbai*

xvi. *Without prejudice to the aforesaid, it is stated that the Notice threatens penalties against the Noticee under Section 23E of the SCRA which has no application to the facts of the present case, as this provision deals with breaches of conditions of listing / delisting.*

xvii. *It is submitted that the Securities Appellate Tribunal, in the matter of Suzlon Energy Ltd. and Anr. v. Securities and Exchange Board of India (Appeal No. 201 of 2018), has held that Section 23E cannot be attracted in case of violations of the listing agreement and instead applies in case of violation of conditions imposed on a company when it is applying for listing of its shares as stated under Rule 19 of the Securities Contracts (Regulation) Rules, 1957.*

xviii. *Further, the Ld. Adjudicating Officer in the matter of Jubilant Life Sciences Ltd. (Adjudicating Order No. RA/JP/288-292/2018), has held that Section 23E of the SCRA can only be attracted in case "if a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions."*

xix. *The matter must be considered in view of the surrounding facts and circumstances, and whether penalty should be imposed upon failure to perform a statutory obligation is a matter of discretion. Reliance was also placed on the order of Supreme Court of India in the case of Hindustan Steel Ltd. v. State of Orissa (AIR 1970 SC 253) (which has been upheld in the matter of the Supreme Court of India in Electro Optics Pvt. Ltd. v. State of Tamil Nadu ((2016) 12 SCC 654).*

xx. *In Escorts Mutual Fund v. P Sri Sai Ram, the Ld. Adjudicating Officer of Securities Appellate Tribunal (Appeal No. 38/2001) held that "on a perusal of*

Section 151 it could be seen that the imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that he may impose such a penalty is of considerable significance, especially in view of the guidelines provided by the legislature in Section 15]." Reliance was placed on the following:

- *a.* *Order of the Supreme Court in the case of Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari (AIR 2019 SC 1265),*
- *b.* *order of Hon'ble Securities and Appellate Tribunal, Mumbai in the case of National Highway Authority of India v. Securities and Exchange Board of India in Appeal No. 232 of 2020.*
- *c.* *SEBI Vs Roofit Industries (2016, 12 SCC 125)*
- *d.* *Siddharth Chaturvedi Vs. SEBI (2016, 12 SCC 119)*

<u>ISSUES FOR CONSIDERATION AND FINDINGS</u>

9. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents made available during the course of the proceeding, including the replies furnished by the Noticee. In order to evaluate the case on its merits, I will now proceed to deal with the following issues arising out of the present proceedings, one by one, as under:

A. Whether the Noticee has violated the provisions of:

(i) **Regulation 30(1) read with regulation 30(2) and 30(6) of LODR Regulations and with Schedule III part A Para A(6) of the LODR Regulations read with clause 2 of Listing Agreement;**

(ii) **Para 3(B), C(2) and 5 of the SEBI Circular read with regulation 30 of LODR Regulations read with clause 2 of Listing Agreement.**

B. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 23E of the SCR Act, 1956?

C. ***If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23 J of the SCR Act, 1956?***

10. Before moving forward, it is pertinent to refer to the relevant provisions of Regulation 30(1) read with regulation 30(2) and 30(6) of LODR Regulations and with Schedule III part A Para A(6) of the LODR Regulations and read with clause 2 of Listing Agreement; and Para 3(B), C(2) and 5 of the SEBI Circular read with regulation 30 of SEBI LODR Regulations and read with clause 2 of Listing Agreement.

11. Relevant regulatory provisions of LODR Regulations and SEBI Circular SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 are reproduced as under:

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Disclosure of events or information.

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

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

……………..

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

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

SCHEDULE III PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

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

……………..

6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.

SEBI Circular SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 on Disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks/financial institutions and unlisted debt securities

Para 3 B: Timing of Disclosures:

i. To begin with, listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks /financial institutions which continues beyond 30 days. Such disclosure shall be made promptly, but not later than 24 hours from the 30th day of such default

ii. In case of unlisted debt securities i.e.NCDs and NCRPS, the disclosure shall be made promptly but not later than24 hours from the occurrence of the default. This is in line with the existing disclosure requirements specified for listed debt instruments. Disclosures shall be made in the format(s) specified in Paras3 (C1) and (C2) below.

C. Disclosure formats:

……………..

C2 .Disclosures specified in the table below shall be made by listed entities, if on the last date of any quarter:

a. Any loan including revolving facilities like cash credit from banks / financial institutions where the default continues beyond 30 days or

b. There is any outstanding debt security under default.

S.No.	***Particulars***	***In INR Crore***
1.	***Loans/ revolving facilities like cash credit from banks / financial institutions***	
A.	*Total amount outstanding as on date*	
B.	*Of the total amount outstanding, amount of default as on date*	
2.	***Unlisted debt securities i.e. NCDs and NCRPS***	
A.	*Total amount outstanding as on date*	
B.	*Of the total amount outstanding, amount of default as on date*	

3.	***Total financial indebtedness of the listed entity including short - term and long -term debt***	

The above disclosure shall be made within 7daysfrom the end of each quarter

5. Disclosures as applicable in terms of this circular, including quarterly disclosure, shall be made beginning January 01, 2020 in the format specified in Paras3 (C1) and 3 (C2) above.

SEBI Circular CIR/CFD/CMD6/2015 dated October 13, 2015 specifying format for Uniform Listing Agreement

……………..

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.

A. Whether the Noticee has violated the provisions of:

i. Regulation 30(1) read with regulation 30(2) and 30(6) of LODR Regulations and with Schedule III part A Para A(6) of the LODR Regulations read with clause 2 of Listing Agreement;

ii. Para 3(B), C(2) and 5 of the SEBI Circular read with regulation 30 of LODR Regulations read with clause 2 of Listing Agreement.

12. I note the following with respect to the allegations made in the SCN against Noticee:

    i. Account of TARC Limited was declared as NPA on Nov 3, 2020 by Yes Bank. The restructuring proposal was under evaluation as per the extant RBI Guidelines.

ii. Noticee vide its letters dated March 30, 2021 and May 28, 2021 to Yes Bank regarding restructuring of loan admitted that the interest and principal due in February 2020, May 2020, August 2020, November 2020 February 2021 and May 2021 are outstanding as on May 28, 2021.
iii. Noticee vide its reply dated March 10, 2022 to SEBI submitted that informed that certain payment in respect of loans were not made as per schedule to banks/financial institution since company is in advance stage of discussion for full and final settlement of debts on a consolidated basis.
iv. In addition to the defaults related to Yes Bank, the annual report of Noticee for FY 2020-21 indicated that Noticee has not been regular in repayment of dues to certain bank, non-banking financial companies and housing finance companies and it was observed that company has defaulted in repayment of loans taken from Yes Bank, Hero Fincorp limited, L&T Finance Ltd, L&T Infrastructure Finance Co. limited and Hero Housing Finance Ltd. Further, the above defaults continued for more than 30 days, however, no disclosures were filed by the company in this regard.
v. It was observed that, during the period of examination, company has defaulted in repayment of loan on 81 occasions which required disclosures as per LODR Regulations and SEBI Circular. However, no such disclosures were filed by the company.
vi. Apart from 81 defaults covered above, company has also defaulted in repayment of loan taken from Yes Bank limited, and no disclosure was filed by the Noticee in this regard.
vii. Company's disclosure dated March 28, 2022 for default in repayment of loan taken from Yes Bank was not submitted in the format, as prescribed under SEBI Circular.

13. Noticee in its reply to the SCN has contended that, the Noticee has continued to make payments to its lenders including those under the loans referred to in the SCN, during FY 2019-20 and 2020-21, and resultantly, lenders have been cooperative and did not call or notify of any defaults. Noticee submitted that in the present circumstances, they were of the bona fide belief that there was no material event that required disclosure because of the above circumstances

where the Noticee was constructively engaged with the lenders and had the assurance and belief that no default would be called and the payment deadlines would be waived. Except the loan availed from Yes Bank, none of the loan accounts are known to have been declared as NPA by the lenders and the lenders have not treated the loans as defaulted. Therefore, since lenders were not treating the loans as NPA, there was no occasion for the Noticee to assume that the regulatory objective of the SEBI Circular had been attracted.

14. The Company has contended that, since no lender declared and called out a default at all, the Noticee's understanding was that there was no "default" as defined in the SEBI Circular. The lenders through their conduct, waived their rights, and therefore did not call the defaults of the loans. I find that the said argument of the Noticee is contrary to and conflicting with relevant provisions of LODR Regulations and SEBI Circular. I note that the default for the purpose of SEBI Circular no. SEBI/HO/CFD/CMD1/CIR/P/2019 /140 dated November 21, 2019 means non-payment of the interest or principal amount in full on the date when the debt has become due and payable (‘pre-agreed payment date’). The trigger point for disclosing is when a default is committed by the company and not when action taken by lender for default in loan. Further, the present proceedings are factually distinguishable from the *order of the Supreme Court of India in the matter of Jagad Bandhu Chatterjee v. Nilima Rani and Ors. (1969) 3 SCC 445, hence the same shall not be applicable in the present matter.* In my view such an assumption by Noticee is misguided and erroneous and do not merit consideration.

15. The SEBI Circular requires that listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks / financial institutions which continues beyond 30 days. Such disclosure shall be made promptly, but not later than 24 hours from the 30th day of such default. I note from the details of defaults provided by the company, that majority of defaults were repaid post 30 days which mandated the company to submit the disclosures as per the format prescribed in the SEBI Circular. In view of the

above the company was required to submit the required disclosures but the same have not been submitted by the company.

16. That the Company has not made disclosures with regards to all the defaults as mentioned in its annual report and as submitted to SEBI in its reply despite receiving specific queries from SEBI in this regard.

17. The Company also contended that, no investors or lending institutions of the Noticee have suffered and neither have the shareholders or other stakeholders faced any adverse consequences of the postponement in loan repayment dates. Further, as of 30 April 2022, all existing lenders of the Noticee were repaid in full, without any compromise/ reprieve/ haircut. Therefore, even with the benefit of hindsight, there has been no default as such. Noticee also submitted that, a disclosure dated May 2, 2022 in this regard has already been made by the Noticee to the stock exchanges which informs the shareholders that the Noticee has successfully raised INR 1,330 crores which has been used to retire the entire loan portfolio of the Noticee and all existing loans stand repaid. The subsequent repayment of the loan by Noticee is indeed a positive aspect, however payment of loan in future shall not exonerate the Noticee from earlier violation of not making the required disclosures at the requisite time to the stock exchanges as required under the LODR Regulations and SEBI Circular.

18. The Noticee has placed reliance on Adjudicating Authority's decision in the matter of D.S. Kulkarni Developers Ltd. (Adjudication Order No: Order/KS/VC/2019-20/6636), which has held that while delays/ defaults by listed entities in payment of loans are a material event under Schedule III of LODR Regulations, 'it is necessary to understand the specific instances of defaults in order to judge the gravity of the matter'. Noticee has submitted that they were of the bona fide belief that there was no material event that required disclosure.

19. It is noted that, the present matter is distinguishable on facts from the matter of D.S. Kulkarni Developers Ltd. (Adjudication Order No: Order/KS/VC/2019-

20/6636). Based on the specific instances provided in the instant matter, it is noted that the above disclosures are essential for investor or potential investor of the Company for making an informed decision. The Company by failing to make disclosures has tried to conceal the delinquency level at the Company and hindered investors from taking an informed decision.

20. I note that the Noticee, in its various letters had admitted that there were instances of delay in repayment of instalments of loans obtained from banks & financial institutions.

21. In this regard, I note that any delay/default by the listed entity or its key managerial person is considered a material event in terms of Clause 6 of Para A of Part A of Schedule III of LODR Regulations read with Clause 2 of the Listing Agreement.

22. I note that, as per clause (6) of Para A of Part A of Schedule III, read with Regulation 30(1), 30(2) and 30 (6) of LODR Regulations, any fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter are deemed material events and the same are required to be disclosed by the Company within 30 Days of 24 hours of occurrence of the event or information. Further clause 6 of Para A of Annexure I to the SEBI Circular indicates the details of fraud/defaults that need to be provided while disclosing events given in clause (6) of Para A of Part A of Schedule III of LODR Regulations.

23. I find the above events are material and the same ought to be disclosed in terms of 30(1) read with regulation 30(2) and (6) of LODR Regulations and with Schedule III part A Para A of the LODR Regulations read with clause 2 of Listing Agreement.

24. I am of the view that the disclosures requirements under the respective regulations serve very important purpose. The stock exchange is informed via disclosures so that the investing public will come to know of the position

enabling them to take an informed decision regarding their investments in the company.

25. I also note that in Appeal No. 66 of 2003 – **Milan Mahendra Securities Pvt. Ltd. Vs. SEBI** – the Hon'ble Securities Appellate Tribunal (SAT) has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market".*

26. Further, Hon'ble Securities Appellate Tribunal ('SAT') in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI** (Appeal No. 209 of 2014 order dated August 11, 2014), has also 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.*" Further, it cannot be a reason to condone this charge levelled against the Noticee.

27. With regard to Noticee's submission that the occurrence of the said non-compliance by it is has neither made any unlawful gain nor caused loss to investors, I place reliance on Hon'ble SAT's judgement dated October 14, 2014 in the matter of **Virendrakumar Jayantilal Patel vs. SEBI** (Appeal No. 299 of 2014), in which Hon'ble SAT observed that "………. *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."* Therefore, the said allegation against Noticee stands established.

28. In view of the above, it is established that there were multiple instances where Noticee failed to disclose the material event related to the defaults on loans and Noticee is in violation of 30(1) read with regulation 30(2) and (6) of LODR Regulations and with Schedule III part A Para A of the LODR Regulations read with clause 2 of Listing Agreement.

29. Further, I note that SCN indicates that SEBI vide email dated March 22, 2022 advised Noticee to submit detailed disclosures regarding its defaults in repayment of loans, as required under LODR Regulations 2015 and SEBI Circular. In this regard, it is observed that Company vide letter dated March 28, 2022 filed disclosure to stock exchange regarding details of default for the quarter ended Dec, 2021 and month ended Feb, 2022. SCN alleges that Noticee did not make complete disclosures about all the loan defaults and disclosures made were not done in the specified format.

30. The Noticee in this regard, has contended that, the same was not done since the restructuring proposal of the Noticee was under consideration by Yes Bank and the bank was insisting on the existing repayment schedule being followed. Therefore, the details as to the due date of payment under the loan and related aspects was not clear. In any event substance of the disclosure is material and not the form of disclosure.

31. It is noted that, despite the communication from SEBI regarding disclosure of all the loan defaults, the Noticee did not provide disclosures for all the loan defaults, and the disclosures done were also not done in the requisite format. This shows that the intent of the Noticee was not *bonafid* and hence, incomplete disclosures were made and the disclosures made were not done in the specified format. Noticee has tried to conceal the delinquency level at the Company and hindered investors from taking an informed decision. The specified disclosures under SEBI LODR Regulations and requisite format under SEBI circular serve a very important purpose of dissemination of disclosures via the intended route and in a comprehensible format, any deviation from the same defeats the whole regulatory purpose. Therefore, it is

the duty and responsibility of the Noticee to ensure that proper systems and controls are in place for such disclosures and to monitor the efficacy of such systems and controls and that the Noticee being a listed Company have greater responsibility towards such disclosures, etc., as loan defaults are major events, which affects the interest of the investors. Therefore, Noticee is expected to disclose the complete information in bona fide manner and in specified format, in the interest of all stakeholders of the company and public at large.

32. Further, the present proceedings are factually distinguishable from the *order of the Hon'ble SAT in the matter of Terrascope Ventures Limited V SEBI (Appeal No. 116 of 2021,* and hence the same shall not be applicable in the present case. In view of the above, the contentions of Noticce are devoid of any merit and it is established that, non-disclosure of these material events in the prescribed format are in violation of Para 3(B), C(2) and 5 of the SEBI Circular dated November 21, 2019 read with regulation 30 of LODR Regulations read with clause 2 of Listing Agreement.

B. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 23E of the SCR Act, 1956?

33. I note that Hon'ble Supreme Court of India, in the matter of Chairman, **SEBI vs. Shriram Mutual Fund** *{[2006] 5 SCC 361}* held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

34. The aforesaid violations, makes the Noticee liable for monetary penalty under Section 23E of the SCRA, 1956, which are reproduced below for reference: -

<u>SCRA, 1956</u>

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

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

35. Noticee in its submission has contended that Section 23E has nothing to do with the violation of the provisions of the Listing Agreement, even if it is assumed that violations alleged in the SCN were made by it, for such violation no penalty can be imposed under Section 23E of SCR Act, 1956 and relied on order dated 03.05.2021 of the Hon'ble SAT in the case of Suzlon Energy Ltd. & Anr Vs. SEBI (Appeal No. 201 of 208).

36. With regard to the same, I note that Section 23E states that "*If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees*" Therefore, upon a plain reading of the section, I note that any company which fails to comply with listing conditions or delisting conditions or grounds or commits a breach thereof shall be liable to monetary penalty under this section and in this case the Noticee is a company which has failed to comply with listing conditions, as established above and therefore, will be squarely liable under section 23E of SCR Act, 1956 for imposition of monetary penalty.

37. With regard to section 23E of SCRA, the Hon'ble SAT in the matter of **Suzlon Energy Ltd. and Anr. vs. SEBI**(Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

"Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E....."

38. I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order and an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order vide civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. I note that vide orders in the matter of M/s NDTV vs. SEBI (Appeal no. 358 of 2015) dated August 07, 2019, and Oasis Securities Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement.

39. For adjudging under Section 23E of SCRA, the limited purpose of these proceedings qua Noticee is to determine if the said Noticees have violated Regulation 30(1) read with regulation 30(2) and 30(6) of LODR Regulations 2015 and with Schedule III part A Para A(6) of the LODR Regulations read with clause 2 of Listing Agreement; Para 3(B), C(2) and 5 of the SEBI Circular

read with regulation 30 of LODR Regulations read with clause 2 of Listing Agreement and if so, determine whether penalty should be imposed and assess the quantum of such penalty. However, the enforcement of this order qua Noticee for the penalty imposed under Section 23E of SCRA, shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

C. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23 J of the SCR Act, 1956?

40. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 23E of SCR Act, 1956. While determining the quantum of penalty under Section 23E of the SCR Act, 1956, it is important to consider the factors relevantly as stipulated in Section 23J of the SCR Act, 1956, which reads as under: -

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

23J *- While adjudging quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely: -*

a. *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
b. *the amount of loss caused to an investor or group of investors as a result of the default;*
c. *the repetitive nature of the default.*

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C, shall be and shall always be deemed to have been exercised under the provisions of this section.

41. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of its failure. I also note that no prior default of the Noticee are available on record. However, I note that

securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn’t make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticee. Hence, I note that the Noticees failed to make disclosures and also failed to make disclosure in the specified format about the loan defaults to its various creditors and have violated the relevant provisions of LODR Regulations and SEBI Circular.

42. The Noticee has contended that, the matter must be considered in view of the surrounding facts and circumstances, and whether penalty should be imposed upon failure to perform a statutory obligation is a matter of discretion. Reliance was also placed on the order of Supreme Court of India in the case of Hindustan Steel Ltd. v. State of Orissa (AIR 1970 SC 253) (which has been upheld in the matter of the Supreme Court of India in Electro Optics Pvt. Ltd. v. State of Tamil Nadu ((2016) 12 SCC 654).

43. Further, In Escorts Mutual Fund v. P Sri Sai Ram, the Ld. Adjudicating Officer of Securities Appellate Tribunal (Appeal No. 38/2001) held that "on a perusal of Section 15J it could be seen that the imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that he may impose such a penalty is of considerable significance, especially in view of the guidelines provided by the legislature in Section 15J." Reliance was placed on the following:

i. Order of the Supreme Court in the case of Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari (AIR 2019 SC 1265),

ii. order of Hon'ble Securities and Appellate Tribunal, Mumbai in the case of National Highway Authority of India v. Securities and Exchange Board of India in Appeal No. 232 of 2020.
iii. SEBI Vs Roofit Industries (2016, 12 SCC 125)
iv. Siddharth Chaturvedi Vs. SEBI (2016, 12 SCC 119)

44. In this regard, it is noted that, while adjudicating, the specific facts and circumstances have been taken into consideration and based on the extenuating factors the discretion available to the undersigned has been exercised.

45. Further, Noticee has contended that there was no loss or harm to any other investor(s) in the market and no undue gain was made by the Noticee. Here, I find it pertinent to refer to the judgment of *Komal Nahata v. Securities and Exchange Board of India (Appeal No. 5 of 2014 dated January 27, 2014)* held that- *"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."*. It is pertinent to note that, the provisions of 15 J are similar to the provisions of 23J.

46. The fact to be taken into consideration is that, Noticee at various points have made payments to the creditors and was on constant talks with the lenders to show its bonafide towards payment of loans, and as on date the Noticee has submitted that, all the loans have been paid to the full extent without availing any discounts or haircut to the creditors.

47. However, I am of the view that the Noticee being a listed Company is expected to carry out its conduct with proper skill, care and diligence and make material disclosures on time as per the relevant regulations. However, it is noted that such repeated and continuing nondisclosure on 81 counts apart from

nondisclosures of defaults w.r.t. Yes Bank by the Noticee has defeated the regulatory purpose. Further, despite a communication from SEBI regarding disclosure of its Loan defaults, the Noticee failed to disclose the complete details of Loan defaults and the disclosures made were also not done in the specified format for the purpose. These transgressions of the Noticee cannot be viewed leniently. Accordingly, I deem it appropriate to impose suitable penalty on the Noticee, which shall act as a deterrent to the Noticee.

ORDER

48. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 23-I of the SEBI Act, 1992 read with Rule 5 of SCR Adjudication Rules, I hereby impose a penalty of Rs 18,00,000/- (Rupees Eighteen Lakhs Only) on the Noticee, in terms of the provisions of Section 23E of SCR Act, 1956.

49. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

50. As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, accordingly, the enforcement of this order w.r.t. penalty imposed under Section 23E of SCRA, 1956 shall be subject to the outcome of the appeal filed by SEBI before the Hon'ble Supreme Court.

51. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR 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

52. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

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

54. In terms of Rule 6 of the SCR Adjudication Rules, copy of this order is sent to the Noticee viz. TARC Limited and also to SEBI.

Date: November 18, 2022 **ASHA SHETTY**

Place: Mumbai **ADJUDICATING OFFICER**