BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/BRK/JS/2022-23/16719)

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

In respect of:

SREI Equipment Finance Limited
(PAN No. AAKCS3431L)
86C, Vishwakarma, Topsia Road (South),
Kolkata, West Bengal, 700046)

In the matter of

SREI Equipment Finance Ltd.

FACTS OF THE CASE

1. In respect of Scheme of Arrangement of SREI Equipment Finance Limited (hereinafter referred to as **"Noticee**"), Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) noticed that the Noticee failed to disclose to the Stock Exchanges an interim order dated March 2, 2021 passed by the Hon'ble National Company Law Appellate Tribunal (hereinafter referred to as **"NCLAT"**) as required under Regulation 51(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **"LODR Regulations"**).

APPOINTMENT OF ADJUDICATING OFFICER

2. To inquire into and adjudge the above mentioned violation of the Noticee, vide order dated August 05, 2021, the undersigned was appointed as Adjudicating Officer by the Competent Authority in exercise of powers conferred under Section 19 read with Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"SEBI Rules"**) to conduct Adjudication Proceedings under Section 15I of SEBI Act against the Noticee for alleged violation of Regulation 51(2) of LODR Regulations read with Clause 4 of Schedule-III of LODR Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Pursuant to the above mentioned appointment, as required under Rule 4 (1) of SEBI Rules, a show cause notice dated December 28, 2021 was issued to the Noticee informing the Noticee that it was observed by SEBI that the order dated December 30, 2020 passed by the Hon'ble National Company Law Tribunal (hereinafter referred to as **"NCLT"**), Kolkata Bench restraining Credit Rating Agencies (hereinafter referred to as **"CRAs"**) from recognizing the default by the Noticee, was promptly disclosed on December 31, 2020. However, the order dated March 2, 2021 passed by the Hon'ble NCLAT mentioned above, granting stay on the order passed by the Hon'ble NCLT and lifting the aforesaid restrictions on CRAs was not disclosed by the Noticee to the Stock Exchanges. Considering the fact that the order passed by the NCLAT was a material event as it has impact on the credit rating and thereby debt repayment capability of the Noticee, prompt disclosure of the same was required by the Noticee under Regulation 51(2) of the LODR Regulations. However, as brought out above, no disclosure was made by the Noticee.

4. In view of the same, Noticee was called upon to show cause as to why an inquiry should not be held against the Noticee in terms of Rule 4 of SEBI

Rules read with 15 I of the SEBI Act, and why penalty should not be imposed under Section 15HB of the SEBI Act for the alleged violations.

5. The Noticee vide reply dated January 28, 2022 responded to the SCN *inter-alia* as follows

A. *The Reserve Bank of India (hereinafter referred to as **"RBI"**) under Section 45 – IE(1) of the Reserve Bank of India Act, 1934 (hereinafter referred to as **"RBI Act"**) superseded the Board of Directors of the Noticee and appointed Mr. Sumit Kumar Surana as the Administrator under Section 45-IE(2) of RBI Act.*

B. *Subsequently the RBI on October 8, 2021 filed an application for initiating CIRP against SEFL under Section 227 read with Clause (zk) of sub- Section (2) of Section 239 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC"**), read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Finance Service Providers and Application to Adjudicating Authority) Rules, 2019 (hereinafter referred to as "**FSP Insolvency Rules"**). On October 8, 2021, the Hon'ble NLCT, Kolkata Bench commenced the CIRP of SEFL and appointed Mr. Sumit Kumar Surana as the Administrator of SEFL.*

C. *As per Rule 5(b)(i) of the FSP Insolvency Rules read with IBC, an interim moratorium commences on and from the date of filing of the application (i.e., October 8, 2021) and a moratorium commences from the date of admission (i.e., October 8, 2021) of the financial service provider into CIRP.*

   Section 14 of the IBC imposes a moratorium on inter alia:

   a) *the institution of suits or continuation of pending suits or proceedings against the Company, including execution of any* *judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

b) *transferring, encumbering, alienating or disposing off by the Company or any of its assets or any legal right or beneficial interest therein;*

c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

D. *Accordingly, the NCLT, while passing order dated October 8, 2021 to admit the petition on behalf of RBI to initiate CIRP against SEFL, also pronounced as under, vide para 15 of the order, which is reproduced as under*

"b. *There shall be moratorium in terms of section 14 of the Code in respect of Financial Service Provider.*

c. *The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under section 31(1) of the IBC or passes an order for liquidation of the Financial Service Provider under section 33 of the Code, as the case may be."*

E. *Upon commencement of moratorium period, no proceedings can be instituted and/ or continued against corporate debtor (in the present* *case SEFL) before any court or authority. The present inquiry initiated against SEFL under Rule 4 (1) of SEBI Rules are 'proceedings' within the meaning of Section 14 of IBC and the present proceedings therefore cannot continue and ought to be stayed during the moratorium period, as mandated by IBC.*

F. *IBC is a subsequent statute and, in case of any inconsistency, the provisions of the IBC shall prevail upon the provisions of the SEBI Act in view of Section 238 of IBC. This issue has been dealt with and decided by the Hon'ble National Company Law Appellate Tribunal in its order dated May 9, 2019 passed in the case of Bohar Singh Dhillon vs. Rohit Sehgal & Ors – Company Appeal No. 665 of 2018. In the said judgement and order, the Hon'ble NCLAT held that the provisions of the IBC shall prevail over the provisions of the SEBI Act and SEBI cannot take any coercive action and/ or step against the corporate debtor during the moratorium period.*

G. *Additionally, reference is made to the order by Securities Appellate Tribunal (hereinafter referred to as "**SAT**") dated October 9, 2020 in the case of Dewan Housing Finance Corporation Ltd. v. Securities and Exchange Board of India – Appeal No. 206 of 2020, wherein the Hon'ble SAT held that the order and proceedings initiated by SEBI against Dewan Housing Finance Corporation Ltd ('**DHFL'**) after initiation of CIRP against DHFL and imposition of moratorium, could not be instituted by SEBI.*

H. *There is a bar in law against SEBI from initiating and/ or continuing with the present proceedings against the SEFL during the moratorium period. Therefore, it is requested that the said Notice and all proceedings relating to it be discontinued.*

I. *Further, the Noticee is not in a position today to defend the actions taken by the previous management. As stated above, the Administrator was appointed by RBI Press Release dated October 4, 2021; and subsequently confirmed by the order of the Hon'ble NCLT dated October 8, 2021. The erstwhile promoters and board of directors of the Noticee, who were running the business undertaking in question during the period in which the alleged violations were committed, were superseded by RBI Press Release dated October 4, 2021. Therefore, the Administrator is not personally aware or conversant with the facts and circumstances of the case to be able to depose on the facts and/ or principles on which the decision had been taken.*

J. *Since the SCN related to events which occurred prior to appointment of the Administrator, and the Administrator does not have any personal knowledge of the circumstances surrounding the concerned events, SEBI cannot assess the matter on merits. In fact, the law specifically prohibits SEBI from proceeding with the present matter as the same will result in prejudice being caused to the CIRP of SEFL.*

6. Thereafter, as per Rule 4 (3) of SEBI Rules, vide Hearing Notice dated April 25, 2022, the Noticee was informed that the purpose of these proceedings is to determine as to whether the Noticee has violated any of the provisions of securities laws and if so, to asses and determine the penalty in order to enable SEBI to cyrstalise its claim. Accordingly, an opportunity of personal hearing was provided on May 9, 2022. In response to the same, the Noticee, vide email dated 7.05.2022 informed that during the personal hearing the Noticee will be represented by Mr. Akshay Puranik, Counsel, along with Mr. Akilesh Menezes and Mr. Nishant Upadhyay, Advocates, AZB & Partners and Mr. Arunabha Acharya, SEFL Officer.

7. On the scheduled date of hearing, as informed vide email dated May 7, 2022, the Noticee was represented by Mr. Akshay Puranik, Counsel, along with Mr. Akilesh Menezes and Mr. Nishant Upadhyay, Advocates, AZB &

Partners and Mr. Arunabha Acharya, SEFL Officer. The undersigned had explained to the representatives, the violations alleged to have been committed by the Noticee. Thereafter, Mr. Akshay Puranik reiterated the written submissions made vide letter dated January 28, 2022 on behalf of the Noticee. Additionally, a copy of order dated September 16, 2006, passed by the Hon'ble Supreme Court in the matter of Arun Kumar & Ors Vs UoI & Ors (2007) 1 Supreme Court Cases 732 was provided and reliance was placed on the same in support of the submissions.

8. With regard to response on merits of the matter, Mr. Puranik submitted that the erstwhile promoters and board of directors of the Noticee, who were running the business undertaking in question during the period in which the alleged violations were committed, were superseded by the RBI on October 4, 2021 of the RBI. Therefore, the Administrator is not personally aware or conversant with the facts and circumstances of the case to be able to depose on the facts and/ or principles on which the decision had been taken.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

    i) Whether SEBI has jurisdiction to adjudicate the instant proceedings initiated vide SCN dated December 28, 2021?

    ii) Whether the Noticee has violated the provisions of Regulation 51 (2) read with clause 4 of Part-B of Schedule-III of LODR Regulations?

    iii) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act? If so, what would the monetary penalty be that can be imposed upon the Noticee?

I now proceed to deal with the issues: -

10. **Issue (i): Whether SEBI has jurisdiction to adjudicate in the present matter?**

(a) With regard to jurisdiction of SEBI, the Noticee had submitted that the RBI, under Section 45 IE (1) of the RBI Act had superseded the Board of directors of Noticee and appointed Administrator. The Noticee also submitted that RBI had subsequently filed application for initiating CIRP against SEFL under Section 227 read with Clause (zk) of sub-Section (2) of Section 239 of IBC before the Hon'ble NCLT, Kolkata bench and on October 08, 2020, the Hon'ble NCLT imposed a moratorium and upon commencement of moratorium period, no proceedings can be instituted and/ or continued against the Noticee before any court or authority. The present inquiry initiated against the Noticee under Rule 4 (1) of SEBI Rules are 'proceedings' within the meaning of Section 14 of IBC and the present proceedings therefore cannot continue and ought to be stayed during the moratorium period, as mandated by IBC.

(b) The Noticee further submitted that the issue of whether SEBI has jurisdiction to initiate and continue with present proceedings has to be decided prior to deciding the matter on merits. In support of this submission the Noticee relied upon order dated September 16, 2006, passed by the Hon'ble Supreme Court in the matter of *Arun Kumar & Ors Vs UoI & Ors*. The Noticee also relied upon order dated May 9, 2019 passed by the Hon'ble NCLAT in the case of *Bohar Singh Dhillon vs. Rohit Sehgal & Ors – Company Appeal No. 665 of 2018* wherein the Hon'ble NCLAT had held that the provisions of the IBC shall prevail over the provisions of the SEBI Act, SEBI cannot take any coercive action and/ or step against the corporate debtor during the moratorium period. Additionally, the Noticee also relied upon order dated October 9, 2020 passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in the case of *Dewan Housing Finance Corporation Ltd. vs. Securities and Exchange Board of India*

– *Appeal No. 206 of 2020*, wherein the Hon'ble SAT had held that the order and proceedings initiated by SEBI against Dewan Housing Finance Corporation Ltd (hereinafter referred to as "**DHFL"**) after initiation of CIRP against DHFL and imposition of moratorium, could not be instituted by SEBI.

(c) It is relevant to note that the order passed by the Hon'ble SAT in the case of Dewan Housing Finance Corporation Ltd. has been challenged by SEBI before the Hon'ble Supreme Court and the same is pending. The limited purpose of these proceedings is to determine whether the Noticee has violated any provisions of securities laws and if so, to assess the liability and determine the penalty in order to enable SEBI to crystallise its claim. The liability so determined with respect to the Noticee by the present proceedings under Section 15 HB of SEBI Act will be liable to be enforced, subject to the outcome of the appeal before the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Dewan Housing Finance Corporation Ltd. (Civil Appeal No. 3963/ 2020)*.

11. **Issue (ii): Whether the Noticee has violated the provisions of Regulation 51 (2) read with clause 4 of Part-B of Schedule-III of LODR Regulations?**

(a) From the material available on record, it is noted that the Noticee had made disclosure to the stock exchanges of the order dated December 30, 2020 passed by the Hon'ble NCLT, Kolkata bench wherein the Hon'ble NCLT had inter-alia held as under

> *"It is further directed that the Credit Rating Agencies shall not consider any such non-payment to be a default under the respective debt documents and shall maintain the rating(s) of SEFL at least that of investment grade."*

Thereafter, in an appeal filed by CARE Ratings Limited, the Hon'ble NCLAT vide an interim order dated March 2, 2021, held as under

> *"…. Considering the submissions made by the learned Senior Counsel for the Appellant, we deem it appropriate to pass interim orders.*
>
> *Impugned Order in para – 34 directs: - "It is further directed that the Credit Rating Agencies shall not consider any such non-payment to be a default under the respective debt documents and shall maintain the rating(s) of SEFL at least that of investment grade."*
>
> *The directions in the impugned Order as reproduced above we stay till next date."*

(b) It is relevant to note that the Noticee, being a debt listed entity, was obligated to make disclosure under Regulation 51(2) of LODR Regulations with respect to order passed by the Hon'ble NCLAT. However, it is a matter of record that the Noticee did not make disclosure of the stay imposed by the Hon'ble NCLAT on the direction issued by the Hon'ble NCLT. It is further noted from records that BSE vide email dated March 15, 2021 and NSE vide email dated March 17, 2021 informed SEBI that the Noticee did not make any disclosure w.r.t. order passed by the Hon'ble NCLAT.

(c) In this regard it is relevant to note that SEBI vide email dated June 08, 2021, sought explanation from the Noticee as to why the Noticee has not promptly disclosed the information regarding the order passed by the Hon'ble NCLAT to the Stock Exchanges as required under Regulation 51(2) of LODR Regulations. The Noticee vide email dated June 11, 2021 responded that

> *"…… the said order dated 2nd March 2021 does not qualify as information which is required to be disclosed promptly under sub-regulation (1) of Regulation 51 of LODR Regulations and we*

further submit that the said order dated 2nd March 2021 does not have any bearing on the performance/ operations of the listed entity, i.e., SEFL nor does it affect the payment of interest or redemption of non-convertible debt securities issued by SEFL.

The interim order passed by the Hon'ble National Company Law Tribunal, Kolkata Bench ("NCLT") in CA (CAA) 149/KB/2020 on December 30, 2020 in clear terms directed that regardless of any non-payment or delayed payment, the Creditors shall maintain status quo with respect to their contractual terms, dues and rights. This was the first leg of the order which categorically stops any of the Creditors from recognizing default in case there was any non-payment or short payment or delayed payment by SEFL. In other words, under no circumstances till the said order dated December 30, 2020 is in force, no default can be declared by anyone. However, the stay of the last sentence of the December 30, 2020 order by the Hon'ble NCLAT cannot have any bearing whatsoever so long as the first leg of the order directing maintenance of status quo of the NCLT interim order dated December 30, 2020 cannot affect SEFL at all. We at the cost of reiteration respectfully submit that the downgrading in the ratings undertaken by Acuite Ratings & Research Limited ("Acuite") and care Ratings Limited ("CARE") are completely blatantly wrong, misleading and baseless and in complete derogation of the said order dated December 30, 2020.

However, we would like to draw your kind attention to the disclosures already made on 6th March 2021 by SEFL promptly upon the Press Releases issued by Acuite and CARE on 5th March, 2021 regarding downgrade of ratings of the Company on the basis of the said Order of the Hon'ble NCLAT dated 2nd March 2021, being made available on the website of the Hon'ble

NCLAT, which provides details about the said order dated 2nd March 2021. Copies of the said disclosures are annexed herewith for your ready reference.

In view of the foregoing, we humbly submit that there has been no violation of inter alia Regulation 51 of the LODR as alleged or at all."

(d) The Noticee had made disclosure to the stock exchanges of the order dated December 30, 2020 passed by the Hon'ble NCLT, Kolkata Bench wherein the Hon'ble NCLT had inter-alia held as under

"It is further directed that the Credit Rating Agencies shall not consider any such non-payment to be a default under the respective debt documents and shall maintain the rating(s) of SEFL at least that of investment grade."

The implication of the order passed by the Hon'ble NCLT would be that even in case of default by the Noticee, the CRAs shall maintain the rating(s) of the Noticee at least that of investment grade.

On the other hand, when the Hon'ble NCLAT imposed a stay on the very same direction of the order passed by the Hon'ble NCLT, the implication would be that in the event of default by the Noticee, the CRAs would not have to maintain the rating(s) at least that of investment grade.

However, admittedly, the Noticee did not make the requisite disclosure with regard to the order passed by the Hon'ble NCLAT, under Regulation 51(2) of the LODR Regulations. When sought for explanation, the Noticee submitted that the stay imposed by the Hon'ble NCLAT does not qualify as information which is required to be disclosed promptly under sub-regulation (2) of Regulation 51 of LODR Regulations and that the order does not have any bearing on the performance/ operations of the Noticee nor does it affect the payment of interest or redemption of non-convertible debt securities issued by the Noticee.

(e) The submission of the Noticee that the last sentence of the order dated March 02, 2021 passed by the Hon'ble NCLAT cannot have any bearing whatsoever so long as the first leg of the interim order dated December 30, 2020 passed by the Hon'ble NCLT directing maintenance of status quo, is not acceptable. When order passed by Hon'ble NCLT is appealed and the Hon'ble NCLAT passes an order, the impugned order passed by the Hon'ble NCLT gets merged with the order passed by the Hon'ble NCLAT. Consequently, the directions issued by Hon'ble NLCT get supplanted and thereby stand modified by the order of Hon'ble NCLAT. As such if disclosure of direction issued by the Hon'ble NCLT is material, when the same direction is stayed by the Hon'ble NCLAT, the degree of materiality becomes higher therefore it was imperative for the Noticee to disclose the information to Stock Exchanges. Furthermore, investors have right to know the financial standing of the Noticee to enable them to make an informed decision.

(f) In its email dated June 11, 2021, the Noticee had also stated that disclosure was made regarding downgrading of ratings of the Noticee by CRAs on the basis of the Order passed by the Hon'ble NCLAT and that this disclosure is sufficient disclosure with respect to order passed by the Hon'ble NCLAT. Then Noticee has made contradictory statements. On the one hand the Noticee stated that the order dated March 2, 2021 passed by the Hon'ble NCLAT does not qualify as information which is required to be disclosed and on the other hand stated that disclosure regarding downgrading of ratings is sufficient disclosure.

(g) It may not be out of place to add that the fact of CRAs downgrading the ratings of the Noticee drives home the point that there was material change which the investors should be aware of. As such the argument of the Noticee that order passed by the Hon’ble NCLAT does not qualify as information which is required to be disclosed, is not acceptable.

(h) During the personal hearing it was submitted that the erstwhile promoters and Board of Directors of the Noticee, who were running the business undertaking in question during the period in which the alleged violations were committed, were superseded by the RBI on October 4, 2021. Therefore, the Administrator is not personally aware or conversant with the facts and circumstances of the case to be able to depose on the facts and/ or principles on which the decision had been taken, is not acceptable. The submission is factually incorrect as the order dated March 2, 2021 passed by the Hon’ble NCLAT was subsequent to the appointment of Administrator. An Administrator who was appointed by the RBI steps into the shoes of the management of the entity and therefore has to perform the duties of the management. In the instant case, considering, the RBI superseded the Board of Directors of the Noticee on October 4, 2020 and the order passed by the Hon’ble NCLAT was on March 2, 2021, which was subsequent to the appointment of the Administrator, it was the responsibility of the Administrator to make the requisite disclosures to the Stock Exchanges. Hence, the question of violations being committed by erstwhile promoters and Board of Directors of the Noticee does not arise and the submission is not acceptable.

(i) In view of the discussion in preceding paragraphs, the charge that the Noticee has not made requisite disclosures under Regulation 51 (2) of LODR Regulations stands established.

12. **Issue (iii): - Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act? If so, what would the monetary penalty be that can be imposed upon the Noticee?**

(a) In view of the discussion at paragraph 11, it has been established that the Noticee has violated the provisions of Regulation 51 (2) of LODR Regulations, consequently the Noticee has become liable for imposition of monetary penalty under section 15 HB of SEBI Act which reads as under:

> *"15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."*

(b) In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}* – wherein the Hon'ble Supreme Court of India held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant*…………..."

ORDER

13. After taking into consideration the facts and circumstances of the case, the discussion in the preceding paragraphs and the factors mentioned in Section 15 J of SEBI Act, in exercise of the powers conferred upon me under Section 15 I of Securities and Exchange Board of India Act, I hereby impose a penalty of Rs. 5,00,000/- on SREI Equipment Finance Limited, the Noticee herein for the failure to make requisite disclosures under Regulation 51 (2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2015.

I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the Noticee.

14. As mentioned at para 6 above, the instant proceedings are only meant to determine as to whether the Noticee has violated any provisions of securities law and if so, to assess and determine the penalty in order to enable SEBI to crystallise its claim. The enforcement of this order is subject to the outcome of the appeal filed by SEBI before the Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India Vs. Dewan Housing Finance Corporation Ltd.*

15. In terms of the provisions of rule 6 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee, Administrator and to the Securities and Exchange Board of India.

Place: Mumbai **BHAVANA RAVIKUMAR**

Date: May 31, 2022 **ADJUDICATING OFFICER**