BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OFINDIA
ADJUDICATION ORDER NO. Order/AN/SM/2023-24/27427

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of:
Burnpur Cement Limited
(PAN-AACCA1999B)

In the matter of Burnpur Cement Limited

A. BRIEF BACKGROUND

1. Securities Exchange Board of India (hereinafter also referred to as ***'SEBI'***) examined the financial statements of Burnpur Cement Limited (hereinafter also referred as ***'BCL' / 'Noticee' / 'Company' / 'Burnpur' / 'Noticee Company'***) to ascertain whether the published financial statements of the Noticee for FY 2018-19 were prepared in accordance with the applicable and notified accounting standards, as required under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 (hereinafter also referred as '***LODR Regulations, 2015', 'LODR Regulations' / 'SEBI LODR Regulations'***) with regard to tax and interest levied upon BCL by Income Tax Department Assessment Orders and the additional income calculated under the Notices of Demand under Section 156 of Income Tax Act, 1961 dated December

31, 2018 for Financial Years 2010-11 to 2016-17 ***(collectively also referred as 'IT Orders' / 'Notices of Demand' / 'Demand Notices' / 'Assessment Orders'***). The period of examination was Financial Year 2018-19 (hereinafter also referred as '***Examination Period' / 'FY 2018-19'***), however, wherever deemed necessary references may have also been made to events /timeframes outside this period.

2. Pursuant to the examination in the matter, SEBI observed that the Noticee had prima facie, failed to prepare financial statements in accordance with the applicable and notified Accounting Standards, published financial statements which did not present a true and fair view of the company's affairs, thereby resulting in mis-statement in the reported financials and failed to disclose material event to the stock exchanges and thereby allegedly violated provisions of Regulations 4(1)(a), 4(1)(b), 4(1)(e), 30(4)(i)(b) read with Clause 8 of Para B of Part A of Schedule III and read with 30(3), Clause 2 of Part B of Schedule V read with 34(3) and Regulation 48 of LODR Regulations, and Regulations 4(2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter also referred as '***FUTP Regulations, 2003', 'FUTP Regulations' / 'PFUTP Regulations'***).

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Upon being satisfied that there are sufficient grounds to adjudge upon the alleged violations of provisions of Regulations 4(1)(a), 4(1)(b), 4(1)(e), 30(4)(i)(b) read with Clause 8 of Para B of Part A of Schedule III and read with 30(3), Clause 2 of Part B of Schedule V read with 34(3) and Regulation 48 of LODR Regulations, and provisions of Regulations 4(2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter also referred as '**PFUTP Regulations 2003'**) by the Noticee, SEBI, in exercise of powers under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter also referred to as the 'SEBI Act'/ 'SEBI Act, 1992')

read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter also referred to as **'*SEBI Adjudication Rules' / 'Adjudication Rules' / 'AO Rules*'**) and under Section 23 I of Securities Contract Regulation Act 1956 {hereinafter also '***SCRA' / 'SC(R) Act 1956' / 'SCRA 1956' / 'SCR Act 1956'***}. appointed Ms. Maninder Cheema, CGM, SEBI as the Adjudicating Officer (hereinafter also referred as **'AO'**), vide communique dated March 11, 2022 to inquire into and adjudge under Section 15HA and 15HB of SEBI Act and Section 23H of Securities Contract Regulation Act 1956. Pursuant to the transfer of Ms. Maninder Cheema, Dr. Anitha Anoop, CGM, SEBI was appointed as the AO in the matter, vide Communiqué dated June 07, 2022. Pursuant to transfer of Dr. Anitha Anoop, the undersigned was appointed as the Adjudicating Officer in the matter vide Communiqué dated September 05, 2022.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice No. SEBI/EAD-5/AA/NS/31772/2022 dated July 29, 2022 (hereinafter also referred to as **"SCN"**) was issued to Noticee under Rule 4(1) of the AO Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of SEBI Adjudication Rules read with Section 15 I of SEBI Act 1992, and Rule 4 of SC(R) Rules read with Section 23 I of SCR Act, 1956 and penalty be not imposed under Section 15HA and 15HB of SEBI Act 1992 and Section 23H of SCR Act 1956 for the alleged violations of provisions as stated therein and brought out under Para 2 above. The SCN was duly served on the Noticee through Speed Post Acknowledge Due (SPAD) and digitally signed e-mail.

5. The following was inter alia observed and alleged in the SCN:

"

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As per the assessment orders ….., Tax and Interest of ₹17.53 crores as assessed u/s 153A/144 of IT Act, 1961 were to be paid by BCL and additional income of ₹63.11 crores was computed. Accordingly, IT department imposed a penalty of ₹17.53 crores on the Noticee.

On examination of the Annual Reports for FY 2018-19, SEBI also found that the Noticee has not made provision for tax and interest levied upon the Noticee and additional income assessed by IT Order during FY 2018-19. SEBI observed the following from the financial statements of the Noticee during the examination period.

Shareholding pattern of the Noticee:

The shareholding pattern of the Noticee during the examination period was as follows:

Particulars	**As on December 31, 2021**	
	No. of shares	**%**
Promoter Holding	*2,37,40,973*	*27.57*
Non Promoter Holding	*6,23,83,390*	*72.43*
Total share capital	***8,61,24,363***	*100*

Financial Results:

₹ in crore

Particulars	**FY ended March 31, 2017**	**FY ended March 31, 2018**	**FY ended March 31, 2019**
Revenue	*74.34*	*53.84*	*86.76*
Other Income	*0.33*	*0.15*	*0.43*
Total Income	*74.67*	*53.99*	*87.19*
Profit after Tax	***-53.88***	***-44.49***	***-12.67***

SEBI sought information from the Noticee vide email dated December 21, 2021 with respect to the accounting treatment of tax and interest levied upon BCL by IT order and whether the same was in accordance with the accounting standards. The Noticee, vide email dated December 22, 2021………, inter alia, stated that "Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company. And also the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company w.r.t. such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, the Company did not recognise or acknowledge the liabilities in the books of Accounts."

…..

….., it is alleged that the Noticee failed to disclose the material information in its financial statements for FY 2018-19 and in the subsequent years. Further it is alleged that the instant accounting treatment of non-provisioning of the resultant tax and interest levied upon Noticee was not found to be in accordance with the applicable and notified Accounting Standards i.e. IndAS 37 and consequently, the published financial statements of the Noticee did not present a true and fair view of the Noticees' financial affairs.

Further, both the penalty levied and additional income assessed being the material information, the Noticee also should have disclosed the same to the stock exchanges as mandated under Regulation 30(4) of LODR Regulations. Therefore, it is alleged that Noticee has violated the provisions of Regulation 30(4)(i)(b) read with clause 8 of Para B of Part A of Schedule III and read with 30(3) of LODR Regulations 2015.

Regulatory provisions with respect to Accounting Standards

9. *As per the provisions of regulations 4(1)(a), 4(1)(b) and 48 of the LODR Regulations, a company is required to comply with all the applicable and notified Accounting Standards. Under section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, the Ministry of Corporate Affairs has notified the Indian Accounting Standards* ***("IndAS")****, which have been made applicable to listed entities since April 01, 2017. It was also observed from the Annual Report of the Noticee for FY 2018-19, it has been certified that the financial statements of the Company were prepared in accordance with IndAS.*

   …..

   It is alleged that Noticee failed to mention the additional tax and interest assessed under the IT Order in the Financial Statements or in the director's report. It may be noted that the IT order has identified ₹63.11 crores as undisclosed income of the Noticee which also has not been brought into the books of *the Noticee. Further, it is alleged that Noticee did not make any specific disclosures to the stock exchanges, even though this was a material event that is required to be reported under IndAS 37.*

In view of the above, it is alleged that the acts and omissions discussed above were fraudulent acts on the part of the Noticee. Had the material information been disclosed at the relevant time, it could have influenced the decision of many investors with respect to buying selling or dealing in the scrip of the company/ Noticee.

Therefore, it is alleged that the instant accounting treatment by the Noticee of non-provisioning of additional income calculated, tax and interest levied upon Noticee was not found to be in accordance with the applicable and notified Accounting Standard - IndAS 37 and consequently, the published financial statements of the Noticee did not present a true and fair view of the Noticees' affairs. Therefore, it is alleged that the Noticee has violated provisions of Regulations 4(2) (f), (k) and (r) of the PFUTP Regulations.

Further, it is alleged that Noticee had not disclosed about said IT Order to exchanges, therefore Noticee has violated the provisions of Regulation 4(1)(e) of LODR Regulations.

Additionally, as per provisions of Clause 2 of Part B of Schedule V read with 34(3) of LODR Regulations, if a different accounting treatment from that prescribed in an Accounting Standard has been followed in the preparation of financial statements, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction. Therefore, it is alleged that Noticee had not followed IndAS 37 for the accounting treatment of tax and interest levied upon BCL by IT order and not even disclosed about the different accounting treatment in the financial statements, and hence thereby has violated the provisions of Clause 2 of Part B of Schedule V read with 34(3) of LODR Regulations.

….. to be in vioaltion of the relevant provisions of PFUTP Regulations 2003 & LODR Regualtions 2015, stated below:

Regulations 4(2) (f), (k) and (r) of the PFUTP Regulations states that,
"4(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—
………..
(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
…………
(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;
…………
(r) knowingly planting false or misleading news which may induce sale or purchase of securities."

Regulation 4(1)(a), 4(1)(b) and 4(1)(e) of LODR Regulations states that
"(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor."
……
……
(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language."

Regulation 30(3) of LODR Regulations states that "The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4)."

Regulation 30(4) of LODR Regulations states that "(i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

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

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

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

Para B of Part A of Schedule III of LODR Regulations states that
"Events *which* shall be disclosed upon application of the guidelines for materiality *referred* sub-regulation (4) of regulation (30):
…………
8. *Litigation*(s) / dispute(s) / regulatory action(s) with impact."

Regulation 34(3) of LODR Regulations states that "The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations."

Para 2 of Part B of Schedule V of LODR Regulations states that
"Disclosure of Accounting Treatment:
Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction."

Regulation 48 of LODR Regulations states that "The listed entity shall comply with all the applicable and notified Accounting Standards from time to time."

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6. The Noticee, vide its email dated August 12, 2022, requested for one weeks' time for submitting reply to the SCN, which was acceded to. However, no reply to the SCN was received from the Noticee within the said extended requested period. Subsequently Noticee vide its letter dated December 15, 2022 made its submissions as reply to the SCN. The Noticee vide its letter dated December 15, 2022, inter alia providing background made following submissions in respect of the alleged violations:

"
…….

<u>Company Background:</u>

(i) Burnpur Cement Limited (henceforth called BCL) is a public limited company started operation in October 1991 in Asansol to produce Portland Slag Cement. The former name of the company was Ashoka Concrete and Allied Industries Pvt. Ltd. with one of the main objectives of manufacturing of cement. The name of the company was changed to Burnpur Cement Pvt. Ltd. on September 18, 2001 and was subsequently converted to a public limited company since November 12, 2001.

(ii) BCL signed an MOU (Memorandum of Understanding) with Government of Jharkhand on 23rd March, 2006 to setup an integrated cement plant at Patratu, Jharkhand. The key reason for setting up

the unit at Patratu was the availability of limestone mines in the vicinity, and limestone can be extracted for making clinker, which is the key raw material for manufacture of cement. The estimated at Rs.297.72 crores and which was to be financed by Rs. 198.28 crores of Term Loan and Equity of Rs. 99.44 crores. The plant was inaugurated in July 2015. However, due to inappropriate planning of the previous management the project could not succeed as per their plan and expectation. Further as we believe, the funds were not utilized in appropriate manner caused damages to the project which in turn caused failure of the project and the 75% of the plant which is clinker unit could not be operationalized.

Due to such, the cash flow of the company couldn't be achieved and the company became NPA in December 2016. Once the company became NPA, then management also shut down the Asansol Unit. After shut down of the plant for about 6 months, the Company entered into an offtake agreement (Buying selling agreement) with Ultra tech Cement Limited in May 2017.

(iii) DEBT ASSIGNMENT BY BANKERS (LENDERS) UNDER SARFAESI ACT

Central Bank of India on 9th July 2018 and State Bank of India on 4th December 2018 took the matter to NCLT under IBC Code 2016. The banks also auctioned the debts they had by swiss challenge method under SARFAESI act 2002 and UV Asset Reconstruction Company Limited was the successful bidder to the auction. Later the said banks assigned their debts to UV Asset Reconstruction Company Limited.

After the assignment of debts by SBI and CBI, UV Asset Reconstruction Company Limited by evaluating the affairs of the company, came to an opinion that then management was not competent enough to utilise the remaining resources optimally and run the business. The inefficiency of the earlier management was resulting in losses and also non-payment of its financial liabilities. Thus, exercising the power given under section 9(1)(a), 15 and 16 of SARFAESI Act, 2002, UVARCL changed the management of the Company with effect from 01st October 2019.

Onwards 1st October 2019, UV Asset Reconstruction Company Limited has changed the management of the Company. It has constituted a well-diversified technical board and hired one consultant to advice over the plant activities. UV Asset Reconstruction Company Limited is working hard to restrain the Company from liquidation, to regain the confidence of the Investors of the company and to make Burnpur Cement Limited a performing asset.

ISSUES INVOLVED IN THE SEBI NOTICES ISSUED:

A Search operation u/s.132 and survey operation both was conducted against Burnpur Cement Group of Companies on 20.10.2016. Thereafter, during the course of assessment proceeding in response to notice u/s.142(1) on various dates, the Assessee-Company filed its written explanation along with details/evidences asked for. However, the Ld. A.O., without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Assessee-Company, passed the impugned assessment orders for various assessment years after making following disallowances/ additions to the total income:-

…..

Accounting ***treatment given for the said Assessment Orders in the books of accounts and financials of Burnpur Cement Limited: -***

During the course of assessment proceedings, the Assessee-Company filed its written explanation along with details/evidences asked for. However, the Ld. A.O., without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company, passed the impugned assessment orders for various assessment years after Adhoc/ arbitrary disallowances/ additions to the total income of the Company.

The Company has preferred appeals for the captioned assessment years before the Commissioner of Income Tax (Appeals) – 21, Kolkata. It is our strong contention that the aforementioned adjustments are devoid of merits and in plain disregard of facts and circumstances of the case and are likely to be deleted by appellate authorities and the entire demand raised against the Assessee-Company would be cancelled.

As per, Indian Accounting Standard (Ind AS)-37, A contingent liability is:

(a) a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or

(b) a present obligation that arises from past events but is not recognised because:

> *(i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or*
>
> *(ii) the amount of the obligation cannot be measured with sufficient reliability. A contingent asset is a possible asset that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity*

A contingent liability is a liability that may occur depending on the outcome of an uncertain future event. ***A contingent liability has to be recorded if the contingency is likely and the amount of the liability can be reasonably estimated.***

Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, The Company did not recognize or acknowledge the liabilities in the books of Accounts as it has to be recorded only ***if the contingency is likely and the amount of the liability can be reasonably estimated.***

Allegations ***in the SEBI Notice:***

i. *Non-Disclosure about the orders dated 31-12-2018, passed by the Income Tax Department of the disclosure under regulation 30(4)(i)(ii) read with clause 8 of the Para B of Schedule III and read with Regulation 30(3) of the SEBI (LODR) Regulations, 2015;*

ii. *Non compliance of the accounting standard Ind AS 37 in respect of proper disclosure of the contingent liabilities in the financial statement as per Regulation 48, read with Regulation 4(1)(a), 4(1)(b), 4(1)(e), 34(3) of the SEBI (LODR) Regulations, 2015 read with Regulation 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations.*

Our Para-wise reply to your show cause notice is as below:

1. ***Para 1:*** *A contingent liability is a liability that may occur depending on the outcome of an uncertain future event.* ***A contingent liability has to be recorded if the contingency is likely and the amount of the liability can be reasonably estimated.***

   Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further ***opportunity*** *and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, The Company did not recognize or acknowledge the liabilities in the books of Accounts as it has to be recorded only* ***if the contingency is likely and the amount of the liability can be reasonably estimated.***

   In view of the aforesaid, the financial statements of the Company for the FY 2018-19 is true and fair representation. Allegations made by you are denied.

2. ***Para 2:*** *No reply needed.*

3. ***Para 3:*** *All the allegations made in this Para are basically taken from the allegations made by the Income Tax Department, while passing its order dated 31st December, 2018. It may be noted that these allegations are contended by the Company and the Company has already filed appeal against this order. The decision in the appeal is still pending.*

   A copy of the appeal filed by the Company with acknowledgement is enclosed herewith.

   Please note that pending disposal of the appeal against the Income Tax Order; none of the allegations made by you are final and no coercive action should be taken against the Company by SEBI making base of the facts and judgements already contended in the Income Tax appeal process.

Accordingly, as the allegations made by you in Para 3 is already sub-judice; SEBI should not pass any order pending disposal of the appeal before the CIT (Appeals).

(i) Sub-Para (i) is denied and it is already contended before the CIT (Appeal). Matter of sub-judice.

(ii) Sub-Para (ii) is denied and it is already contended before the CIT (Appeal). Matter of sub-judice.

4. ***Para 4:** Income additions, penalty and interest is already contended before the CIT (Appeal). Matter of sub-judice.*

5. ***Para 5:** Since the additions, penalty and interest is already contended before the CIT (Appeal) and the matter of sub-judice; there is no question that we could have made provisions for the income tax, interest and penalties. In your show cause notice you have alleged that the matter was required to be disclosed as contingent liabilities. So, there is no question of making provision for a liability as well as showing the same as contingent liabilities.*

6. ***Para 6:** No reply needed.*

7. ***Para 7:** No further reply needed. Already covered under the aforesaid submissions.*

8. ***Para 8 & 9:** Allegations are denied. As per the aforesaid submissions, please note that the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata. Accordingly, we are of the opinion that the requirement for making disclosure under Regulation 30 may be applicable only upon the crystallization of the demand.*

   As per Para 8 of (B) of Annexure I of the SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015; the following material matter need to be disclosed to the Stock exchange under regulation 30 of the SEBI (LODR) Regulations, 2015:

   *"The listed entity shall notify the stock exchange(s) upon it or its key management personnel or its promoter or ultimate person in control becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the listed entity, **the outcome of which can reasonably be expected to have an impact."***

   Please note that pending disposal of the Income Tax Appeal, there is no impact/ significant adverse bearing on the affairs of the Company. Accordingly, in view of the wordings of Para 8 of (B) of Annexure I of the SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 read with Regulation 30 of the SEBI (LODR) Regulations, 2015; no disclosure was required to be made by the Company, as alleged in the captioned Show Cause Notice.

9. ***Para 10:** Already replied at our submission for Para 8 & 9 and Para 5, as above.*

10. ***Para 11:** Already replied at our submission for Para 8 & 9, as above.*

11. ***Para 12 to 18:** A contingent liability is a liability that may occur depending on the outcome of an uncertain future event. A contingent liability has to be recorded if the contingency is likely and the amount of the liability can be reasonably estimated.*

    *Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, The Company did not recognize or acknowledge the liabilities in the books of Accounts as it has to be recorded only **if the contingency is likely and the amount of the liability can be reasonably estimated.***

    In view of the above, all the allegations made at Para 12 to 18 of the captioned Show Cause Notice is denied and rebutted.

12. ***Para 19:*** *As already explained above in respect of reply to Para 5, Para 8 and other submissions made above, there has been no different accounting treatment from that prescribed under the IndAS. In view of the above, all the allegations are denied and rebutted.*

13. ***Para 20:*** *No reply needed.*

14. ***Para 21 to 24:*** *In view of the aforesaid submissions, there is no case, which required any further enquiry against the Company.*

    Please further appreciate that due to default by the promoters of this company; the loan accounts of the Company were in default and Lenders had initiated the proceeding under the SARFAESI Act 2002.

    Onwards 1st October 2019, UV Asset Reconstruction Company Limited, a registered Asset Reconstruction Company (ARC) has changed the management of the Company from the old promoters. Any further coercive action shall be prejudice and coercive against the Company and its public shareholders.

15. ***Para 25:*** *In this regard, we had filed a settlement application on November 14, 2022 vide ref. number 100133. However, the SEBI has not considered the same and the same Settlement application has been returned back on 9th December, 2022.*

16. ***Para 26:*** *Delay in filing the reply may be condoned. Please note that we had tried to settle that matter with SEBI under Settlement Regulations, but as of now the same was not allowed. We humbly request to accept our submissions in the present reply.*
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17. ***Para 27:*** *No reply needed.*

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7. In the interest of natural justice, vide Hearing Notice dated October 07, 2022, an opportunity of hearing was provided to the Noticee on October 15, 2022. *Vide* email dated October 11, 2022, Noticee requested adjournment of the said hearing and also requested for physical hearing and reiterated said request vide its emails dated October 12, 2022, and October 17, 2022. Accordingly, the hearing was rescheduled and *vide* email dated October 17, 2022, Noticee was given opportunity of in-person hearing on October 20, 2022. *Vide* email dated October 17, 2022, Noticee once again requested adjournment seeking date after October 25, 2022. The hearing was once again rescheduled and *vide* email dated October 18, 2022, an opportunity of in-person hearing was given to the Noticee to appear on November 02, 2022.

8. On the scheduled date of hearing, the Noticee appeared through its Authorized Representatives (hereinafter also referred as "**ARs'**) viz., Sh. Indrajeet Kumar

Tiwary, Whole Time Director of Noticee along with Sh. Gopal Singh Bisht, Consultant of Noticee.

9. Vide its email dated November 11, 2022 Noticee informed that it was in the process of filing an application under the Settlement Scheme of SEBI and inter alia once again requested for grant of 15 days' time to reply to the SCN, in response to which Noticee was requested to confirm whether it had applied for settlement under SEBI (Settlement Proceedings) Regulations, 2018 to which Noticee replied that it had applied for settlement. V*ide* email dated December 09, 2022, Noticee informed that the settlement application filed by it had not been considered by SEBI and inter alia requested 4-5 working days to file its reply to the SCN. V*ide* its email dated December 15, 2022 the Noticee made its submissions to the SCN. I note that the Noticee as part of its reply to the SCN vide its letter dated December 15, 2022, inter alia submitted that 'delay in filing the reply may be condoned'. The key submissions of the Noticee, in respect of the allegations levelled against it vide its reply dated December 15, 2022 to the SCN are being dealt with, in following paragraphs as hereinafter:

D. CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the instant matter are:

    Issue I - Whether the Noticee violated the provisions of Regulations 4(1) (a), 4(1) (b), 4(1) (e), 30(4)(i)(b) read with Clause 8 of Para B of Part A of Schedule III and read with Regulation 30(3) of LODR Regulations, Clause 2 of Part B of Schedule V read with Regulation 34(3) of LODR Regulations and Regulation 48 of LODR Regulations, and Regulations 4(2) (f), (k) and (r) of PFUTP Regulations 2003?

Issue II – If yes, do the violations of provisions mentioned above, if any, attract monetary penalty under Section 15HA and 15HB of SEBI Act, 1992 and Section 23H of SC(R) Act, 1956?

Issue III - If so, what should be the quantum of monetary penalty?

11. Before proceeding with the matter on merits, I would first deal with the aspect relating to the settlement application having been returned back as submitted by the Noticee. In this regard, I note from the material available on record that vide its letter dated December 05, 2022 the concerned department of SEBI, inter alia drawing reference to Regulation 4(1) of the SEBI (Settlement Proceedings) Regulations, 2018, had informed the Noticee that *'since the present application had been filed beyond the period of limitation, the settlement application in original was being returned to the Noticee.'*

12. I also note that Noticee as part of its reply to the SCN had made reference to IBS and SARFAESI Act, under sub para titled, '*DEBT ASSIGNMENT BY BANKERS (LENDERS) UNDER SARFAESI ACT*', under Para titled '*Company Background'*, wherein the Noticee had inter alia stated as under:

> '
>
> *Central Bank of India on 9th July 2018 and State Bank of India on 4th December 2018 took the matter to NCLT under IBC Code 2016. The banks also auctioned the debts they had by swiss challenge method under SARFAESI act 2002 and UV Asset Reconstruction Company Limited was the successful bidder to the auction. Later the said banks assigned their debts to UV Asset Reconstruction Company Limited.*
>
> *After the assignment of debts by SBI and CBI, UV Asset Reconstruction Company Limited by evaluating the affairs of the company, came to an opinion that then management was not competent enough to utilise the remaining resources optimally and run the business. The inefficiency of the earlier management was resulting in losses and also non-payment of its financial liabilities. Thus, exercising the power given under section 9(1)(a), 15 and 16 of SARFAESI Act, 2002, UVARCL changed the management of the Company with effect from 01st October 2019.*
>
> *….. UV Asset Reconstruction Company Limited is working hard to restrain the Company from liquidation, to regain the confidence of the Investors of the company and to make Burnpur Cement Limited a performing asset.*
>
> '.

In this regard, I note that the Noticee as part of its submissions vide letter dated December 15, 2022 had made passing reference to the same, citing the relevant period/year as years 2018 and 2019 i.e., years prior to initiation of present proceedings and no plea as such had been made by the Noticee nor had it demonstrated and /or submitted anything that may have a bearing on the continuation of the present proceedings. Further in this regard, upon checking on the website of Insolvency and Bankruptcy Board of India at URL: https://ibbi.gov.in/en/claims/corporate-personals, name of the Noticee Company did not appear and the website prompted 'NO RESULT FOUND'.

13. Here it would be pertinent to draw reference to the relevant legal provisions alleged to have been violated by the Noticee, which are reproduced as hereunder:

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

"

…..
CHAPTER II
PRINCIPLES GOVERNING DISCLOSURES AND OBLIGATIONS OF LISTED ENTITY

Principles governing disclosures and obligations.
4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
…..

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

…..

Regulation 30(3) of LODR Regulations, 2015

Disclosure of events or information.

…..

“

30.(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

…..

”

Regulation 30(4)(i)(b) of LODR Regulations, 2015

“

(i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

…..

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

….

. *”*

Clause 8 of Para B of Part A of Schedule III of LODR Regulations, 2015

SCHEDULE III

PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

[See Regulation 30]

The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s):

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

…..

B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):

…..

8. Litigation(s) / dispute(s) / regulatory action(s) with impact.

SCHEDULE V: ANNUAL REPORT
[*See* **Regulation 34(3) and 53(f)]**

The annual report shall contain the following additional disclosures:

…..
B. **Management Discussion and Analysis:**
…..

2. Disclosure of Accounting Treatment:
Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.
…..
"

Regulation 34(3) of *LODR Regulations, 2015*

Annual Report.
34.(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

Regulation 48 of *LODR Regulations, 2015*

"
Accounting Standards.
48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.
"

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

"….

4. Prohibition of manipulative, fraudulent and unfair trade practices
…..
(2) Dealing in securities shall be deemed to be a [7][manipulative] fraudulent or an unfair trade practice if it involves [8][any of the following]:—
…..
(f) [13][knowingly] publishing or causing to publish or reporting or causing to report by a person dealing in securities any information [14][relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

> *…..*
> *[18][(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;]*
> *…..*
> *(r) [25][knowingly] planting false or misleading news which may induce sale or purchase of securities.*
> *…..*
> *".*

Issue I - Whether the Noticee violated the provisions of Regulations 4(1)(a), 4(1)(b), 4(1)(e), 30(4)(i)(b) read with Clause 8 of Para B of Part A of Schedule III and read with 30(3), Clause 2 of Part B of Schedule V read with 34(3), Regulation 48 of LODR Regulations and Regulations 4(2) (f), (k) and (r) of PFUTP Regulations 2003?

14. In this regard, from the material available on record, I note that briefly stated, it had inter alia been alleged that the Noticee, failed to prepare financial statements in accordance with the applicable and notified Accounting Standards (IndAS 37), did not disclose about the different accounting treatment in the financial statements together with the management's explanation, published financial statements which did not present a true and fair view of the company's affairs, thereby resulting in mis-statement in the reported financials and failed to disclose material event /information relating to the penalty levied and additional income assessed as per the IT Orders to the stock exchanges. Accordingly**,** it was inter alia alleged that the Noticee had violated various provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 viz., Regulations 4(1)(a), 4(1)(b), 4(1)(e) and Regulation 48, Regulation 30(4)(i)(b) read with Clause 8 of Para B of Part A of Schedule III and read with Regulation 30(3) and Para 2 of Part B of

Schedule V read with Regulation 34(3) of LODR Regulations, 2015 and Regulation 4(2)(f), (k) and (r) of PFUTP Regulations, 2003.

15. I now proceed with, in respect of the alleged violations, as abovementioned, against the Noticee having regard to SCN dated July 29, 2022 as here under:

16. From the reply dated December 15, 2022 of the Noticee to the SCN, I note that, broadly speaking, the primary contention of the Noticee, repeatedly reiterated in its reply to the SCN, in respect of the allegations levelled against it, has been as under:

> *'a contingent liability is a liability that may occur depending on the outcome of an uncertain future event. A contingent liability has to be recorded if the contingency is likely and the amount of the liability can be reasonably estimated. Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, The Company did not recognize or acknowledge the liabilities in the books of Accounts as it has to be recorded only if the contingency is likely and the amount of the liability can be reasonably estimated. In view of the aforesaid, the financial statements of the Company for the FY 2018-19 is true and fair representation. Allegations made by you are denied.*
>
> …..
>
> "
>
> …
>
> *Since the additions, penalty and interest is already contended before the CIT (Appeal) and the matter of sub-judice; there is no question that we could have made provisions for the income tax, interest and penalties. In your show cause notice you have alleged that the matter was required to be disclosed as contingent liabilities. So, there is no question of making provision for a liability as well as showing the same as contingent liabilities.*
>
> …
>
> "

(note: considering that broadly speaking the above had primarily been contended by the Noticee repeatedly in respect of the allegations levelled against it, for sake of brevity the above primary contention of the Noticee is hereinafter synonymously also referred to as 'primary contention' / 'primarily contended')

17.1. It was inter alia alleged that the Noticee has violated provisions of Regulations 4(1) (a), 4(1) (b) and Regulation 48 of LODR Regulations, 2015 as the accounting treatment of the IT Orders by the Noticee was not in accordance with the applicable and notified accounting standards:

17.1.1. In this regard, I note from the material available on record that Assessment Orders had been passed by the IT Department dated December 31, 2018 for financial years 2010-11 to 2016-17 and Notices of Demand (synonymously/ collectively 'IT Orders', in short) had been raised in respect of the Noticee. As per the Notices of Demand dated December 31, 2018 relating to FY 2010-11 to 2016-17, Income Tax Department had assessed an additional income of Rs. 63.11 crores and also imposed additional tax & interest of Rs. 17.53 crores on the Noticee.

17.1.2. In this regard, it had inter alia been alleged that the accounting treatment of the IT Orders by the Noticee was not in accordance with the applicable and notified Accounting Standards and that the Noticee had violated the provisions of Regulation 4(1) (a), 4(1) (b) and Regulation 48 of LODR Regulations, 2015.

17.1.3. I note that as per Regulation 4(1) of LODR Regulations, a listed entity which has listed securities is required to make disclosures and abide by the obligations cast under these regulations, in accordance with the stated principles, which inter alia include that under Regulation 4(1) (a) of LODR Regulations, as per which an obligation is cast on a listed entity to prepare information and disclose the same in accordance with applicable standards of accounting and financial disclosures. Besides, in terms of Regulation 4(1)(b) of LODR Regulations a listed entity is inter alia required to implement the prescribed accounting standards in letter and spirit in the preparation of financial statements. As per Regulation 48 of LODR Regulations a listed entity is required to comply with all extant applicable and notified accounting standards.

17.1.4. It is a matter of record that the Noticee is a listed entity which has its equity shares listed on the BSE and NSE. I note from material available on record that it had inter alia been alleged that the Noticee did not record the amounts as per the IT Orders dated December 31, 2018, in its annual accounts for the FY 2018-19 and thereafter, and failed to mention the additional tax and interest assessed under the IT Order in the Financial Statements or in the director's report. I note that the primary contention of the Noticee with regard to the allegations levelled, as already brought out earlier also, has been as under:

> *"*
> *…..*
> *A contingent liability is a liability that may occur depending on the outcome of an uncertain future event. A contingent liability has to be recorded if the contingency is likely and the amount of the liability can be reasonably estimated. Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, The Company did not recognize or acknowledge the liabilities in the books of Accounts as it has to be recorded only* ***if the contingency is likely and the amount of the liability can be reasonably estimated.***
> *……*
> *There has been no different accounting treatment from that prescribed under the IndAS.*
> *…..*
> *"*

17.1.5. Here it would be relevant to draw reference to the provisions relating to applicability of the Indian Accounting Standards to the listed entities and the relevant Indian Accounting Standard. Under Section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, the Ministry of Corporate Affairs has notified the Indian Accounting Standards ("IndAS"), which have been made applicable to listed entities since April 01, 2017. As per the Indian Accounting Standard relating to Provisions, Contingent Liabilities and Contingent Assets viz., Indian Accounting Standard (Ind AS) 37 ('IndAS 37' for short), a contingent liability is:

> *"(a) a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or*
> *(b) a present obligation that arises from past events but is not recognised because:*
> *(i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or*
> *(ii) the amount of the obligation cannot be measured with sufficient reliability."*

17.1.6. As per the material available on record, SEBI had inter alia observed that, "…*It was also observed from the Annual Report of the Noticee for FY 2018-19, it has been certified that the financial statements of the Company were prepared in accordance with IndAS…".* In other words, as per the Annual Report for FY 2018-19 of the Noticee itself, the Noticee had followed IndAS. In this regard, it is noted that in terms of the provisions of IndAS 37, a contingent liability has to be recorded if the obligation is likely and the amount of the liability can be reasonably estimated.

17.1.7. In this regard, in the instant matter, as per material available on record, by virtue of Notices of Demand under Section 156 of Income Tax Act, 1961 dated December 31, 2018, having been raised by the Income Tax Department, a liability as additional tax and interest thereon, had arisen on the Noticee. Further, the liability in this regard, as per said Notices of Demand was crystalized as ₹17.53 crores towards additional income tax and interest. Logically speaking, that the Noticee had preferred appeals against the said Demand Notices renders the said liability as contingent, as the outcome in respect of the appeals preferred by the Noticee against the said IT Orders would not be decided by the Noticee but the relevant authority.

17.1.8. Further, in this regard, it is noted that the Noticee has neither disputed the demand of Rs.17.53 crores raised upon it by the IT Orders dated December 2018 nor can, logically speaking, the Noticee demonstrate that the appeals preferred by it against the said IT Orders, would invariably be decided in favour of Noticee only, rendering the event as contingent /likely. Otherwise too, going by the submissions of the Noticee itself viz., 'The Company has preferred appeals for the captioned assessment years before the Commissioner of Income Tax (Appeals) – 21, Kolkata. It is our strong contention that the aforementioned adjustments are devoid of merits and in plain disregard of facts and circumstances of the case and are likely to be deleted by appellate authorities and the entire demand raised against the Assessee-Company would be cancelled.', the matter of appeals preferred by Noticee is likely and accordingly going by the submissions of Noticee itself, the same being likely would qualify to be contingent. Accordingly, having regard to the facts and circumstances in the matter and the material available on record, the contention of the Noticee that as the Company had filed for the stay of the demand and also had preferred the appeals against the orders and therefore no liability arose against the company, is devoid of merit and cannot be accepted.

17.1.9. Therefore I find that the Noticee, being a listed entity did not implement the prescribed accounting standard viz., IndAS 37 in letter and spirit in the preparation of its financial statements and did not prepare the information in accordance with applicable IndAS 37 and it is accordingly established that the Noticee as a listed entity failed to comply with the extant applicable and notified accounting standard IndAS 37.

In view of thereof, I hold that the Noticee has violated the provisions of Regulation 4(1) (a), 4(1) (b) and Regulation 48 of LODR Regulations, 2015.

17.2. It was inter alia alleged that the Noticee had violated the provisions of Clause 2 of Part B of Schedule V read with 34(3) of LODR Regulations by not disclosing about the different accounting treatment in the financial statements.

17.2.1. As per Regulation 34(3) of LODR Regulations, 2015, the Annual Report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

17.2.2. As per Clause 2 of Part B of Schedule V, as regards disclosure of accounting treatment, where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

17.2.3. In this regard, Noticee vide its letter dated December 15, 2022 primarily contending, inter alia submitted that, '….., *there has been no different accounting treatment from that prescribed under the IndAS. In view of the above, all the allegations are denied and rebutted*…..'.

17.2.4. In this regard, while the Noticee has contended so, it has already been established in the foregoing that Noticee had failed to comply with the extant applicable and notified Accounting Standards viz., IndAS 37 and accordingly, it logically flows that by not having followed the IndAS 37, the Noticee had followed a different accounting treatment from that as prescribed under IndAS 37 and that it did not disclose the fact of having followed a different accounting treatment, in its financial statements together with the management's explanation as to why it believed such alternative treatment was more representative of the true and fair view.

17.2.5. It is accordingly established that the Noticee did not account for the IT Orders in its financials for FY 2018-19 and onwards and therefore failed to prepare its financial statements as per applicable and notified accounting standard IndAS 37 and having done so also failed to disclose about having followed the different treatment than prescribed together with the management's explanation. Accordingly, the contention of the Noticee in this regard is devoid of merit and hence not acceptable.

In view thereof, I hold that the Noticee has violated the provisions of Clause 2 of Part B of Schedule V read with 34(3) of LODR Regulations, 2015.

17.3. It was inter alia alleged in the SCN that Noticee had violated the provisions of Regulation 30(4)(i)(b) read with clause 8 of Para B of Part A of Schedule III and read with 30(3) of LODR Regulations 2015. Further, both the penalty levied and additional income assessed being the material information, the Noticee did not disclose the same to the Stock Exchanges.

17.3.1. In this regard, I note that Noticee vide its letter dated December 15, 2022 as reply to the SCN had contended that, *'Allegations are denied. As per the aforesaid submissions, please note that the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata. Accordingly, we are of the opinion that the requirement for making disclosure under Regulation 30 may be applicable only upon the crystallization of the demand.'.*

17.3.2. Here it would be relevant to draw reference to the relevant provisions alleged to have been violated viz., Regulation 30(4)(i)(b), Clause 8 of Para B of Part A of Schedule III and Regulation 30(3) of LODR Regulations, 2015.

17.3.3. As per Para B of Part A of Schedule III of LODR Regulations, 2015, a listed entity is required to disclose events upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30) and the list of such events inter alia includes 'Litigation(s) / dispute(s) / regulatory action(s) with impact'. As per Regulation 30(3) of LODR Regulations, 2015, the listed entity is required to make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

17.3.4. In this regard, I note that under Para 5 of its reply to the SCN, Noticee has itself inter alia submitted, *'Since the additions, penalty and interest is already contended before the CIT (Appeal) and the matter of <u>sub-</u>*

judice;….’. Thus, going by the submission of the Noticee itself the matter being sub-judice would fall under the category of litigation /dispute and would thus qualify to be material as the same would pass the test of application of the guidelines for materiality.

17.3.5. Further in this regard, it is a matter of record that Notices of Demand had been raised on the Noticee by the Income Tax Department and that the Noticee has itself as part of its reply to the SCN made submissions that it had filed for the stay of the demand and also had preferred appeals against the IT Orders and accordingly disputed /contested the said Notices of Demand. As per Regulation 30(4)(i)(b) of LODR Regulations for determination of materiality of events/ information a listed entity is inter alia required to consider the criteria as stated therein, which inter alia includes the criteria as to the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date.

17.3.6. As evident from plain reading of Regulation 30(4)(i)(b) of LODR Regulations, with regard to disclosure of events or information, the Noticee was required to consider the criteria specified for determination of materiality of an event or information inter alia the omission of event or information, likely to result in significant market reaction if the said omission came to light at a later date.

17.3.7. In the instant matter, in this context, it is noted from the material available on record that the total revenue and the loss of the Noticee as per its annual report for FY 2018-19 was ₹87.19 crores and ₹12.67 crores respectively. Considering the amount of additional income (viz., ₹63.11 crores) and amount of tax and interest levied there upon (viz., ₹17.53 crores) assessed in the IT Orders dated December 31, 2018, the amount of additional income assessed and tax & interest levied upon the Noticee under IT Orders works out to be 72.38% and 20.11% respectively of the total revenue of the Noticee for FY 2018-19. Likewise, the additional income assessed and tax & interest thereon under the IT Orders relative to the amount of loss of Noticee for FY 2018-19, works to 498.11% and 138.35%. Evidently, going merely by the quantum of the amounts per the IT Orders, relative to the financials of the Noticee around the period viz., FY ending 2018-19 itself, the same would, in my opinion, pass the test of materiality. It is accordingly established that the IT Orders were material in nature.

17.3.8. Further in this regard, I also note from the shareholding pattern of the Noticee, for quarter ending March 2019, period relevant to the period of Notices of Demand dated December 31, 2018, as available on the website of the BSE that 72.38% of the shares of the Noticee were held by the public category of shareholders and that the number of shareholders under category 'Public' were 34,818. That public shareholder held 72.38% shareholding of the Noticee reflects that public had a large stake in the Noticee being a listed entity. It has already been established in the foregoing that the additional tax liability as well as the income assessed were material vis-à-vis the financials of the Noticee and in backdrop of the fact that 72.38% of shares were held by Public, in my opinion, it is logical that omission /non-consideration of such an important development, involving amounts which were about 498.11% and 138.35% relative to the amount of loss of the Noticee for FY 2018-19, would likely result in significant market reaction, if the said omission came to light at a later date.

17.3.9. Further in this regard, I note that under Para 8 of its reply to the SCN, Noticee has inter alia contended:

'….. . Accordingly, we are of the opinion that the requirement for making disclosure under Regulation 30 may be applicable only upon the crystallization of the demand.

As per Para 8 of (B) of Annexure I of the SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015; the following material matter need to be disclosed to the Stock exchange under regulation 30 of the SEBI (LODR) Regulations, 2015:

"The listed entity shall notify the stock exchange(s) upon it or its key management personnel or its promoter or ultimate person in control becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact."

Please note that pending disposal of the Income Tax Appeal, there is no impact/ significant adverse bearing on the affairs of the Company. Accordingly, in view of the wordings of Para 8 of (B) of Annexure I of the SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 read with Regulation 30 of the SEBI (LODR) Regulations, 2015; no disclosure was required to be made by the Company, as alleged in the captioned Show Cause Notice.'.

17.3.10. In this regard, I note that while the Noticee has contended that there is no impact as the appeal is pending, the requirement for disclosure as per the cited SEBI circular is to the contrary viz., for matters that may be pending and outcome of which is expected to be impactful. Accordingly, the submission of the Noticee in this regard are in my opinion contrary to the provisions of the cited SEBI Circular and hence devoid of merit.

In view thereof, I hold that the Noticee by not making disclosure regarding the IT Orders has violated the provisions of Regulation 30(4)(i)(b) read with clause 8 of Para B of Part A of Schedule III and read with 30(3) of LODR Regulations 2015.

17.4. It was inter alia alleged in the SCN that Noticee had violated the provisions of Regulation 4(1)(e) of LODR Regulations.

17.4.1. In this regard, as had otherwise also been primarily contended, the Noticee, as part of his submissions had denied all the allegations inter alia contending, *'A contingent liability is a liability that may occur* *depending on the outcome of an uncertain future event. A contingent liability has to be recorded if the contingency is likely and the amount of the liability can be reasonably estimated. Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, The Company did not recognize or acknowledge the liabilities in the books of Accounts as it has to be recorded only if the contingency is likely and the amount of the liability can be reasonably estimated. In view of the above, all the allegations made ….. is denied and rebutted….'.*

17.4.2. In this regard, I note that Regulation 4(1)(e) of LODR Regulations requires that the listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

17.4.3. It has already been held in the foregoing that the Noticee had failed to make disclosures to the Stock Exchanges with respect to the IT Orders which was a material information and that the accounting treatment in respect of the tax and interest levied upon the Noticee by IT Orders was not in accordance with the applicable and notified Accounting Standard viz. IndAS 37 and that the Noticee also did not disclose the fact about having followed a different accounting treatment from that prescribed under IndAS 37 along with the management's explanation in its financial statements and therefore the published financial statements /results of the Noticee for FY 2018-19 did not present true and fair view of the financial performance and position of the company and accordingly in my opinion Noticee as a listed entity did not ensure that disseminations made under provisions of these regulations were adequate, accurate, timely, as required per Regulation 4(1)(e) of LODR Regulations, 2015.

In view thereof, I hold that the Noticee has violated Regulation 4(1)(e) of LODR Regulations, 2015.

17.5. It was inter alia alleged that the Noticee had violated provisions of Regulations 4(2) (f), (k) and (r) of the PFUTP Regulations as it had not followed IndAS 37 for the accounting treatment of tax and interest levied upon BCL by IT order and not even disclosed about the different accounting treatment in the financial statements and that the instant accounting treatment by the Noticee of non-provisioning of additional income calculated, tax and interest levied upon Noticee was not found to be in accordance with the applicable and notified Accounting Standard IndAS 37 and consequently, the published financial statements of the Noticee did not present a true and fair view of the Noticees' affairs and accordingly the acts and omissions were fraudulent acts on the part of the Noticee.

17.5.1. In this regard, Noticee in his submissions vide its letter dated December 15, 2022 had primarily contended that, *'A contingent liability is a liability that may occur depending on the outcome of an uncertain future event. A contingent liability has to be recorded if the contingency is likely and the amount of the liability can* be *reasonably estimated. Since, the Income-tax officer had passed the impugned assessment orders without appreciating the explanation/details filed and without allowing any further opportunity and calling for further explanation from the Company and also, the Company had filed for the stay of the demand*

and also had preferred the appeals against the orders, no liability arise against the company wrt such order, at least until the outcome of first appellate authority i.e. Commissioner of Income Tax (Appeals) – 21, Kolkata, The Company did not recognize or acknowledge the liabilities in the books of Accounts as it has to be recorded only if the contingency is likely and the amount of the liability can be reasonably estimated. In view of the above, all the allegations made at Para 12 to 18 of the captioned Show Cause Notice is denied and rebutted.'

17.5.2. I note that, as already dealt in the foregoing, the amounts assessed as per the IT Orders dated December 31, 2018 were material vis-a-vis the financials of the company viz., additional income assessed and tax & interest thereon relative to the amount of loss of Noticee for FY 2018-19 being 498.11% and 138.35% respectively. Considering the same in backdrop of the fact that around the relevant period public investors held 72.38% of the shareholding of the Noticee, it would be logical to construe that the developments regarding IT Orders were material developments in so far as Noticee was a listed company with wide public shareholding. It is commonly accepted that core purpose of disclosure is to provide investors/ stakeholders with the information including that relating to material developments so as to facilitate them to take informed investment decisions and is thus an important foundation for the decisions of market participants. Disclosures of such material information renders it possible for investors to evaluate companies and aid in developing trust and confidence in the capital markets. Accordingly non disclosure of such material information and related developments may pose serious challenge to the integrity and orderly functioning of the securities market and may be against the interest of investors.

17.5.3. In view thereof, in backdrop of the fact that the amounts in the IT Orders relative to the then financials of the Noticee were material and that 72.38% of the shares of the Noticee, being a listed entity, were held by public category shareholders, I hold that the acts and omissions on part of the Noticee, being a listed entity, of not making relevant disclosures about the IT Orders to the Stock Exchanges, neither accounting for the amounts per the IT Orders dated December 31, 2018, in its books of accounts and Annual Report for FY ending March 31, 2019 and thereafter, not making relevant disclosures in the financial statements together with the management's explanation as to why it believed such alternative treatment was more representative of the true and fair view, reflects upon the Noticee having concealed about the IT Orders dated December 31, 2018, more so as having not followed IndAS 37, the Noticee had an option but with an obligation also to disclose about the alternative treatment along with the management's explanation which too the Noticee failed to comply with and hence the published financial statements of the Noticee did not present a true and fair view of the Noticees' affairs. Dissemination of such financial statements which do not present true and fair view of the Noticee's state of affairs would qualify into the bucket of false and /or misleading information and accordingly likely to influence the decision of investors including inducing sale or purchase of securities of the Noticee, as the investors may stand deprived of material information /developments with regard to Noticee having received Notices of Demand from the Income Tax Department. Evidently, when looked at in totality, such acts and omissions would qualify to be acts and omissions fraudulent on the part of the Noticee, as had the material information been disclosed in the at the relevant time, it could likely have influenced the decision of investors. Such acts of irregularities may pose threat to the integrity and

/or orderly functioning of the securities market and may be act against the interest of investors.

In view thereof, I hold that Notice has violated provisions of Regulations 4(2) (f), (k) and (r) of PFUTP Regulations 2003.

Issue II: Do the violations of provisions mentioned above, if any, attract monetary penalty under Section 15HA and 15HB of SEBI Act, 1992 and 23H of SC(R) Act, 1956?

18. It has been established in the foregoing paragraphs that Noticee has violated the provisions of Regulations 4(1)(a), 4(1)(b), 4(1)(e), 30(4)(i)(b) read with Clause 8 of Para B of Part A of Schedule III and read with 30(3), Clause 2 of Part B of Schedule V read with 34(3) and Regulation 48 of LODR Regulations, 2015, and provisions of Regulations 4(2) (f), (k) and (r) of SEBI PFUTP Regulations 2003, by the Noticee.

19. *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 inter alia held that, "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………....".*

20. Having regard to the violations of LODR Regulations in respect of the Noticee in the instant matter and the wordings of Section 23H of SC(R) Act, 1956, the same would not be attracted. In view thereof, I hold that the Noticee is liable for monetary penalty under the provision of 15HA for violations of PFUTP

Regulations and 15HB of SEBI Act, 1992 for violations of LODR Regulations. The relevant text of the provisions of SEBI Act, 1992, reads as under:

SEBI Act, 1992
"….
Penalty for contravention where no separate penalty has been provided.
Section 15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under 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.*
…."

"….
Penalty for fraudulent and unfair trade practices.
Section 15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, 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 or three times the amount of profits made out of such practices, whichever is higher.*
…."
.

Issue III - If so, what should be the quantum of monetary penalty?

21. While determining the quantum of penalty under section 15HA and 15HB of SEBI Act, 1992, it is important to consider the relevant factors as stipulated under Section 15J of the SEBI Act, 1992 which reads as under:-

Securities and Exchange Board of India Act, 1992

'

…..
[109][Factors to be taken into account while adjudging quantum of penalty.]
15J. While adjudging quantum of penalty under 110[15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely :—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.
…..
'.

22. In the instant case, I note that the material on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. With respect to the repetitive nature of the default, I find that there is nothing on record to indicate any past violations committed by the Noticee. However, I cannot ignore that the Noticee had failed to disclose material event to the stock exchanges and also failed to prepare financial statements in accordance with the applicable and notified Accounting Standards (IndAS 37) and having failed so also did not disclose about the different accounting treatment in the financial statements together with the management's explanation, published financial statements which did not present a true and fair view of the company's affairs. I also note that as per the submissions, Noticee has inter alia submitted that onwards October 01, 2019, management of the company had been changed and that efforts were being made to restrain the company from liquidation, to regain the confidence of the investors of the company.

E. ORDER

23. Considering the facts and circumstances of the instant case, the material available on record, the factors mentioned preceding paragraphs, in exercise of the powers conferred upon me under section under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose the following penalty, as per table below, on the Noticee for the aforementioned violations, as discussed in this order. In my opinion, the said penalty will be commensurate with the violation committed by the Noticee in this case:

Name of the Noticee	**Penalty Under Section**	**Penalty Amount** (INR)
Burnpur Cement Limited	Section 15HA of SEBI Act, 1992	5,00,000/-
	Section 15HB of SEBI Act, 1992	1,00,000/-

24. The Noticee shall remit /pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

26. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the SEBI Adjudication Rules.

DATE: JUNE 14, 2023
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER