

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/GG/VP/2022-23/17262**

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

In respect of:

Indgrowth Capital Advisors LLP

(PAN: AAFF17874K)

In the matter of Indgrowth Capital Fund-I

A. FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a complaint against Indgrowth Capital Fund I (hereinafter referred to as "**Indgrowth AIF**") wherein the complainant, inter alia, raised the issue of an asset allocation strategy and alleged that Indgrowth AIF had given undue weightage to Ugro Capital Limited— an investee company in its portfolio. Pursuant to the same SEBI examined the case and during the examination, it was observed that Indgrowth AIF vide its letters dated February 03, 2020 and February 05, 2020 has provided two different figures of its investable funds as INR 429 crore and INR 456.76 crore, respectively. Examination team observed that Indgrowth AIF had actively breached the permissible investment limit of 10% of investable funds while investing in the shares of Ugro Capital and Indgrowth AIF and was reporting the incorrect amount of investable funds to SEBI, in its quarterly reports. In terms of Regulation 20 and Regulation 24 of AIF Regulations, the

manager of the Indgrowth AIF was responsible for every decision of the AIF, including ensuring that the decisions relating to compliance with the provisions of AIF Regulations, terms of the placement memorandum, agreements made with investors, other fund documents and applicable laws. Since, Indgrowth Capital Advisors LLP is the manager of Indgrowth AIF (hereinafter referred to as “**Noticee**”) was responsible for the compliance of provisions of Regulation 15(1)(d) read with Regulation 20(5) read with Regulation 24(b) AIF Regulations read with SEBI Circular No. CIR/IMD/DF/10/2013, dated 29 July, 2013 read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR /P/2017/87, dated 31 July, 2017.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed me, as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the ‘**SEBI Act**’) read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) *vide* order dated 19.04.2022 to inquire into and adjudge under section 15EA of the SEBI Act, with respect to the allegations against the Noticee.

C. SHOW CAUSE NOTICE, HEARING AND REPLY

3. A notice dated 25.05.2022 was issued to the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty should not be imposed against Noticee under section 15EA of the SEBI Act for the alleged violation of the provisions of Regulation 15(1)(d) read with Regulation 20(5) read with Regulation 24(b) AIF Regulations read with SEBI Circular No. CIR/IMD/DF/10/2013, dated 29 July, 2013 read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR /P/2017/87, dated 31 July, 2017.
4. The Show Cause Notice (hereinafter referred to as “**SCN**”) issued to the Noticee, *inter alia* alleged, that the Noticee has not properly computed the estimated expenditure to arrive at the quantum of “investable funds”, in terms of Regulation

2(1)(p) of the AIF Regulations; that the Noticee had exceeded the limit of 10% of the investable funds as prescribed in Regulation 15(1)(d) in Ugro Capital; and that by furnishing wrong figures under the head “investable fund” in its monthly and quarterly reports, the Noticee has failed to comply with the provisions in Sebi circulars of July 2013 and 2017.

5. The Noticee vide email and letter dated 17.06.2022 submitted its reply to the SCN. In the interest of natural justice an opportunity of hearing was granted to the Noticee on 21.06.2022 vide hearing notice dated 13.06.2022. The Noticee authorized Mr. Sushreet Pattanayak & Ms. Riya Chopra, Advocates from IC Universal Legal to appear in the matter along with the CEO and other Executive namely, Mr. Rajesh Singhal, Mr. Aayam Banerjee and Namit Arora. The Advocates and the representative of the Noticee reiterated the submission made vide reply dated 17.06.2022. The Noticee has submitted its additional submission vide email dated 27.06.2022

6. The relevant portion of the reply of the Noticee is summarized as under:

Reply dated 17.06.2022

- i. *The Noticee submitted that under Regulation 2(d) of the AIF Regulations prior to August 13, 2021 defined 'investable funds' as "corpus of the Alternative Investment Fund net of estimated expenditure for administration and management of the fund." It was further submitted that Regulation 2(d) was amended w.e.f. August 13, 2021 to define 'investable funds' as "corpus of the scheme of Alternative Investment Fund net of expenditure for administration and management of the fund estimated for the tenure of the fund." Further Regulation 2(h) of the AIF Regulations defines 'corpus' as the "total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any such document as on a particular date."*
- ii. *In view of the said provisions the Noticee submitted that it had calculated the 'investable funds' of Indgrowth Fund as per the following formula:*
 - *Total corpus of the Fund: X*
 - *Estimated expenditure for administration and management of the Fund (during the term of 4 years of the Fund) : Y*
 - *Investable Funds : $X - Y = Z$.*

Estimated expenditure for administration and management of the Fund (during the term of 4 years of the Fund) was calculated by us as per the following formula:

- *Total estimated expenditure of the Fund =*
- *Operating expenses of the Fund, management fees of the investment manager, set-up costs and other expenses of the Fund.*

Less

- *Estimated dividend income from portfolio companies*
- *Estimated short term debt mutual fund income.*

- iii. The Noticee in its reply dated 17.06.2022 had clarified that as per letter dated February 05, 2020, the 'investable funds' of Indgrowth Fund as on the final closing date i.e. February 19, 2018 and the methodology adopted for such calculation were communicated to SEBI. The calculation of 'investable funds' as on February 19, 2018 was as follows:
- Total corpus (commitment amount) as on final closing date of the Fund - Rs. 476.76 crore
 - Estimated expenditure for administration and management of the fund over the life of the fund (4 years) —Rs. 20 crore.
 - Investible Funds = ~Rs. 456.76 crore.
- iv. The Noticee further submitted that calculation of estimated expenditure for administration and management of the fund over the life of the fund (4 years) was as follows:
Operating expenses of the Fund, management fees of the investment manager, set-up costs and other expenses of the Fund = Rs. 42.28 crore
- Less:
- Estimated dividend income from portfolio companies = Rs. 11.3 crore
 - Estimated short term debt mutual fund income — Rs. 11.7 crore
 - o Total income from dividends and short term income from temporary investments = Rs. 23 crore
 - o Total estimated expenditure of the Fund = Rs. 19.58 crore (i.e. —Rs. 20 crore)
- v. Noticee submitted that as per their reading and understanding of the AIF Regulations, the above-mentioned methodology for calculation of 'investable funds' was in line with the AIF regulations. As per their understanding of the AIF Regulations, deduction of a) dividend income from portfolio companies and b) short term debt mutual fund income, from the total expenditure of the Indgrowth Fund, for purposes of calculation of 'investable fluids' was in order.
- vi. The Noticee submitted that it is pertinent to note that the Indgrowth Fund was a close-ended scheme which as per its investment strategy was investing in portfolio companies as allowed under Regulation 15(f) of the AIF Regulations was also making certain temporary investments. The Fund was accordingly earning income in the form of dividend from its portfolio investments and returns from its temporary investments. Further, the Fund had not made any interim distribution to its investors. The term 'estimated expenditure' used in Regulation 2 (p) of the AIF Regulations is not defined under the AIF Regulations nor has SEBI provided any express guidance on the same. In the absence of clear guidance on the scope of the term 'estimated expenditure' by SEBI, it was our bonafide understanding that 'estimated expenditure' would mean expenditure that is intended to be debited to the drawdowns/ capital contributions being made by the investors. It was further submitted that it would be noted that the term 'investable funds' would literally translate to the amount of capital that is available to be invested which in the case of the Fund was expected to be ~Rs. 456.76 crore as on February 19, 2018. The total estimated operating expenses of the Fund, management fees of the investment manager, set-up costs and other expenses of the Fund of Rs. 42.28 crore were expected to be offset to the extent of Rs. 23 crore due to the estimated income in the form of dividend from portfolio companies and short term income from temporary investments.
- vii. The Noticee further submitted that, this understanding of Indgrowth Advisors is further substantiated by the fact that, the Fund has indeed only debited Rs. 28.1 crore towards payment of operating expenses, management fees, setup costs and other expenses of the Fund to the capital contributions made by the investors against a total expenditure of Rs. 45.31 crore, and therefore, to a significant extent has used proceeds from dividend income from its portfolio investments and temporary investments towards payment of such costs. The fact that such short term income from temporary investments may be utilized to meet operating expenses, management fees, set-up costs and other expenses has also been adequately disclosed to investors at several places under the private placement

memorandum of the Fund (the "PPM") including the paragraph on "Temporary Investments" under SECTION V: SUMMARY OF PRINCIPAL TERMS of the PPM on page 52-53 of the PPM. The paragraph on "Temporary Investments" under SECTION V: SUMMARY OF PRINCIPAL TERMS clearly states that:

"Until Capital Contributions received by the Fund are utilized towards Fund Investments, the Investment Manager shall be entitled to invest the Capital Contribution in Temporary Investments.

Any gains arising to the Fund from such Temporary Investments shall be distributed/allocated to the Contributors in proportion to their respective Beneficial Interest.

If such monies are not distributed, the Investment Manager shall have the right to adjust the Operating Expenses and/or Management Fee of the Fund against the gains from the Temporary Investments."

- viii. *It is submitted that Noticee has clarified that all other gains generated from Temporary Investments would be allocated between investors (in proportion of their Beneficial Interest) and/or maybe utilized by the Investment Manager to meet with the expenses of the Fund." The Noticee further submitted that, the calculated the Funds 'investment limit' for investment in portfolio companies basis the 'investable funds' as calculated as per methodology discussed in the reply and the calculation was as follows:*

As per Regulation 15 (d) of the AIF Regulations-

10% of investable funds: 10% of Rs. 456.76 crore

= Rs 45.67 crore.

- ix. *The Noticee submitted that without prejudice to the submission, it is pertinent to note that investment made by the Fund in Ugro Capital was made by way of preferential allotment and was subject to a lock-in period of one year under Regulation 167(2) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("CDR") i.e. up to September 26, 2019. Therefore, even if the Fund were aware/ was made aware that its investment in Ugro Capital was above the 10% investment limit under Regulation 15(1)(d) on account of the methodology for calculation of investable funds as suggested by SEBI in the SCN, it could not have made any divestments till September 26, 2019 on account of the lock-in restriction as prescribed under the ICDR.*

Reply dated 27.06.2022

It has always been our intent to remain compliant with the AIF Regulations including the obligation to not invest more than 10% of investable funds in any investee company. Accordingly, in the investment agreement to invest in Ugro Capital by way of preferential allotment which was signed on December 31, 2017 we had consciously maintained flexibility in respect of the actual investment amount. The Fund was at that time still at fund raising stage and had received commitments of Rs. 425.39 crores as on that date. Since, the corpus of the fund was not final at that stage and the determination of investable funds and investment limit is based on the final corpus of the fund, therefore, in the investment agreement for Ugro Capital, we consciously in light of the requirement that our investment should be within 10% of the investable funds as per the AIF Regulations, kept the flexibility to invest a minimum of Rs. 40 crore and maximum of Rs. 45 crore. The said clause was specifically negotiated by us with Ugro Capital in order to ensure that we remain in compliance with the investment limit prescribed under Regulation 15 (1) (d). Kindly also note that in any event, the variation in the investment limit per SEBI's computations (Rs 43.41 crores) vs actual investment eventually made in Ugro by the Fund (Rs 44.99 Crores) was only 3%.

As discussed during our in-person meeting, we reiterate that our interpretation of 'investable funds' was based on our bonafide understanding of the provisions of the SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"). In the absence of

clarity on what constitutes 'estimated expenditure', Regulation 2 (d) of the AIF Regulations defining 'investable funds' was ambiguous and therefore provided scope for interpretation. Accordingly, we adopted an interpretation corresponding to the practical workings of the fund i.e.

- **Total estimated expenditure of the Fund=**
- Operating expenses of the Fund, management fees of the investment manager, set-up costs and other expenses of the Fund

Less:

- Estimated dividend income from portfolio companies
- Estimated short term debt mutual fund income

In the absence of any interim distributions being made by the Fund, proceeds from its portfolio investments and temporary investments were, in fact, used towards defraying the Funds expenditure. Disclosures in this regard were made to the investors of the Fund in the private placement memorandum as well as the contribution agreement.

Accordingly, the calculation of 'investable funds' and 'investment limit' under Regulation 15 (1) (d) of the AIF Regulations was, to the best of our understanding, in accordance with the AIF Regulations.

Further, it is highlighted that no harm has been caused to any investors of the Fund, in any way, on account of the default alleged in the show cause notice. The Fund was making adequate disclosure to its investors on investments made by the fund into portfolio companies and details of temporary investments. This was disclosed regularly in the form of a newsletter to Investors. In addition, the income received from such temporary investments was disclosed to investors at both an aggregate and individual beneficial interest level in a tax letter which was shared every year.

D. CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the records and response of the Noticee to the SCN with respect to the alleged violation stated in the SCN.
8. In this case, at the outset, it will be appropriate to refer to the alleged provisions, which reads as under:

Definition of corpus as define in Regulation 2(1)(h)

Regulation 2(1)(h) "corpus" means the total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any such document as on a particular date;

Definition of investable funds as define in Regulation 2(1)(p)

Regulation 2(1)(p) "investable funds" means corpus of the Alternative Investment Fund net of estimated expenditure for administration and management of the fund;

Regulation 15(1)(d) of AIF Regulations

General Investment Conditions.

15.(1) Investments by all categories of Alternative Investment Funds shall be subject to the following conditions: -

(a).....

(b).....

(c).....

(d) *Category III of Alternative Investment Funds shall invest not more than ten percent of the investable funds in an Investee Company directly or through investment in units of other Alternative Investment Funds:*

¹Provided that large value funds for accredited investors of Category III may invest up to twenty percent of the investable funds in an investee company directly or through investment in units of other Alternative Investment Funds;

(e) to (h).....

Regulation 20(5) of AIF Regulations

General Obligations.

20 (1) to (4).....

(5) *The Manager shall be responsible for every decision of the Alternative Investment Fund, including ensuring that the decisions are in compliance with the provisions of these regulations, terms of the placement memorandum, agreements made with investors, other fund documents and applicable laws.*

(6) to (15).....

Regulation 24(b) of AIF Regulations

Obligation of Manager.

24. *The Manager shall be obliged to:*

- (a) *address all investor complaints;*
- (b) *provide to the Board any information sought by Board;*
- (c) *maintain all records as may be specified by the Board;*
- (d) *take all steps to address conflict of interest as specified in these regulations;*
- (e) *ensure transparency and disclosure as specified in the regulations.*

Regulation 28 of AIF Regulation

Submission of reports to the Board.

28. *The Board may at any time call upon the Alternative Investment Fund to file such reports, as the Board may desire, with respect to the activities carried on by the Alternative Investment Fund*

Relevant provisions of SEBI Circulars No. CIR/IMD/DF/10/2013, dated 29 July 2013

Sub: Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs)

“ ...

3.2 Submission of reports to SEBI

- i. *Under Regulation 28 of the AIF Regulations, All AIFs shall submit periodical reports to SEBI relating to their activity as an Alternative Investment Fund.*
- ii. *Category I and II AIFs and the Category III AIFs which do not undertake leverage shall submit report to SEBI on a quarterly basis in the format as specified in Annexure I.*
- iii. *Category III AIFs which undertake leverage shall submit a report to SEBI on a monthly basis in the format as specified in Annexure II.*
- iv. *Reports shall be submitted by AIFs online through the online reporting system provided by SEBI. However, till such online system is made available, reports shall be sent by email to aifreporting@sebi.gov.in. Excel sheet to be filled in this regard is available on SEBI website under the section 'Info for'□ 'Alternative Investment Funds'. Once the online system is made*

¹ Inserted by the SEBI (Alternative Investment Funds)(Third Amendment) Regulations, 2021, w.e.f. 03-08-2021.

available by SEBI, no reports shall be sent by email. Further, AIFs are advised to note that no physical reports shall be filed with SEBI.

v. The reports for the period upto the quarter ended June 30, 2013 for AIFs which are already registered with SEBI shall be sent vide email to the aforesaid email address within one month from the date of this circular.

vi. Reports shall be submitted within 7 calendar days from the end of quarter/ end of month as the case maybe.

.....”

Relevant provisions of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/87 dated 31 July 2017.

Sub: Online Filing System for Alternative Investment Funds.

“....

“2. All applicants desirous of seeking registration as an AIF are now required to submit their applications online only, through SEBI Intermediary Portal at <https://siportal.sebi.gov.in>. Furthermore, all SEBI registered AIFs are now required to file their compliance reports and submit applications for any request under the provisions of AIF Regulations and circulars issued thereunder, through the online system only. The aforesaid online filing system for AIF has been made operational with immediate effect.

3. Link for SEBI Intermediary Portal is also available on SEBI website - www.sebi.gov.in. In case of any queries and clarifications, users may refer to the manual provided in the portal or contact the Portal Helpline as specified in the manual.

4. Existing SEBI registered AIFs have already been advised to activate their online accounts.

5....”

9. The issue that arises for consideration is whether the Noticee (being the Manager cast with obligations under Regulation 20(5) and 24(b) of AIF Regulations) had violated (i) the provisions of Regulation 15(1)(d) dealing with the conditions of investment limits qua one investee company namely, Ugro Capital Limited and the reporting norms contained in Regulation 28 read with provisions of SEBI Circular No. CIR/IMD/DF/10/2013, dated 29 July, 2013 and SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/87, dated 31 July, 2017, by reporting the incorrect amount of “investable funds” to SEBI, in its quarterly reports. If yes, ascertain the Noticee’s liability for monetary penalty under section 15EA of the SEBI Act and the quantum thereof?

CONSIDERATION:

10. I have perused the reply of the Noticee in response to the SCN with respect to the alleged violation stated in the SCN.

11. I note from the SCN that Indgrowth AIF vide its letters dated February 03, 2020 and February 05, 2020 had provided two different figures of its investable funds as INR 429 crore and INR 456.76 crore, respectively. Thereafter, vide letter dated February 12, 2020, Indgrowth AIF had clarified that there was an inadvertent error with respect to the calculation of investable funds of INR 429 crore and it was submitted that as on date of final closing i.e. February 19, 2018, the Investible fund of Indgrowth AIF was INR 456.76 crore as per the calculation given hereunder:

Table No. 1

Total Corpus as on date of final closing	INR 476.76 crore
Estimated expenditure for administration & management of the fund (during the term of 4 years)	INR 20 crore
Investable Funds	INR 456.76 crore

The estimated expenditure of INR 20 crore as given by the Noticee is as below:

Table No. 2

Total estimated expenditures	INR 42.58 crore
Less:	
Estimated Dividend income from portfolio companies	INR 11.3 crore
Estimated short term debt mutual fund income	INR 11.7 crore
Expenditure after the estimated income	INR 19.58 crore

12. The SEBI examination team observed from the details submitted by Indgrowth AIF that the 'investable funds' of INR 456.76 crore were calculated by deducting the estimated expenditure of INR 20 crore. The aforesaid estimated expenditure of INR 20 crore arrived after deducting the estimated dividend income of INR 11.3 crore and short term mutual fund income of INR 11.7 crore from the total estimated expenditure of INR 43 crore for the tenure of the fund. Accordingly, the 10% investment limit in a single investee company was calculated to INR 45.67 crore.

13. The examination team further observed that in light of the definition of “investable fund” in the AIF Regulations, if the estimated expenditure of INR 42.58 crore was an expenditure of the Indgrowth AIF, then, the “investable funds” of Indgrowth AIF should have been calculated to INR 434.18 crore (i.e. corpus of INR 476.76 crore minus the estimated expenditure of INR 42.58 crore for the tenure of the fund). Accordingly, the investment limit of 10% in a single investee company should have been INR 43.41 crore (10% of INR 434.18 crore) and not INR 45.67 crore, as claimed by the Noticee.
14. Examination team observed from the details submitted by Indgrowth AIF that as on November 01, 2019, out of total twenty stocks in which Indgrowth AIF had invested, it had exceeded the limit of 10% in Ugro Capital Limited. Indgrowth AIF had stated vide email dated September 18, 2020 that it had invested in INR 44,99,99,988 in 34,88,372 CCIDs of Ugro Capital Limited which were converted into equity shares (1:1 basis) on February 21, 2019. It was also seen that out of 34,88,372 CCIDs of Ugro Capital Limited during December 2019 Indgrowth AIF sold 14,771 shares (investment cost, of INR 19,05,459) of Ugro Capital Limited. The remaining investment of INR 44,80,94,529 in Ugro Capital was still in breach. Despite it being in breach, Indgrowth AIF had further invested INR 77,722 to buy 485 shares of Ugro Capital Limited on February 28, 2020 and thereby exceeded the limit of 10% by investing more than INR 43.41 crore of the investable funds in Ugro Capital Limited as prescribed in Regulation 15(1)(d) of AIF Regulations. (10% of INR 44,99,99,988= INR 44.99 crore).
15. Examination team further observed from the details submitted by Indgrowth AIF vide email dated December 21, 2021 that from March 12, 2021 to April 07, 2021, Indgrowth AIF had sold 1,25,185 shares (investment cost of INR 1,62,77,665) of Ugro Capital Limited. Accordingly, on April 07, 2021, the investment in Ugro Capital Limited came down to INR. 43.19 crore within the investment limit (i.e. INR 43.41 crore) of 10% of its investable funds.

The aforesaid breach and its rectification are summarized hereunder:

Table No.3

Name of Investee Company	10% of Investable funds in INR Crore (A)	Invested Value in Investee Company in INR Crore (B)	Extent of the breach in INR Crore (B-A)	Date(s) of Breach	Date of rectification of breach	Breached Period
Ugro Capital Limited	43.41	44.99	1.58	14-Aug-2018 28-Feb-2022	07-April-2021	From 14-Aug-2018 to 07-April 2021

16. Examination team further observed from the email dated December 21, 2021 that Indgrowth AIF has reported its “corpus” and “investable funds” to SEBI on a quarterly basis as detailed hereunder:

Table No. 4

Sr. No.	Quarter	Corpus in Cr.	Investable fund in Cr.
1	Jul-Sep 2017	291.43	291.43
2	Oct-Dec 2017	425.39	425.39
3	Jan-Mar 2018	476.76	476.76
4	Apr-Jun 2018	476.76	476.76
5	Jul-Sep 2018	476.76	476.76
6	Oct-Dec 2018	476.76	476.76
7	Jan-Mar 2019	476.76	462.03
8	Apr-Jun 2019	476.76	459.78
9	Jul-Sep 2019	476.76	457.96
10	Oct-Dec 2019	476.76	455.46
11	Jan-Mar 2020	476.76	456.76
12	Apr-Jun 2020	476.76	456.76
13	Jul-Sep 2020	476.76	456.76
14	Oct-Dec 2020	476.76	456.76
15	Jan-Mar 2021	476.76	456.76
16	Apr-Jun 2021	476.76	456.76
17	Jul-Sep 2021	476.76	456.76
18	Oct-Dec 2021	476.76	456.76

17. In view of the above, it was alleged in the SCN that Indgrowth AIF had exceeded the limit of 10% by investing INR 44.99 crore of its investable fund i.e. more than INR 43.41 crore in Ugro Capital and was reporting incorrect amount of investable funds to

SEBI, in its quarterly reports. Since Noticee is the manager of Indgrowth AIF, it was alleged that Noticee has violated Regulation 15(1)(d) read with Regulation 20(5) read with Regulation 24(b) AIF Regulations read with provisions of SEBI Circular No. CIR/IMD/DF/10/2013, dated 29 July, 2013 read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR /P/2017/87, dated 31 July, 2017.

18. I note that the expression of “investable fund” assumes significance for the purpose of applying the investment conditions enlisted in Regulation 15 of AIF Regulations which includes the condition that the investment in a single Investee company shall not exceed 10% of the “investable funds” of the AIF. In view of this condition, the correct computation of “investable funds” becomes relevant as it is the tool used by the Regulator to administer the compliance requirements of the AIFs. A plain reading of the definition would make it clear that “investable fund” would mean the ‘Corpus’ minus the ‘Expenditure’. ‘Expenditure’ in the normal sense would mean the cost to the fund on account of administration and management expenses, as estimated by the AIF. The figures of ‘expenditure’ would be an identifiable estimated standalone figure which will neither get reduced or enhanced depending on the quantum of returns accruing from temporary investments.

19. Now the question that arises for consideration is whether the Noticee can be held liable for the error in computation of “investable funds”. As explained by the Noticee, the Noticee has set off the estimated expenditure against the estimated returns derived from temporary parking/ investment of funds and therefore the estimated expenditure got reduced, and as a consequence, the “investible funds” got increased to the extent of the returns. I find that in Ugro Capital Limited, the investment is just below the 10% cap of the higher investable fund, as computed by the Noticee.

20. At this juncture, I have taken a look at the periodic disclosure of “corpus” & “investable fund” of the Noticee, shown in Table No. 4 above. I find that throughout the period July-Sep 2017 to Jan-March 2022, the Noticee has been

disclosing the higher “investable fund” based on its own understanding, as claimed. Since the understanding of the Noticee AIF was incorrect from the inception, the disclosures made were also incorrect. The Noticee has pleaded bonafide error in this method of computation. The Noticee has also relied on certain clauses of the Private Placement Memorandum (PPM) on “Temporary Investments” under Section V: Summary of Principal Terms of the PPM stated as under:

i. SECTION V: SUMMARY OF PRINCIPAL TERMS of the PPM on page 52-53 of the PPM. The paragraph on "Temporary Investments" under SECTION V: SUMMARY OF PRINCIPAL TERMS clearly states that:

"Until Capital Contributions received by the Fund are utilized towards Fund Investments, the Investment Manager shall be entitled to invest the Capital Contribution in Temporary Investments.

Any gains arising to the Fund from such Temporary Investments shall be distributed/allocated to the Contributors in proportion to their respective Beneficial Interest.

If such monies are not distributed, the Investment Manager shall have the right to adjust the Operating Expenses and/or Management Fee of the Fund against the gains from the Temporary Investments."

21. The above cited clause undisputedly empowers the Noticee-AIF to utilize the returns on temporary investments, if undistributed, towards adjustment of Operating Expenses and or Management Fee of the Fund. In my view, the said clause is merely a contractual understanding between the Noticee and the investor/s and does not relate to any of the regulatory compliances attached to the Manager of the AIF under the Regulations. I also note that this clause too presupposes an estimated amount of Expenses or Management fee of the Fund. Applying the definition of ‘Corpus’ to arrive at the quantum of ‘investable funds’ has nothing to do with the inter se agreements that the Fund Manager may have with its investors for the appropriation of the said fees against any anticipated income or returns.

22. The object of providing for investment caps per investee company under the AIF Regulations is to arrest the risk of concentration in investments. When the computation of “investable funds” is left to the AIFs and if the Noticee follows a particular method of computation which is different from the normal method, then

the investors continue to be exposed to the extent of the difference arrived at between the two computations. In this case, such difference in UGRO Capital Limited is INR 1.58 crore, and the exposure to that extent is not in accordance with the AIF Regulations and is a breach of the provisions contained in Regulation 15(d). I find from the set of facts before me that the investment cap with respect to Ugro Capital Limited was breached for the period 14 August, 2018 to April 7, 2021. The Noticee has pleaded its inability to rectify the investment limit breach due to the lock-in restrictions arising under the ICDR. Albeit, I find that there is a violation in the instant case.

23. I find that the Noticee AIF is manned by qualified and experienced financial experts and the explanation forthcoming in these proceedings such as bona fide error in understanding or lack of clarity in the expression “Expenditure” is not acceptable. The Noticee has only tried to maximise its “investable funds” and has adopted a convenient method to do so, disregarding the mandate in the AIF Regulations. To sum up, I find that the allegations in the SCN to the effect that the Noticee had exceeded the limit of investment by investing more than 10% of the investable funds in Ugro Capital Limited stands substantiated. Likewise, the allegation that the figures reported by the Noticee under the head “investable funds” is incorrect also stands proved. Thus, I find that the Noticee is in violation of the provisions of Regulation 15(1)(d) read with Regulation 20(5) read with Regulation 24(b) AIF Regulations read with SEBI Circular No. CIR/IMD/DF/10/2013, dated 29 July, 2013 read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR /P/2017/87, dated 31 July, 2017.

ORDER

24. After taking into consideration the quantum and percentage of breach of the investment limit and the duration thereof as well as the duration of wrong reporting of ‘investable fund’, I find it appropriate to impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on the Noticee, under Section 15EA of the

SEBI Act. The penalty amount should not be passed on to the investors of the AIF in any manner whatsoever, excluding the sponsor.

25. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account, the details of which are as follows:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

26. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in following table should be sent to "The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

27. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **June 27, 2022**
Place: **Mumbai**

GEETHA G.
ADJUDICATING OFFICER