BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/JR/2025-26/31385)

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;

Future Retail Limited
PAN: AADCB1093N

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') examined the concerns raised by Amazon.com (hereinafter referred to as "**Amazon**") regarding the Scheme of Arrangement between Future group and Mukesh Dhirubhai Ambani Group (hereinafter referred to as "**MDA group**") to ascertain whether there is any violation of provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**"), SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") and applicable SEBI circulars by Future Retail Limited (hereinafter refrred to as "**Noticee**").

APPOINTMENT OF ADJUDICATING OFFICER

2. Upon being satisfied that there were sufficient grounds to inquire into and adjudicate upon the violations of provisions of LODR Regulations, PIT Regulations and applicable SEBI circulars by the Noticee, SEBI, in exercise of powers u/s 19 r/w sub-section (1) of section 15-I of the SEBI Act, 1992, (hereinafter referred to as "**SEBI Act**") and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules"**)

appointed Shri K. Saravanan as Adjudicating Officer (hereinafter referred to as "**AO"**), vide order dated February 18, 2021, to inquire into and adjudge the alleged violations by the Noticee. On transfer of the matter, the undersigned was appointed as the AO in the matter, vide order dated November 22, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice Ref. No. EAD-7/ADJ/KS/AE/OW/8389/2021 dated April 7, 2021 (hereafter referred to as "**SCN"**) was issued to the Noticee in terms of the provisions of rule 4(1) of the Adjudication Rules r/w section 15-I of SEBI Act requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under section 15A(b) of SEBI Act for the alleged violation stated in the SCN.

4. The brief of alleged violations by the Noticee as per the SCN is given hereunder;

4.1 It was observed that Noticee entered into a Shareholders' Agreement dated August 12, 2019 (hereinafter referred to as "**SHA"**) with Future Coupons Ltd (now known as Future Coupons Pvt Ltd) (hereinafter referred to as '**FCL'**), Mr. Kishore Biyani and other existing shareholders (including Future Corporate Resources Private Ltd – hereinafter referred to as '**FCRPL**') of the company being part of the promoter group of the company. Noticee disclosed the same on August 12, 2019 to the stock exchanges under Regulation 30 of LODR Regulations.

4.2 It was observed that Mr. Kishore Biyani (on behalf of the existing shareholders forming part of the promoter group and FCL) had entered into a share subscription agreement and a SHA dated August 22, 2019 with Amazon. The same was disclosed by FRL on August 22, 20219 to the stock exchanges under Regulation 30 of the LODR Regulations.

4.3 Noticee, vide letter dated August 29, 2020 had intimated to the stock exchanges regarding approval of proposed deals between Future Group led by Kishore Biyani and MDA Group through composite scheme of Arrangement (**Scheme**) and the same has been disclosed on August 29, 2020 under regulation 30 of LODR Regulations.

4.4 Amazon raised concerns with regard to the said scheme between Future group and MDA Group, and accordingly initiated arbitration proceedings on October 05, 2020 before Singapore International Arbitration Centre (hereinafter referred to as "**SIAC"**) against Noticee, FCL and the Promoters (led by the Biyanis) and sought emergency interim relief with respect to the scheme.

4.5 The Emergency Arbitrator (hereinafter referred to as "**EA**") appointed by the SIAC under the SIAC Rules, has passed an Interim Award dated October 25, 2020, wherein EA has specifically noted that FRL did not have the consent from FCL and consequently from Amazon, and accordingly, the board of directors of the Company could not have approved the impugned transaction.

4.6 **Allegation (i) : Delay in Disclosure of initiation of arbitration proceedings**.

4.6.1 The arbitration proceeding was initiated against Future Groups by Amazon on October 05, 2020 before SIAC. Noticee was Respondent No. 2 in the said proceedings. Noticee had received the communication in this regard from SIAC on October 05, 2020 and an objection has been filed by Noticee before SIAC on October 06, 2020.

4.6.2 It was however observed that Noticee had not disclosed the said arbitration proceedings in spite of receiving the information for commencement of the said proceeding on October 5, 2020 from SIAC, and even after filling its objection before SIAC on October 6, 2020. The same was required to be disclosed as soon as reasonably possible and not later than twenty-four hours i.e. on or before October 6, 2020 as material event as required under LODR Regulations.

4.6.3 Further, Regulation 30 (3) of LODR Regulations stipulates 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)*". Further, Point (8) Para (B) of Part (A) of Schedule III stipulates that *"the listed entity shall disclose the litigation/dispute/regulatory action with impact, upon application of the guidelines for materiality referred in*

sub-regulation (4) of Regulation (30) of LODR Regulations." Furthermore, regulation 30(11) of LODR Regulations stipulates that *"the listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).***"** Furthermore, regulation 30(6) of LODR Regulations stipulates that *"the listed entity shall disclose the events or information as soon as reasonably possible and not later than twenty-four hours from the occurrence of event or information."*

4.6.4 Due to non-disclosure of said proceeding, the stock exchange sought clarifications from Noticee in this regard. Noticee submitted that the commencement of said proceedings was not considered a material event and thus not disclosed.

4.6.5 It was observed that Mr. Kishore Biyani and others (Promoter and Promoter Group) are holding approx. 29% shares in the Noticee (as per September 2020 quarter) and 51% in FCL. Hence, both companies are part of the same business group. Further, both the companies are related party as per the definition of Section 2(76) of the Companies Act, 2013.

4.6.6 It was observed that the SHA among Promoter & Promoter Group, FCL and Amazon on August 22, 2020 was disclosed by Noticee as material event under regulation 30 of LODR Regulations because the common Promoter & Promoter Group are involved in the SHA and the companies are related. Accordingly, it is observed that while Noticee was not a party to the SHA among FCL, Promoter group of Noticee and Amazon, still Noticee had found this as a material event and accordingly disclosed it to the stock exchanges.

4.6.7 It was observed that Amazon initiated arbitration proceeding against Noticee, FCL, and its Promoter & Promoter Group, wherein Amazon *inter alia* raised concerns with regard to the SHAs, which were disclosed by Noticee as material event under Regulation 30 of LODR Regulations. The disclosures were made on August 12 and 22, 2019.

4.6.8 Further, as per SEBI circular no. CIR/CFD/CMD/4/2015 dated September 09, 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". Thus, the SEBI circular also necessitates the disclosure.

4.6.9 Further, the Hon'ble Delhi High Court in its Order dated December 21, 2020 inter alia finds no merit in the contention of FRL that Emergency Arbitrator lacks legal status under Part I of the Arbitration and Conciliation Act, 1996 and thus *coram non judic*e.

4.6.10 Noticee provided a disclosure on August 29, 2020 with regard to composite scheme between Future group and MDA Group under Regulation 30 of LODR Regulations. The arbitration proceedings *inter-alia* relates to the said scheme, which was already disclosed by Noticee as a material event and outcomes of the proceeding has an effect of stay on scheme. Hence, the proceeding is material in nature and was required to be disclosed under Regulation 30 of LODR Regulations.

4.6.11 It was observed that Noticee had disclosed the initiation of arbitration proceeding before SIAC initiated by Amazon on November 01, 2020 only after active intervention of Stock Exchanges. However, the same should have been disclosed within twenty- four hours of the event i.e. on or before October 06, 2020 as required under regulation 30(3) & 30(6) of LODR Regulations.

4.7 **<u>Allegation (ii) : Inadequate and delay disclosure of Interim Order of SIAC</u>**

4.7.1 It was observed that in the interim order passed by SIAC on October 25, 2020 in the arbitrations proceedings in favour of Amazon, wherein *inter-alia* the respondents were injuncted from taking any steps in furtherance or in aid of the Board Resolution made by the Board of the Directors of Noticee on August 29, 2019 in relation to the said Scheme. The same was highlighted in the media report.

4.7.2 It was observed that on October 26, 2020, Noticee provided a clarification on news item related to SIAC interim order in favour of Amazon in the matter of Future-RIL deal, wherein *inter-alia* it is stated that "*the Company has received the arbitration communication from SIAC, enclosing an interim order of the Emergency Arbitrator in the arbitration proceedings under shareholders' agreement between Amazon, Future Coupons Private Limited and the promoter group. The Company is examining the communication and the order. It may be noted that the Company is not a party to the agreement under which Amazon has invoked arbitration proceedings*".

4.7.3 It was observed that this clarification was made by Noticee pursuant to news item as regards to the interim order and that Noticee by itself was not forthcoming in making the disclosure on October 26, 2020. Moreover, it was observed that laxity on the part of Noticee is further exhibited by the fact that the said disclosure did not give any details about the matter under dispute as required under Regulation 4(1)(d) and Regulation 4(1)(e) of LODR Regulations

4.7.4 Due to inadequate and delayed disclosure of the interim order of SIAC, the exchanges sought clarifications from Noticee in this regard. Noticee, *inter-alia,* submitted that the interim reward was not considered a material event and thus not disclosed.

4.7.5 Further, as per SEBI circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015 regarding Continuous Disclosure Requirements for Listed Entities, the order dated October 25, 2020 passed by SIAC was required to be disclosed.

4.7.6 The provisions of regulation 4(1)(d) of LODR Regulations stipulates that the listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors and the disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language. regulation 4(1)(e) of LODR Regulations stipulates that the listed entity shall, with respect to disclosures referred to in this regulation, make

disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

4.7.7 It was observed that Noticee provided an inadequate disclosure on October 26, 2020. In this regard, it was observed that Noticee provided a simple clarification/disclosure on October 06, 2020 as clarification on news item related to SIAC interim order in favour of Amazon in the matter of Future-RIL deal instead of details of the arbitration proceedings like details of litigation, its financial implication etc and the interim order of SIAC. Thus, Noticee was alleged to have violated Regulation 4(1)(d) and 4(1)(e) of LODR Regulations.

4.7.8 Further, it was observed that only after active intervention of Stock Exchanges, Noticee disclosed regarding the SIAC interim order on November 1, 2020 wherein Noticee provided full details of the initiation of arbitration proceedings, chronology of the events, details of interim order, impact of the interim order and all the direction of SIAC under Regulation 30 of the LODR Regulations. However, the interim order was required to be disclosed adequately, accurately, explicitly timely and presented in a simple language not later than twenty-four hours i.e. on or before October 26, 2020 instead of November 01, 2020 as stipulated under Regulation 30(3), 30(6), 30(4)(i)(a),(b), 30(7), 30(11) of LODR Regulations read with SEBI Circular dated September 09, 2015 with regard to Continuous Disclosure Requirements for Listed Entities

4.7.9 Hence, with respect to the above allegations by not disclosing the above material event adequately and in a timely manner Noticee was alleged to have violated the under regulations 4(1)(d), 4(1)(e), 30(3), 30(6), 30(4)(i)(a), (b), 30(7), and 30(11) of LODR Regulations read with SEBI Circular dated September 09, 2015.

4.8 **Allegation (iii) : Violation of Clause 4 of Schedule A of PIT Regulations**

4.8.1 It was observed that that Noticee's disclosure on October 26, 2020 was limited to providing information only with regard to receipt of interim award from SIAC and did not disclose more details of the interim award. It is

alleged that the same is in violation of clause 4 of Schedule A of PIT Regulations which includes "prompt dissemination of UPSI that gets disclosed selectively, inadvertently or otherwise to make such information generally available." Thus, Noticee was alleged to have violated clause 4 of Schedule A of PIT Regulations.

5. The Noticee, vide email dated May 4, 2021 sought inspection of documents in the matter. The Noticee was provided with an opportunity to inspect the documents on May 24, 2021.

6. Subsequently, the Noticee replied to the SCN vide letter dated July 22, 2021 stating, inter alia, the following:

   - *At the outset, and before dealing with the aforesaid allegations, it is important to set factual context. Arbitration proceedings can only lie against a party to an arbitration agreement. FRL is not and has never been a party to any arbitration agreement with Amazon. Amazon's initiation of arbitration proceedings against FRL without being party to any agreement with FRL was an untenable misadventure. All the allegations in the Show-cause notice are directly related to these arbitration proceedings, and this context should be borne in mind.*
   - *'FRL,a public limited company, listed on the BSE Limited and National Stock Exchange oflndia Limited (collectively, "**Stock Exchanges**"), is party to a "Shareholder's Agreement" dated August 12, 2019 ("**FRL SHA**") with Future Coupons Pvt Ltd ("FCPL") and Mr. Kishore Biyani, Ms. Ashni Kishore Biyani, Mr. Anil Biyani, Mr. Gopikishan Biyani, Mr. Laxminarayan Biyani, Mr. Rakesh Biyani, Mr. Sunil Biyani, Mr. Vijay Biyani, Mr. Vivek Biyani, Future Corporate Resources Private Limited, Akar Estate and Finance Private Limited (collectively referred to as the "**Promoters**"). The FRL SHA [attached as Annexure 1 to the Show-cause notice] recorded inter-se mutual rights and obligations of the Parties thereto in their capacity as shareholders of FRL. Under the FRL SHA, FRL and the Promoters agreed that the "Retail Assets" of FRL would not be transferred to a "Restricted Person" except with the written consent of FCPL.*

Evidently, Amazon, is neither a shareholder of FRL nor a signatory or party to the FRL SHA.

- *Pursuant to a letter dated August 22, 2019, addressed by Mr. Kishore Biyani informing FRL that the Promoters and FCPL had executed the FCPL SHA with Amazon, which granted (only upon a change of law permitting such action) a call option to Amazon by which Amazon could acquire the Promoters' shareholding in FRL and further certain share transfer restrictions on their shareholding in FRL was agreed to by the Promoters. The ability for Amazon to acquire such shares of FRL remains impermissible under law till date.*
- *Due to the unprecedented impact of the COVID-19 pandemic, the day-to-day business of FRL was adversely impacted. To salvage this critical financial position of FRL, the Board of Directors of FRL, acting lawfully and in exercise of their fiduciary duties to the shareholders of FRL, in the best interest of FRL and all its stakeholders, approved a scheme of arrangement' under Section 230 ofthe Companies Act, 2013 in a manner consistent with Clause 10 of the FRL SHA. The consent from FCPL envisaged in the FRL SHA was also obtained vide written consent dated August 29, 2020. The disclosure made by FRL in this regard is attached as Annexure 3 to the Show-cause notice*
- *On October 5, 2020 Amazon issued a Notice of Arbitration to FRL, FCPL and the Promoters under the FCPL SHA contending that, among others, the FCPL SHA and the FRL SHA constitute a "single integrated transaction". Based on such assertion of a "single integrated transaction", Amazon contended that FRL was bound by the terms and conditions of the FCPL SHA and that consequently, a dispute under the FCPL SHA had arisen, lending itself to arbitration. It was argued that FRL could not have transferred its business to "Restricted Persons" i.e. RRVL and RRFL, without Amazon's consent. Such a stance is diametrically contrary to Amazon's own past assertion to various regulatory authorities. It is apparent that Amazon has first time asserted such a false case of conflation of the two shareholders agreements, only so as to invoke arbitration against FRL and to somehow scuttle the Scheme. Concurrently, Amazon also filed an application for Emergency Reliefs before an Emergency Arbitrator under the the Arbitration Rules of SIAC, 2016 (***"SIAC Rules"***).*

- *On October 6, 2020, in response to the above, FRL filed an application objecting to the competence of the SIAC to administer an Arbitration in terms of Rule 28.1 of the SIAC Rules, inter alia on the ground that Amazon had wrongly invoked arbitration proceedings against FRL under the FCPL SHA in contravention ofthe provisions of Part I ofthe Arbitration & Conciliation Act, I 996 ("**Arbitration Act**"), despite the fact that FRL was not a party to the FCPL SHA. FRL called upon SIAC to accordingly tenninate the arbitration proceedings against it.*
- *On October 25, 2020 the Emergency Arbitrator passed the EA Order primafacie conflating of the FRL SHA and FCPL SHA as an interim measure pending arbitration. This was received by FRL on October 25, 2020 at 18:33 hours.*
- *After assessing the EA Order, including for implications of disclosure statements, on October 26, 2020 FRL issued a Clarification Statement and a Media Release to the Stock Exchanges relating to the EA Order and that FRL was examining the same, as FRL was obtaining necessary legal advice thereon.*
- *Against this backdrop, the allegations in the Show-cause notice that FRL has committed violations of the LODR and PIT Regulations may be examined. In this regard, FRL submits as under.*

Re: Alleged violation of Regulation 30(3) and 30(6) of the LODR on account of the alleged delay in disclosure of the initiation of arbitration proceedings by Amazon.com NV Investment Holdings LLC

- *Regulation 30 prescribes two categories of events. The requirement to disclose an event would depend on which category it falls under. The categories and corresponding disclosure requirement is as under:*
  - *(a) Events specified in Para A of Part A of Schedule III of the LODR contains a list of events which are deemed to constitute material event. Under Regulation 30(2), the listed entity is required to disclose these events; and*
  - *(b) Events specified in Para B of Part A of Schedule III, which as per Regulation 30(3) of the LODR are to be disclosed by a listed company "based on the application of the guidelines for materiality, as specified in sub-regulation (4),*

- *In the instant case, the event in question is Amazon's initiation of arbitration proceedings qua FRL, without having any privity of contract with FRL. As stated above, Amazon has initiated arbitration proceedings under the FCPL SHA, an agreement to which FRL is neither a signatory nor a party. It can never be the intention of the LODR that every frivolous and baseless attempt to initiate proceedings should be reported. As and when there are developments in it, it would be a fresh cause for reviewing the need for disclosure. And, indeed, every development, when considered material was disclosed. This is what Regulation 30 of the LODR requires and that has been fully complied with.*
- *Untenable proceedings could also get disposed of without any development. Therefore, at the stage of initiation of the arbitration proceedings, there was no requirement to make any disclosure. On October 6, 2020, FRL raised its Objection to the Competence of the SIAC to administer an arbitration qua it under Rule 28.1 of the SIAC Rules, stating that there was no arbitration agreement between Amazon and FRL and that accordingly FRL was not a party to the arbitration proceedings. Thus, even the jurisdiction of the SIAC to administer the arbitration proceedings initiated by Amazon qua FRL was yet to be determined. Until this stage, no development worthy of disclosure had taken place.*
- *It was only on November 26, 2020 that the SIAC decided to continue with the arbitration proceedings. This development was duly and immediately disclosed to the Stock Exchanges by FRL. Thus, FRL's conduct has been consistent with the position stated above -- the very initiation of arbitration proceedings was not material since on the face it, it was without jurisdiction.*
- *In this regard, it is pertinent to note that FRL's contention that the "single integrated transaction" is an illegality would also come to be accepted by the Hon'ble Delhi High Court in the Suit Judgement [see Paras 10.16 to 10.31]. Amazon sought to initiate arbitration proceedings against FRL on the basis of its contention that the FCPL SHA and FRL SHA constituted a "single integrated transaction" under which FRL was bound by the tenns and conditions of the FCPL SHA and the arbitration agreement contained therein. Therefore, the decision of FRL to*

treat the initiation of the arbitration as untenable was well borne out even with judicial endorsement. FRL was fully entitled to take this view of the attempt being frivolous since the approach of the alleged "single integrated transaction" would even confer control over FRL to Amazon (yet another untenable proposition in Amazon's attempt) which would not be feasible:

(a) without Amazon obtaining "prior approval" from the Government of India under the Foreign Exchange Management (Non-debt Instrwnents) Rules, 2019; and

(b) without Amazon making an "open offer" as is mandated under the Securities and Exchange Board (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 since such a wrong and legally-untenable reading of conflating the FCPL SHA and the FRL SHA as one integral transaction would have the effect of conferring control to Amazon over FRL,

- *Thus, FRL could not have been joined as a party to the arbitration proceedings initiated by Amazon and therefore the entire reference to arbitration is devoid of merit. And it was reasonable to expect that such an obvious fact would be accepted and would be evident to any judicial and quasi-judicial forum. The Delhi High Court indeed accepted it too. Therefore, FRL cannot be faulted for treating such frivolous misadventures not being considered relevant for disclosure.*
- *In view of the above, it is submitted that there was no requirement to make any disclosure about the initiation of arbitration on October 6, 2020, under Regulation 30 of the LODR read with SEBI's Circular dated September 9, 2015. When the development of the SIAC expressing its intention to continue hearing the grievances took place, the same was disclosed out of abundant caution, despite it being possible to take a view even then that such a development was not material since, nothing material had still taken place. However, adopting an abundantly cautious view, FRL made the disclosure on November 26, 2020 that the arbitration would continue.*
- *In any case, materiality of information at a point in time must be considered and assessed by circumstances in play at that point in time. Whether the assessment was a bona fide one and legitimately capable of being a reasonable assessment is what needs to be seen for consideration of penalty. If two views are possible bona fide, and a company takes one of the bona fide interpretations which is*

not to disclose, penal intervention would not inexorably follow. It is only if no reasonable person would ever consider such a development to not be material, that it can be said to be a violative development. For the reasons stated above, the mere initiation of arbitration, without any necessary particular, including a Statement of Claim being filed, it would be unreasonable to suggest that the very initiation of arbitration without a Statement of Claim was in itself inherently a material development warranting disclosure under Regulation 30 ofthe LODR.

Alleged violation ofRegulation 4(1)(d), 4(1)(e), 30(3), 30(4)(i)(a), (b), 30(6), 30(7) and 30(11) of the LODR Regulations on account ofalleged inadequate and delayed disclosure ofthe interim order dated October 25, 2020 passed by the Emergency Arbitrator, Singapore International Arbitration Centre ("SIAC") ["EA Order"]

- *It should be noted that the disclosure dated October 26, 2020, made by FRL indeed constituted requisite and timely disclosure of the EA Order under the LODR. Vide the disclosure dated October 26, 2020, FRL informed the Stock Exchanges of the receipt of communication from the SIAC and further vide letter dated October 30, 2020, the EA Order copy has also been submitted. Apart from the fact that the details of the EA Order are confidential under Rule 39 of the SIAC Rules, it is submitted that the information and details of the EA Order, having no material impact (as substantiated above) was not required to be disclosed.*
- *In fact, in view of the above, it was prudent for FRL not to disclose the contents of the EA Order. The EA Order in any case was under the FCPL SHA, and the arbitration clause contained therein, to which FRL was not even a party. The EA Order was still disclosed in the manner it was felt bona fide would be appropriate for disclosure. To allege that the EA Order should be published in its entirety is fallacious and untenable inasmuch as every such development is not meant to be disclosed in full detail and verbatim. Such developments too have to be studied and assessed and disclosed, which is why even the LODR recognises the provision of time of 24 hours to assess materiality. In any case, the substantive disclosure after internal assessment and legal advice was indeed made within 24 hours.*
- *The detailed disclosure dated November 1, 2020 was made pursuant to being wrongly forced by the Stock Exchanges to do so. A listed company faced with*

such a factual development has two options – one is to litigate against the Stock Exchange and the other is to make disclosures without prejudice to its position. FRL chose the latter. To visit a listed company with penal proceedings for such reasonable conduct and to allege violation of LODR is arbitrary, unfounded and inappropriate.

- *In any event, and without prejudice to the above, it is submitted that the EA Order is wholly without jurisdiction and a nullity qua FRL, for the following reasons:*
  - *(a) As stated above, FRL is not a party to the FCPL SHA or the arbitration agreement contained therein. Thus, the invocation of arbitration proceedings as well as the EA Order passed in the arbitration proceedings is a nullity qua FRL.*
  - *(b) Amazon's basis for impleading FRL i.e. that the FRL SHA and FCPL SHA constitute a single integrated transaction would render the single integrated transaction an illegality, for reasons mentioned above.*
- *Further, assuming whilst denying that the EA Order was with jurisdiction qua FRL, it would not have any material impact on FRL or the Promoters or the KMP, as the EA Order is not enforceable per se and would only be enforced by the Courts in India pursuant to a separate application preferred by Amazon under Section 9 of the Arbitration Act or by way of Amazon filing a Suit. A conjoint reading of the aforesaid submissions would make it clear that FRL has not violated Regulations 4(1)(d), 4(1)(e), Regulation 30(3), Regulation 30(4), Regulation 30(6), Regulation 30(7) or Regulation 30(11) of the LODR.*

Alleged violation of Clause 4 of Schedule A of the PIT Regulations on account of alleged incomplete disclosure of the EA Order, which has been observed to constitute "Unpublished Price Sensitive Information"

- *These are the same principles underlying the LODR and the submissions made above apply to this charge with the same effect and force. In any case, for the PIT Regulations and Clause 4 of Schedule A of the PIT Regulations to apply, the information would necessarily have to be "unpublished price sensitive information", failing which the provisions of the PIT Regulations would not be attracted. The PIT*

Regulations have been explicitly amended to even provide that merely because a development is reported under LODR it would not follow that such information automatically becomes unpublished price sensitive information under the PIT Regulations. Besides, information that is generally available can never be unpublished information. This section of the Show-cause notice ought to be disposed of without any further review on this ground alone.

- *It is important to note that here too, Amazon's media strategy of mischaracterising and disseminating its version of events actually led to the EA Order becoming "generally available" information forthwith. Therefore, none of the contents can even be regarded as UPSI.*
- *What FRL published in its best judgement and assessment was what FRL considered worthy of disclosure. Such disclosure rendered the contents generally available. What Amazon disseminated made the contents generally available, and that too ceased to be UPSI. Therefore, the very foundation of the allegation that there was no disclosure of the UPSI stands eroded.*
- *In this regard, it is submitted that various comments of Amazon regarding the EA Order emerged in various reports on October 25, 2020 itself. These news reports were widely publicized. A list of these news reports is enlisted as under:*
  - *a) Financial Express*
  - *b) Times of India*
  - *c) Deccan Herald*
  - *d) Outlook*
  - *e) The Week*
- *Thus, information of the EA Order, being "generally available information" did not remain 'unpublished price sensitive infonnation'. Therefore, it is submitted that FRL could not have and did not commit a violation of the PIT Regulations*.

7. In the interest of natural justice an opportunity of personal hearing was given to the Noticee by the then AO on August 3, 2021, vide email dated July 7, 2021. Vide email dated July 22, 2021, the Noticee sought another date of personal hearing. Another opportunity of personal hearing was given to the Noticee to appear before the then AO on April 5, 2022, vide email dated March 29, 2022. Vide email dated

April 4, 2022, the Noticee once again sought another date for personal hearing in the matter. Acceding to its request another opportunity of personal hearing was given to the Noticee to appear before the then AO on April 12, 2022, vide email dated April 7, 2022. Vide email dated April 11, 2022 the Noticee, once again sought for adjournment of the personal hearing. Acceding to its request, another opportunity of personal hearing was given to the Noticee on April 21, 2022, vide email dated April 13, 2022. Vide email dated April 19, 2022, the Noticee was informed that due to unavoidable circumstances, the scheduled hearing is postponed to a future date. Vide email dated August 11, 2022, another opportunity of personal hearing was given to the Noticee on August 26, 2022. Vide email dated August 19, 2022, the Noticee informed the then AO that vide order dated July 20, 2022, the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as "**NCLT**") passed an order in respect of the Noticee imposing moratorium in terms of section 14 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC**"). Vide letter dated July 25, 2022, the Interim Resolution Professional (hereinafter referred to as "**IRP**") appointed in the matter replied to the SCN stating, inter alia, the following:

"By virtue of the provisions of the Code, on and from the date of the said Order, i.e., July 20, 2022:

a) The management of the affairs of the Corporate Debtor vests in the IRP;

b) The powers of the board of directors stand suspended and are to be exercised by the IRP;

c) The officers and managers of the Corporate Debtor shall report to the IRP and provide access to such documents and records of the Corporate Debtor as may be required by the IRP; and

d) The financial institutions maintaining accounts of the Corporate Debtor are required to act on the instructions of the IRP in relation to such accounts and furnish all information relating to the Corporate Debtor available with them to the IRP.

By virtue of the provisions of Section 13 read with Section 14 of the Code, a moratorium has been declared vide the CIRP Order inter alia prohibiting the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel

*or other authority***.** *The moratorium shall be effective till the date of the completion of the CIRP. You are requested to communicate about the moratorium in respect of the Corporate Debtor to all the relevant officials in your organization dealing with matters pertaining to the Corporate Debtor."*

8. Vide email dated August 25, 2022, an opportunity of personal hearing was given to the IRP. The IRP appeared on the scheduled date and reiterated the submissions made vide email dated August 19, 2022.

9. Subsequent to the transfer of the matter to the undersigned, it was brought my notice, vide email dated February 5, 2025, that liquidation order dated July 29, 2024 was passed by the Hon'ble NCLT in the matter. Accordingly an opportunity of personal hearing was given to the Liquidator to appear before the undersigned on March 25, 2025 vide notice dated March 10, 2025. The Authorised Representative (hereinafter referred to as "**AR**") of the Liquidator appeared on the scheduled date and requested for another date of personal hearing. Further, vide email dated March 28, 2025 the Noticee sought copy of the SCN dated April 7, 2021. Vide email dated March 28, 2025 the requisite documents were provided to the AR and another opportunity of personal hearing was given to the Noticee on April 15, 2025. Vide letter dated April 14, 2025, the AR submitted, inter alia, the following:

"*In this regard, the erstwhile RP filed I.A. No. 5293 of 2024 for initiating liquidation of the Corporate Debtor, which was allowed by this Hon'ble Tribunal vide an order dated 29th July 2024. In this regard, pursuant to the Liquidation Order, Mr. Sanjay Gupta has been appointed as the Liquidator of the Corporate Debtor.*

That upon being appointed as the Liquidator, our Client in accordance with the provisions of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 has been discharging his duties."

10. The AR appeared on the scheduled date of personal hearing and reiterated the submissions made vide letter dated April 14, 2025.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the submissions of the Noticee, facts, and material available on record. The issues that arise for consideration in the present case are as follows:

ISSUE No. I: Whether the Noticee violated provisions of LODR Regulations and/ or PIT Regulations and/ or various circulars, as alleged in the SCN?

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s 15A(b) of SEBI Act?

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticee, after taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

12. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated by the Noticee. The said provisions of LODR Regulations are reproduced hereunder:

LODR Regulations

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

(d)The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

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

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).

30.(4) (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;

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

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

Provided further that disclosure with respect to events specified in sub-para4 of Para A of Part A of Schedule III shall be made within thirty minutes of the conclusion of the board meeting.

30. (7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

30. (11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).

SEBI circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015

*8.**Litigation(s) / dispute(s) / regulatory action(s) with impact:** 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 favourof the listed entity, the outcome of which can reasonably be expected to have an impact.*

*8.1.**At the time of becoming the party:***

a) brief details of litigation viz. name(s) of the opposing party, court/ tribunal/agency where litigation is filed, brief details ofdispute/litigation;

b) expected financial implications, if any, due to compensation, penalty etc;

c) quantum of claims, if any;

8.2. ***Regularly till the litigation is concluded or dispute is resolved:***

a) the details of any change in the status and / or any development in relation to such proceedings;

b) in the case of litigation against key management personnel or its promoter or ultimate person in control, regularly provide details of any change in the status and / or any development in relation to such proceedings;

c) in the event of settlement of the proceedings, details of such settlement including -terms of the settlement, compensation/penalty paid (if any) and impact of such settlement on the financial position of the listed entity.

PIT Regulations

SCHEDULE A

Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information

4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.

FINDINGS

13. I have gone through the submissions made by the Noticee and the other material on record. I have noted the contentions of the Noticee. The limited purpose of this proceedings is to determine if the Noticee has violated securities laws and determine the penalty in order to enable SEBI to crystallise its claim with the Liquidator.

ISSUE No. I: Whether the Noticee violated various provisions of LODR Regulations and/ or PIT Regulations and/or various circulars, as alleged in the SCN?

14. **With regard to allegation (i) i.e. Delay in Disclosure of initiation of arbitration proceedings**;

14.1. I note that an arbitration proceeding was initiated against Future Groups by Amazon on October 05, 2020 before SIAC. Noticee was Respondent No. 2 in

the said proceedings. Noticee had received the communication in this regard from SIAC on October 05, 2020 and an objection has been filed by Noticee before SIAC on October 06, 2020.

14.2. I note that Noticee had not disclosed the said arbitration proceedings in spite of receiving the information for commencement of the said proceeding on October 05, 2020 from SIAC, and even after filling its objection before SIAC on October 06, 2020. The same was required to be disclosed as soon as reasonably possible and not later than twenty-four hours i.e. on or before October 06, 2020 as material event as required under LODR Regulations.

14.3. I note that Noticee disclosed the initiation of arbitration proceeding before SIAC initiated by Amazon on November 01, 2020 only after active intervention of Stock Exchanges.

14.4. With regard to Noticee's submission that Amazon had initiated arbitration proceedings under the Future Coupons Pvt. Ltd. Shareholders' Agreement (hereinafter referred to as "**FCPL SHA**") dated August 22, 2019 wherein the Noticee was neither a signatory nor a party and also with regard to Noticee's objection to the competence of SIAC to administer an arbitration where there was no arbitration agreement between Amazon and the Noticee, I note that Mr. Kishore Biyani and others (Promoter and Promoter Group) were holding approx. 29% shares in the Noticee (as per September 2020 quarter) and 51% in FCL. Hence, both companies were part of the same business group. Further, both the companies were related party as per the definition of Section 2(76) of the Companies Act, 2013.

14.5. I further note that FCPL SHA dated August 22, 2019 among Promoter & Promoter Group, FCL and Amazon was disclosed by FRL as material event under regulation 30 of LODR Regulations because the common Promoter & Promoter Group are involved in the SHA and the companies are related. It is noted that although the Noticee was not a party to the FCPL SHA, still it had found this as a material event and accordingly disclosed it to the stock exchanges, hence contention of Noticee that the initiation of arbitration by Amazon pursuant to the FCPL SHA is not a material information to be disclosed has no merits.

14.6. Further, as per SEBI circular no. CIR/CFD/CMD/4/2015 dated September 09, 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".* Thus, the SEBI circular also necessitates the disclosure.

14.7. I also note that the Noticee made the relevant disclosre regarding the initiation of arbitration on November 1, 2020 after active intervention of the Stock Exchanges. The submission of the Noticee that the relevant disclosure was made on November 26, 2020 only after SIAC decided to continue with the arbitration is misleading. On perusal of the disclosure dated November 26, 2020 it is noted that the Noticee submitted, "*Further to our letter dated 01st November, 2020 informaing about the arbitration at Singapore, in which the Company has been made a party, inspite of it being not a party to the arbitration agreement.*" Therefore, it is clear that the Noticee had made the disclosure before the SIAC decided to continue with the arbitration against it and only on on intervention by the Stock exchanges.

15. **With regard to allegation (ii) i.e. Inadequate and delay disclosure of Interim Order of SIAC;**

15.1. I note that in the interim order passed by SIAC on October 25, 2020 in the arbitrations proceedings in favour of Amazon, wherein *inter-alia* the respondents were injuncted from taking any steps in furtherance or in aid of the Board Resolution made by the Board of the Directors of FRL on August 29, 2019 in relation to the said Scheme. The same was highlighted in the media report.

15.2. I note that this clarification was made by Noticee on October 26, 2020 pursuant to news item as regards to the interim order and that Noticee by itself was not forthcoming in making the disclosure on October 26, 2020. Moreover, the said

disclosure did not give any details about the matter under dispute as required under Regulation 4(1)(d) and Regulation 4(1)(e) of LODR Regulations.

15.3. The Noticee submitted that it was not required to make any disclosure of the interim order as the passing of the same does not constitute a material event under the LODR Regulations.

15.4. I note that the interim order was passed by SIAC pursuant to the arbitration initiated by Amazon which was a material information for the Noticee. Subsequent to the media coverage of the passing of the order, Noticee provided a clarification on October 26, 2020 on the news item related to SIAC interim order.

15.5. I note that Noticee provided an inadequate disclosure on October 26, 2020. In this regard, I note that Noticee provided a simple clarification/ disclosure on October 26, 2020 as clarification on news item related to SIAC interim order in favour of Amazon in the matter of Future-RIL deal instead of details of the arbitration proceedings like details of litigation, its financial implication etc and the interim order of SIAC which is in violation of regulation 4(1)(d) and 4(1)(e) of LODR Regulations.

15.6. Further, I note that only after active intervention by Stock Exchanges, Noticee made disclosure regarding the SIAC interim order on November 1, 2020 wherein FRL provided full details of the initiation of arbitration proceedings, chronology of the events, details of interim order, impact of the interim order and all the direction of SIAC under regulation 30 of the LODR Regulations.

In view of the aforesaid as mentioned at para 14 and 15, I find that the allegation of violation of regulation 4(1)(d), 4(1)(e), 30(3), 30(6) 30(4)(i)(a), (b), 30(7), 30(11) of LODR Regulations read with SEBI circular dated September 9, 2015 by the Noticee stands established.

16. **With regard to allegation (iii) i.e. Violation of Clause 4 of Schedule A of PIT Regulations;**

16.1. I note that FRL's disclosure on October 26, 2020 was limited to providing information only with regard to receipt of interim award from SIAC and did not disclose more details of the interim award.

16.2. The Noticee submitted that passing of the interim order was not "unpublished price sensitive information" (hereinafter referred to as "**UPSI**") and it was generally available as it was widely covered by various media houses.

16.3. I note that under clause 4 of Schedule A of PIT Regulations, an entity is obliged to promptly dessiminate UPSI that gets disclosed selectively. However, in the present case, the passing of the interim order was widely covered in various media. However, all the details of the news was not available publicly. It was only after active intervention of Stock Exchanges that the Noticee disclosed full details of the initiation of arbitration proceedings, chronology of the events, details of interim order, impact of the interim order and all the direction of SIAC under Regulation 30 of the LODR Regulations on November 1, 2020.

In view of the above, the allegation of violation of clause 4 of Schedule A of PIT Regulations by the Noticee stands established.

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s section 15A(b) of SEBI Act, as applicable?

17. The provisions of Section 15A(b) of the SEBI Act read as under:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,-*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

18. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

19. Hence, in view of the findings as given above, I am convinced that the Noticee is liable for monetary penalty under section 15A(b) of the SEBI Act for violation of provisions of LODR Regulations, PIT Regulations and SEBI circulars, as mentioned above.

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticee, after taking into consideration the factors stipulated in section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

20. While determining the quantum of penalty under section 15A(b) of SEBI Act, the following factors stipulated in section 15J of the SEBI Act have to be given due regard:-

SEBI Act

"15J. Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b)the amount of loss caused to an investor or group of investors as a result of the default;

(c)the repetitive nature of the default."

21. The main objective of disclosure related provisions is to afford fair treatment for shareholders so that there is no information asymmetry in the market. The Regulation seeks to achieve fair treatment by, *inter alia,* mandating disclosure of timely and adequate information to enable shareholders to make an informed

decision. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of such provisions is investor protection. Further these timely disclosures are of significant importance from the point of view of the Regulators also.

22. I note that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee, nor has it been alleged by the SEBI. There is also no record of past action taken by SEBI against the Noticee.

23. Further it is noted that subsequent to the passing of the liquidation order by Hon'ble NCLT on July 29, 2024, a Liquidator is appointed who is discharging his duties under the Insolvency and Bankruptcy Code, 2016.

ORDER

24. After taking into consideration the facts and circumstances of the case, including the fact that a few of the disclosures, which were required to be made and were not made, pertained to period 2015-2019 and the show cause notice was issued on December 15, 2023, in exercise of powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the penalty of Rs.10,00,000/- (Rupees Ten Lakh Only) under section 15A(b) of the SEBI Act on the Noticee for the violations as mentioned above. I find that the said penalty is commensurate with the violations committed by the Noticee in this case.

25. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Liquidator and also to the Securities and Exchange Board of India.

AMIT KAPOOR
Digitally signed by AMIT KAPOOR
Date: 2025.04.24 11:56:41 +05'30'

Place: Mumbai **AMIT KAPOOR**

Date: April 24, 2025 **ADJUDICATING OFFICER**