

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/GR/PU/2022-23/22341**

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

In respect of
CG Power and Industrial Solutions Ltd
(PAN: AAACC3840K)

In the matter of CG Power and Industrial Solutions Ltd

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') was in receipt of three Fraud Monitoring Reports (FMRs) relating to bank frauds against CG Power and Industrial Solutions Ltd., (hereinafter referred to as the "**Noticee/Company/CGPISL**"). The said report was forwarded to the National Stock Exchange ('**NSE**') for examination and comments on the same. Upon submission of the report by NSE, it was observed that there existed certain non-compliances by the Noticee with respect to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). More particularly, the Noticee had failed to disclose material information relating to defaults in re-payment of principal and payment of interest on loans from Banks/ Financial Institutions in January 2020 in violation of 3(C1) r/w para 3(B)(i) of SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 ("**Loan Default Circular**") r/w Point no. 6 of Para A of Part A of Schedule III of LODR Regulations r/w Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of Securities Contract Regulation Act, 1956 (hereinafter referred to as the "**SCRA**") and also the Noticee delayed to place the information pertaining to

default in loans before the Board of Directors for the period from August 27, 2019 till June 27, 2020, which is in violation of para H of Part A of Schedule II r/w Regulation 17(7) of LODR Regulations. Further, the Noticee had also failed to make quarterly disclosure on default in loans as per the format prescribed under para 3(C2) of the Loan Default Circular, which is in violation of para 3(C2) of Loan Default Circular r/w Point No. 6 of Para A of Part A of Schedule III of LODR Regulations r/w Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

2. In this regard, SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as Adjudicating Officer vide communique dated October 07, 2022 under Section 23-I of SCRA read with Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("**SCR Adjudication Rules**") to inquire into and adjudge under Section 23E of the SCRA for the aforesaid violation alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as "**SCN**") bearing ref.no. SEBI/HO/EAD/EAD4/P/OW/2022/55524/1 dated November 01, 2022 was served on the Noticee under Rule 4(1) of the SCR Adjudication Rules read with Section 23 I of the SCR Act, 1956, to show cause as to why an inquiry should not be held against it and penalty should not be imposed under Section 23 E of the SCRA for the alleged violations specified in the said SCN.
4. The said SCN was issued to the Noticee via SPAD and was duly delivered. In the interest of natural justice and in order to conduct an inquiry, an opportunity of personal hearing was granted to the Noticee on November 17, 2022 vide Hearing Notice dated November 10, 2022 served through email on the same day. In response to the said e-

mail, the Company Secretary of the Noticee vide email dated November 14, 2022 had sought an adjournment on the same. Accordingly, another opportunity of personal hearing was granted to the Noticee on November 28, 2022 vide email dated November 14, 2022, which was duly delivered. Subsequently, the company secretary of the Noticee sought for another adjournment of the personal hearing vide e-mail dated November 25, 2022, thereafter, another opportunity of personal hearing was granted to the Noticee on December 01, 2022. On the said day the Authorized representative (AR) of the Noticee sought another adjournment due to non-availability and consequently a last and final opportunity of personal hearing was granted to the Noticee on December 07, 2022. The said hearing was attended to by the AR of the Noticee who reiterated the submissions made by the Noticee vide its letter dated November 24, 2022 and sought time of 10 days to submit additional submission which was granted. However, till date no additional submission has been made in this regard.

5. Summary of the reply dated November 24, 2022 of the Noticee is as under:

- As regards the allegation of non-compliance in the SCN, the Noticee submitted that as none of the erstwhile KMPs are available, it was unable to ascertain the reasons which caused the delay and further, the entire Board of the company also stood replaced from 26th November 2020. It also stated that the Board was briefed on the delay at its meeting held on 27th June 2020 and the disclosure was made immediately on the same day, therefore, no prejudice has been caused to anyone by the alleged delay.
- The Noticee submitted that the company itself is a victim of the violations caused by the previous promoters / management and under the RBI's Prudential Framework for Resolution of Stressed Assets, which is akin to the resolution process under the Insolvency Bankruptcy Code 2016 (IBC), the new management has taken management control of the company only in November 2020 and was not responsible for the alleged violation. Therefore, the Company and the present management should not be held liable for the said violation.
- The Noticees also submitted that as per Section 24 of the SCRA where an offence has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly and/ or where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, shall

also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- The Noticee contended that it cannot be proceeded against in light of principles of law underlying Section 32A of the Insolvency and Bankruptcy Code, 2016 ("IBC") which confers on the Noticee immunity from proceedings for defaults committed by a corporate debtor prior to the commencement of the insolvency resolution process, where the resolution plan resulted in a change of management or control to a person, other than the promoter or management of the corporate debtor.
- The Noticees also submitted that the SCN has been issued under Section 23E of the SCRA, which deals with violation of listing conditions i.e. conditions imposed by the stock exchange for listing of the securities. The SCN alleges violation of disclosure obligations, which are not covered by Section 23E. In the case of Suzlon it has been explicitly held by the Hon'ble Securities Appellate Tribunal that Section 23E cannot be pressed into service for alleged violation of disclosure obligations since the specific provision governing the same is Section 23A of the SCRA and not Section 23E of the SCRA.

6. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply submitted by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee, reply filed and the documents/material available on record. The issues that arise for consideration in the present case are:

Whether

(a) Noticee has violated the provisions of 3(C1) r/w para 3(B)(i) of Loan Default Circular r/w Point no. 6 of Para A of Part A of Schedule III of LODR Regulations r/w Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA; para 3(C2) of Loan Default Circular r/w Point No. 6 of Para A of Part A of Schedule III of LODR Regulations r/w

Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA and Para H of Part A of Schedule II r/w Regulation 17(7) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA

(b) Do the violations, if any, on the part of the Noticee attract penalty under Section 23E of SCRA?

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?

8. Before I proceed further in the matter, it is pertinent to mention the relevant provisions of the LODR Regulations, Loan Default Circular, SCRA and Equity Listing Agreement alleged to have been violated by the Noticee. The same are reproduced below:

SECURITIES CONTRACT REGULATION ACT, 1956

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange

Listing Agreement

Clause 2(i) of the Listing Agreement reads as under:

“That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following: —

i. the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time...”

LODR REGULATIONS

Board of Directors.

17. (7) The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

.....

SCHEDULE II: CORPORATE GOVERNANCE

PART A: MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS

H. Any material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by the listed entity.

Disclosure of events or information

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

SCHEDULE III

PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

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

...

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

Loan Default Circular

Para 3(B)(i) of Loan Default Circular: "...listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks / financial institutions which continues beyond 30 days. Such disclosure shall be made promptly, but not later than 24 hours from the 30th day of such default."

The format for such disclosure is prescribed under Para 3(C1) of Loan Default Circular.

Para 3(C2) of Loan Default Circular: "Disclosures specified in the table below shall be made by listed entities, if on the last date of any quarter:

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

... The above disclosure shall be made within 7 days from the end of each quarter."

Issue (a): Whether Noticee has violated the provisions of 3(C1) r/w para 3(B)(i) of Loan Default Circular r/w Point no. 6 of Para A of Part A of Schedule III of LODR Regulations r/w Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA, provisions of para 3(C2) of Loan Default Circular r/w Point No. 6 of Para A of Part A of Schedule III of LODR Regulations r/w Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA and the provisions of Para H of Part A of Schedule II r/w Regulation 17(7) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA?

9. In respect of the aforesaid alleged violation against the Noticee, I note from the SCN that the Noticee was in default on loans from banks / financial institutions from August 27, 2019. In this regard, I note that as per the Loan Default Circular dated November 21, 2019 which came into effect from January 01, 2020, the Noticee is required to make disclosure of default in the format specified under para 3(C1) of the said Circular on January 01, 2020. However, in this regard, I note that the Noticee vide its reply dated November 02, 2021, to the NSE submitted that the aforesaid disclosures were made to the stock exchange on June 27, 2020, i.e. after a delay of 178 days.
10. I further note that the Noticee was also required to make a disclosure on default of loans to exchange on quarterly basis in the format prescribed under para 3(C2) of the said Loan Default Disclosure Circular, however, it had made delayed disclosures in respect of the followings.

S. No	Disclosure Quarter ended	Timeline for disclosure under Para 3(C2) of Loan Default Circular	Date of (delayed) Disclosure	Delayed by
1.	December 31, 2019	By January 07, 2020	June 27, 2020	172 days
2.	March 31, 2020	By April 07, 2020	June 27, 2020	81 days

11. Further, I note that the Noticee being a listed entity was required to place before its board of directors, the information pertaining to any material default in financial obligations by it. In this regard, I note from the filings made by the Noticee to the stock exchanges, that there were 16 meetings of board of directors of the Noticee i.e. on August 30, 2019, September 25 and 30, 2019, November 2, 10, 11 and 28, 2019, December 13 and 30, 2019, January 24 and 28, 2020, February 14, 2020, March 16, 2020, April 19, 2020, May 01, 2020, and June 03, 2020, held between the date of default i.e. August 27, 2019 to date of the meeting wherein the said information was placed i.e. June 27, 2020. However, it is noted that the extracts of the information pertaining to default in loans was placed before its board of directors only on June 27, 2020.
12. Further, with regards to the allegation of delay in making disclosure with regards to default in repayment of principal as well as payment of interest on loan from Banks/Financial institutions (w.e.f January 01, 2020) and delay in submitting the disclosure for quarter ending March 2020, as indicated in the preceding para No. 10, the Noticee submitted that under the RBI's Prudential Framework for Resolution of Stressed Assets, the new management has taken control of the management of the company only in November 2020. It further stated that the Board was briefed on the delay at its meeting held on 27th June 2020 and the disclosures were made immediately on the same day, therefore, no prejudice was caused to anyone by the alleged delay. The Noticee also submitted that as per Section 24 of the SCRA, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and therefore, the present management should not be held liable for the said violation.
13. With regard to the above contention of the Noticee, I note that irrespective of the management i.e. old or new, the Noticee was under an obligation to make timely disclosure i.e. on January 01, 2020, in respect of default in repayment of principal as well as payment of interest on loan from Banks/Financial institutions. However, the

said disclosure was made belatedly on June 27, 2020, i.e. with a delay of 178 days. Similarly, with regard to the delay in submitting the disclosure for quarter ending March 2020, I note that the said disclosure was also made belatedly on June 27, 2020. I Note that though the Noticee has contended that the old management is responsible for the said violations, they have not submitted any supporting documentary proof to state that the new management has been specifically been exempted for the past actions/violations of the old management. Therefore, the contention of the Noticee in this regard cannot be accepted.

14. The Noticee also contended that, it cannot be proceeded against, in light of principles of law underlying Section 32A of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) which confers on the Noticee immunity from proceedings for defaults committed by a corporate debtor prior to the commencement of the insolvency resolution process, where the resolution plan resulted in a change of management or control to a person, other than the promoter or management of the corporate debtor.

15. In this regard, I note that as admitted by the Noticee, it went into resolution process under RBI’s Prudential Framework for Resolution of Stressed Assets as per the Reserve Bank of India’s circular dated 7 June 2019, and not under IBC. Further, upon perusal of the RBI’s Prudential Framework for Resolution of Stressed Assets, it is observed that the said framework is based on the powers conferred by the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934 which is different from IBC and also, I note that the said framework, at several instances distinguishes the resolution process under it to be different from that of resolution process under the IBC, i.e. at para 28 of Chapter IV of the RBI Prudential Framework for resolution of Stressed assets dated June 07, 2019, which talks about exceptions, the circular reads as under;

“28. The framework shall not be available for borrower entities in respect of which specific instructions have already been issued or are issued by the Reserve Bank to the banks for initiation of insolvency proceedings under the IBC. Lenders shall pursue such cases as per the specific instructions issued to them.”

16. In view of the above, I find that the Noticee cannot claim the exemption under Section 32A of the IBC as it underwent resolution under the RBI's Prudential Framework for Resolution of Stressed Assets, as the exemption provided under one law cannot be substituted in place of another law since the purpose for which each law is made is different. Hence in order to receive specific relief under IBC, the Noticee ought to have undergone resolution under IBC, in order to avail of it. Therefore, the contention of the Noticee in this regard cannot be accepted as it is without merit.
17. Finally, the Noticee contended that the SCN has been issued under Section 23E of the SCRA, which deals with violation of listing conditions i.e. conditions imposed by the stock exchange for listing of the securities. The Noticee further contended that the SCN alleges violation of disclosure obligations, which are not covered by Section 23E and that in the case of Suzlon it has been explicitly held by the Hon'ble Securities Appellate Tribunal that Section 23E cannot be pressed into service for alleged violation of disclosure obligations since the specific provision governing the same is Section 23A of the SCRA and not Section 23E of the SCRA.
18. With regard to the aforesaid contention, I note that Section 23E states that *"If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees"* Therefore, upon a plain reading of the section, I note that any company which fails to comply with listing conditions or delisting conditions or grounds or commits a breach thereof shall be liable to monetary penalty under this section and in this case the Noticee is a company which has failed to comply with listing conditions, as established above and therefore, will be squarely liable under section 23E of SCRA for imposition of monetary penalty. Thus, the submission of the Noticee in this regard is devoid any merit. Further, SEBI has appealed the order of Hon'ble Securities Appellate Tribunal in the matter of Suzlon Energy Ltd. Vs. SEBI and the same is pending before the Hon'ble Supreme Court.

19. In view of the above, by making delayed disclosure on June 27, 2020 with regard to default in re-payment of principal and payment of interest on loans from Banks/ Financial Institutions since January 2020 and also with regards to the disclosure for quarter ending March 2020, I find that the Noticee has violated para 3(C1) r/w para 3(B)(i) of Loan Default Circular r/w Point no. 6 of Para A of Part A of Schedule III of LODR Regulations r/w Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA and para 3(C2) of Loan Default Circular r/w Point No. 6 of Para A of Part A of Schedule III of LODR Regulations r/w Regulation 30(2) of LODR Regulations read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA.
20. As regards the allegation of the requirement to place the information pertaining to default in loans before the Board of Directors under the Regulation 17(7) r/w schedule II of LODR Regulations, against the Noticee, I note that, the said regulation lays down the code of conduct for all members of the board of directors and senior management of the listed entity, for the purpose of better corporate governance. In this regard, I also note from the filings made by the Company to the stock exchanges that the Noticee was in default on loans from banks / financial institutions from August 27, 2019 and was obligated to place the same before its Board of Directors. However, I note that the company, had provided extracts of the same to its board of directors which was dated June 27, 2020, wherein the information pertaining to default in loans was placed. Further, with regard to the same, the Noticee submitted that the board was aware of the loan default as the proposal for debt restructuring was placed before the Board and its approval was taken at the Board Meeting held on 25th September 2019, the minutes of which has been submitted along with its reply dated November 24, 2022. Therefore, since the Board already had knowledge of the same without which it could not have approved the minutes of the Board Meeting held on 25th September 2019 and also was once again informed on June 27, 2020, I note that the purpose and the intent behind the regulation has been sufficiently satisfied. In view of the above, I find that the Noticee is not in violation of the provisions of Para H of Part A of Schedule II r/w

Regulations 17 (7) of SEBI LODR read with Clause 2(i) of the Listing Agreement read with Section 21 of SCRA.

Issue (b) - Does the violation, if any, attract penalty under Section 23E of SCRA?

21. I note that the Hon'ble Supreme Court of India in the matter of **SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** 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..... Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

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

23. Further, Hon'ble Securities Appellate Tribunal in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, has also held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

24. In the context of disclosure related violations, I observe that Hon'ble Securities Appellate Tribunal 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.

25. In view of the foregoing, I am convinced that the Noticee is liable for monetary penalty under Section 23E of SCRA. However, SEBI has appealed the order of Hon'ble Securities Appellate Tribunal in the matter of **Suzlon Energy Ltd. Vs. SEBI**, in order to ascertain whether penalty can be imposed under Section 23E of SCRA for violations of provisions of Listing Agreement and the same is pending before the Hon'ble Supreme Court. The relevant penal provisions are mentioned as under:

SCR Act, 1956

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

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

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

“Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words “fails to comply with the listing conditions” cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements

with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E.....” (emphasis supplied)

27. I note that a stay application has been filed before the Hon’ble Supreme Court by SEBI with respect to the findings of Hon’ble Securities Appellate Tribunal in paragraphs 17 and 18 of the aforesaid order and an appeal has been filed before the Hon’ble Supreme Court against the aforesaid order vide civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. I note that vide orders in the matter of **M/s NDTV vs. SEBI** (Appeal no. 358 of 2015) dated August 07, 2019, and **Oasis Securities Ltd. & Ors. Vs. SEBI** (Appeal no. 316 of 2018), dated March 17, 2020, the Hon’ble Securities Appellate Tribunal has upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. For adjudging under Section 23E of SCRA, the limited purpose of these proceedings qua Noticee is to determine if the Noticee has violated Section 21 of the SCRA read with Clause 2(i) of the listing Agreement read and if so, determine whether penalty should be imposed and assess the quantum of such penalty. However, the enforcement of this order qua Noticee for the penalty imposed under Section 23E of SCRA, shall be subject to the outcome of the aforesaid appeal before the Hon’ble Supreme Court of India.

Issue (c) - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?

28. While determining the quantum of penalty under Section 23J of the SCRA read with Rule 5(2) of the Adjudication Rules, 1995 which read as under:

SCRA 1956

Factors to be taken into account by the adjudicating officer.

23J - *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.*

29. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the fraud done by it. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person/company who is to make such filing doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticee. Hence, I note that the Noticee failed to make timely disclosures about the loan defaults to the exchanges and also failed to make the disclosure for the quarter ending March 2020 in the specified format and thereby has violated the relevant provisions LODR Regulations, Listing Agreement, SCRA and SEBI Circular as mentioned above.

ORDER

30. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 23J of SCRA and in exercise of the powers conferred upon me under Section 23-I of SCRA read with Rule 5 of SCR Adjudication

Rules, I hereby impose the following penalty on the Noticee in terms of Section 23E of the SCRA for the violations as specified in this order:

Name of the Noticee	Penal Provisions	Penalty(Rs)
CG Power and Industrial Solutions Ltd.	Adjudication proceedings *under 23E of the SCRA	Rs 5,00,000/- (Rupees Five Lakhs Only)

* As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed on the Company under Section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

31. I am of the view that the said penalty is commensurate with the violation committed by the Noticee in this case.

32. 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 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.

33. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	

6. Bank details in which payment is	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

34. 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.

35. In terms of the provisions of Rule 6 of the SCR Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: December 23, 2022

G RAMAR

Place: Mumbai

ADJUDICATING OFFICER