

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/GN/2024-25/30529]

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

In respect of:
MAXHEIGHTS INFRASTRUCTURE LTD.

PAN: AABCR2634K

In the matter of
Maxheights Infrastructure Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) received a complaint against Maxheights Infrastructure Ltd. (hereinafter referred to as **Company / Noticee**), subsequently SEBI conducted examination to ascertain if the Noticee was in violation of the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) and the erstwhile listing agreement.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communique dated December 26, 2023, appointed the undersigned as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules**’) r/w Section 19 of the SEBI Act and under Section 23-I of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **SCR Act**) and Rule 3 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **SCR Rules**) to inquire into and adjudge under section 15HB of

the SEBI Act and 23A(a) of the SCR Act for the alleged violation of provisions of LODR Regulations and erstwhile listing agreement to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice (hereinafter referred to as “**SCN**”) dated January 04, 2024 was issued to the Noticee under rule 4(1) of the Adjudication Rules and SCR Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of SEBI Rules read with Section 15-I of SEBI Act and Section 23-I of the SCR Act read with Rule 4 of SCR Rules and penalty, if any, be not imposed on Noticee under Section 15HB of the SEBI Act and 23A(a) of the SCR Act, 1956.
4. The following allegations have been made in the SCN against the Noticee-

Alleged incorrect classification of Pitampura Leasing and Housing Finance Pvt. Ltd. (PLHFL) in shareholding pattern for quarter December 2018 and March 2019

5. The details of acquisition of shares of Noticee by Pitampura Leasing and Housing Finance Pvt. Ltd. (hereinafter referred to as **PLHFL**) during FY 2018-19, as submitted by the Noticee to BSE, is given in the following table:

Quarter ending	No. of Shares acquired by PLHFL	Total shareholding (as per the shareholding pattern filed with BSE)
Dec 2018	8,700	1,56,09,225
March 2019	2,36,469	1,56,09,225

6. Since Sumitra Narang (Promoter of Noticee) holds more than 20% shareholding of PLHFL, the said entity falls under the category of “promoter group” in terms of ICDR Regulations.
7. In view of the above, the shareholding pattern for the quarters of December 2018 and March 2019 filed by the Noticee with BSE should have reflected the shareholding of PLHFL under the category of “promoter & promoter group”; however it was reflected in the shareholding pattern filed from June 2019 onwards. Thus, the Noticee has allegedly incorrectly disclosed the shareholding pattern for the quarters of December 2018 and March 2019 and is in alleged violation of Regulation 31(1) read with Regulation 4(1)(e) of the LODR Regulations.

Alleged incorrect classification of Ranjitgarh Finance Co. Pvt. Ltd. (RFCL) as public shareholder

8. As on June 30, 2023, the shareholding of Ranjitgarh Finance Co. Pvt. Ltd. (hereinafter referred to as **RFCL**) in Noticee was 6.07%. Further, RFCL has been classified as a public shareholder of Noticee.
9. Manan Narang is classified as the promoter of Noticee. The Noticee in its response dated July 14, 2022 to BSE has stated that Sumitra Narang is the mother of Manan Narang and promoter of Noticee and Herika Narang is the wife of Manan Narang and promoter of Noticee and they collectively hold approximately 21.80% of the shareholding of RFCL. Thus, RFCL should have been classified under the category of “promoter and promoter group” in the shareholding pattern of Noticee and not as a public shareholder.
10. In view of the above, it is alleged that the Noticee has incorrectly classified RFCL as a public shareholder instead of “promoter & promoter group” in the shareholding pattern, resulting in alleged incorrect disclosures to shareholders and alleged violation of Regulation 31(1) read with Regulation 4(1)(e) of the LODR Regulations.

Alleged Non-independence of Independent Director

11. It is alleged that Mr. Ashok Ahuja was incorrectly classified as an Independent Director by Noticee and the Noticee has allegedly misled shareholders by classifying Mr. Ashok Ahuja as independent.
12. Mr. Satish Chander Narang is the Non-executive chairman of the board of the Noticee as well as the promoter of the Noticee. Therefore, at least one-half of the Board of the Noticee shall consist of independent directors. Mr. Ashok Ahuja was appointed as an Independent Director of Noticee w.e.f. September 30, 2015 and Mr. Ashok Ahuja was allegedly incorrectly classified as an Independent Director by the Noticee, therefore, it is alleged that Independence requirements of Board {w.e.f. September 30, 2015 till the resignation of Mr. Ashok Ahuja w.e.f. May 29, 2022 } was allegedly not fulfilled, and it resulted in alleged violation of Clause 49 (II) (A) (2) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) and Regulation 17(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja's resignation w.e.f. May 29, 2022)

13. Mr. Ashok Ahuja became the Chairperson of audit committee of the Noticee w.e.f. May 27, 2017 till the time of his resignation w.e.f. May 29, 2022, (when he was alleged to be not independent director) therefore, it is alleged that Noticee violated Regulation 18(1)(d) of LODR Regulations.
14. As Mr. Ashok Ahuja was allegedly incorrectly classified as an Independent Director by the Noticee. Therefore, two third members of Audit committee was allegedly not independent directors, hence it is alleged that independence requirements of Audit Committee (w.e.f. September 30, 2015 till the resignation of Mr. Ashok Ahuja w.e.f. May 29, 2022) was allegedly not fulfilled and it resulted in alleged violation of Clause 49 (III) (A) (1) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) read with regulation 103(2) of LODR regulations and Regulation 18(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja's resignation w.e.f. May 29, 2022)
15. Independence requirements of nomination and remuneration committee w.e.f. May 27, 2017 till the time of Mr. Ahuja's resignation w.e.f. May 29, 2022, was not fulfilled, hence it is alleged that Noticee violated Regulation 19(1)(c) of LODR Regulations.
16. Additionally, the statements and affirmations made by the Noticee in its annual reports / CG reports that half of the Board is independent are allegedly incorrect. Further, the affirmations in the quarterly Corporate Governance reports that the Noticee meets the composition requirements of the Audit Committee are allegedly incorrect. Similarly, the affirmations w.r.t composition of NRC (CG report for quarter ended June 2017 till Mar. 2022) being in terms of the LODR Regulations, is allegedly incorrect. The Noticee has thus allegedly mis-led its shareholders, resulting in alleged contravention of Regulation 4(1)(c) of LODR Regulations.
17. The SCN was issued at the last known address of Noticee through Speed Post Acknowledgment Due (SPAD) which was delivered. SCN was also sent through Digitally Signed E-mail dated January 08, 2024 which was delivered and the delivery of the notice is on record. Vide email dated January 31, 2024, extension was given to Noticee till February 07, 2024 for submission of reply. Vide letter dated February 05, 2024 Noticee submitted that they have filed an Application for Settlement under SEBI (Settlement Proceedings) Regulations, 2018 and Noticee requested to keep the matter in abeyance till the time their settlement application is disposed of by SEBI. Vide email dated February 09, 2024, Noticee was informed that the adjudication proceedings will continue but the final

order will be kept in abeyance till the settlement application is disposed of. Vide hearing notice dated February 09, 2024, opportunity of hearing was given to the Noticee on February 21, 2024. Vide email dated February 19, 2024, Noticee submitted the reply dated February 15, 2024, which is summarized below-

- a) Notice submitted that the present SCN is issued after a gap of almost 5 years from the alleged violation of Allegation - 1 and almost after 8 years from the alleged violation of Allegation - 3. However, no reasons have been mentioned in the SCN for belatedly initiating present proceedings after an unexplained delay as mentioned above. It is also pertinent to mention that the persons handling the subject matter of the present proceedings are no more associated with the Company. Thus, the inordinate delay and absence of records/information is causing great prejudice to us in defending ourselves in present proceedings. Hence, we state that considering the aforesaid, the SCN should be disposed of at the threshold itself. Noticee referred to the Hon'ble SAT order in the matter of Garware Polyester Ltd & Ors vs SEBI, Parag Sarda Vs SEBI, M. Yatin Pandya HUF vs SEBI, Ashok Shivlal Rupani and Anr. Vs SEBI, Mr. Rakesh Khathotia vs SEBI, H B Stockholding, Khandwala Securities Ltd and Hon'ble Supreme Court order in the matter of State of Gujarat vs Patel Raghav Natha.

Allegation - Shareholding of Pitampura Leasing and Housing Finance Ltd ("PPLHFL") was not disclosed under category of "Promoter & Promoter group"

- b) Noticee submitted that all disclosures filed by the Noticee under PIT Regulations, 2015 and SAST Regulations, 2011 w.r.t. shareholding of PPLHFL is filed under "Promoter and Promoter Group" category. Therefore, the public at large knew that PPLHFL was a promoter group company and that they had acquired shares in the Noticee. Noticee annexed a copy of Disclosures under PIT Regulations, 2015 and SAST Regulations, 2011 filed by PPLHFL for Quarter ending December 2018 and March 2019 as downloaded from BSE website.
- c) Noticee referred to the order of the WTM SEBI in the matter of acquisition of shares of Refex Industries Limited (formerly known as Refex Refrigerants Limited)
- d) Noticee submitted that the violation of regulation 31(1) r/w regulation 4(1)(e) of the LODR regulation is unintentional and there are clear mitigating circumstances in the form of their regular compliances to LODR Regulations prior to and post the alleged transactions as mentioned in the SCN which further lessens the gravity of the violation.

- e) Noticee submitted that non- disclosure, if any, was technical in nature and due to inadvertence, devoid of any malafide intention. Further, no harm has been caused to any investor nor any loss has occurred due to their alleged non- disclosure as the details regarding the category of shareholding was disclosed in the disclosures filed under relevant Regulations with BSE.

Allegation - Incorrectly classified Ranjitgarh Finance Co. Private Limited ("RFCPL") as a public shareholder instead of "promoter and promoter group" in the shareholding pattern.

- f) Noticee submitted that RFCPL has been rightly classified as "public shareholder" w.r.t. its shareholding in their Company. RFCPL had been under management and control of Mr. Manan Narang (one of the promoters of our Company). However, Mr. Manan Narang or his wife Ms. Herika Narang, are not directors of Noticee and are not associated in any manner whatsoever with Noticee except Mr. Manan Narang being promoter of Noticee.
- g) Noticee submitted that Mr. Naveen Narang and Mr. Manan Narang are brothers and both of them were carrying business together till December, 2013. However, due to certain disputes between them, they separated their business and their offices. In order to fulfill the wishes of their aging parents, they were maintaining their shareholding in each other' companies and maintained their status quo with respect to shareholdings and status of their shareholding.
- h) It is pertinent to note that as there were certain irreconcilable disputes between them which led them to separate their businesses, neither of them held any role in management/control over the management of each other' company except shareholding in each other companies, which was necessitated due to their aging parents wishes.
- i) Noticee submitted that as Mr. Manan Narang is not associated with their Company and also with their Managing Director viz. Naveen Narang, he has requested Noticee to reclassify him from promoter to public. Further, the said request of Mr. Manan Narang was discussed in the Board Meeting held on 10th February, 2024 and necessary disclosure in this regard were duly filed with the BSE.

- j) Noticee submitted that Mr. Manan Narang has transferred his entire holding in Noticee to Ms. Sumitra Narang (his mother) by way of gift and as on date, Mr. Manan Narang is no longer a shareholder of Noticee. Relevant disclosure under PIT regulation, 2015 and SAST regulation, 2011 have already been filed with exchange.
- k) In view of the aforesaid, Noticee submitted that RFCPL is not a promoter of Noticee as they do not fall under the definition of Promoter as defined under Regulation 2 (1) (za) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 as RFCPL is neither having control over the Company nor is RFCPL instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public. Further, RFCPL is not named as Promoter in the offer document. Therefore, shareholding of RFCPL is correctly disclosed under the category of "Public Shareholder".

Allegation - Mr. Ashok Ahuja was incorrectly classified as an Independent Director by the Company and we have allegedly misled shareholders by classifying Mr. Ashok Ahuja as Independent.

- l) Noticee submitted that before Mr. Ashok Ahuja's appointment as Independent Director with Noticee, he was working with Noticee on part time basis. He was administrative work w.r.t. to registration of the property documents etc.
- m) Mr. Ashok Ahuja was appointed as Independent Director of the Company on 30.09.2015 for a period of 5 years. Thereafter, on completion of the initial term of 5 years, he was again appointed as Independent Director for a further period of 5 years. Mr. Ashok Ahuja resigned from the post of the Independent Director w.e.f. 29.05.2022.
- n) Noticee submitted that during his appointment and tenure as Independent Director with the Noticee, he had no pecuniary relation with the Company/Subsidiary Companies/Holding Company/ Associate Companies etc. Further, Mr. Ashok Ahuja was working on ad hoc basis with PPLHFL and was not a permanent employee with them.
- o) Noticee submitted that the provisions of Regulation 16(l)(b)(vi)(A) of LODR are not applicable to Mr. Ashok Ahuja, as the said Regulation is only applicable when the person to be appointed as Independent Director is in full time employment of the Listed entity or other entities as prescribed. Further, Noticee submitted that the intent behind the insertion of the said Regulation is to ensure that the person to be appointed as

Independent Director is not influenced by the decisions of the Board and the proposed appointee should have his own opinion, moreover if he is or was under the full time employment of the Listed entity or other entities as prescribed, the said relationship may prejudice his decision and he may or may not be able to give his independent advice to the Board. On the contrary, if the proposed appointee was not under the full time employment of the listed entity or other entities as prescribed, the said relationship will not have any bearing on his independence or will not come in the way of his discharging of duties as independent director. Therefore, Noticee submitted that they are not in violation of regulation 16(1)(b)(vi)(A).

- p) Noticee submitted that the Regulation 16(1) (b) (iv) of LODR Regulation was amended by way of modification and became applicable only from 01.01.2022 and Mr. Ashok Ahuja was appointed as an Independent Director w.e.f. 30.09.2015. Noticee submitted that the amount paid to Mr. Ashok Ahuja during the two year period before his appointment, does not disqualify him from being appointed as the Independent Director as it was well within the limit as applicable at that point in time.*
- q) Further, without prejudice to what is stated aforesaid, even if we consider the present Regulation 16(1)(b)(iv) of LODR Regulations, we have not violated the same. The said Regulation specifically states that the proposed Director should not have the material pecuniary relationship with the Company or its holding, subsidiary or associate Company or their promoters or Directors during the relevant period of 3 (Three) years. However, the term material pecuniary relationship is not defined under the said Regulations.*
- r) In this regard, we submit that being the amount so paid to Mr. Ashok Ahuja does not qualify as material pecuniary relationship with the Company. Further, the amount paid by PLHFL to Mr. Ashok Ahuja is also not substantial to be qualified as material pecuniary relationship.*
- s) Noticee submitted that MCA Circular dated 09.06.2014 bearing reference no. 14/2014 provides clarity on the pecuniary relationship w.r.t. Independent Directors. In view of the aforesaid circular, Noticee submitted that Mr. Ashok Ahuja was working on part-time basis with company and on ad-hoc basis with PPLHFL and the same was on arms length basis, therefore in terms of the aforesaid circular it can be ascertained that Mr. Ashok Ahuja does not have any pecuniary relationship with our Company. Therefore,*

no adverse inferences be drawn w.r.t. appointment of Mr. Ashok Ahuja as an Independent Director of Noticee. Further, he has been correctly appointed in various committees of our Company as an Independent Director.

t) Therefore, Noticee denied that they have violated eligibility conditions of Independent Director as specified in Clause 49(II)(B)(I)(e)(i) of the erstwhile listing agreement and Regulation 16(1)(b)(vi)(A) and 16(1)(b)(iv) of LODR Regulations.

u) Noticee referred to the cases of Reliance Industries Ltd. v SEBI (Appeal No. 39/2002), Akbar Badrudin Badrudin Jiwani vs Collector of customs Bombay AIR 1990 SC 1579, Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563),

18. Further, vide email dated February 20, 2024, Noticee requested for adjournment of hearing scheduled on February 21, 2024. Vide email dated February 21, 2024, the request for adjournment was acceded to and second opportunity of hearing was granted to Noticee on March 11, 2024.

19. The authorized representatives (**ARs**) of the Noticee attended the hearing on the schedule day. ARs reiterated the submission made vide reply dated February 15, 2024. Vide letter dated May 17, 2024 settlement division of SEBI informed about the rejection of settlement application of Noticee.

20. Vide email dated May 21, 2024, Noticee was informed that adjudication proceedings will be carried on and was advised to inform in case Noticee needs another opportunity of hearing, however, no reply was received from Noticee. Thereafter, vide email dated May 31, 2024, to adhere to the principle of natural justice another opportunity of hearing was provided to Noticee on June 07, 2024. Vide email dated June 03, 2024, Noticee sought adjournment of hearing scheduled on June 07, 2024, in view of the same, another opportunity of hearing was provided to Noticee on June 19, 2024. Vide email dated June 14, 2024, Noticee submitted the letter dated June 12, 2024 wherein Noticee reproduced the submissions already made vide reply dated February 15, 2024. ARs of the Noticee attended the hearing on June 19, 2024 and reiterated the submission made vide reply dated February 15, 2024 and June 12, 2024.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

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

ISSUE I: Whether Noticee has violated the following provision of securities law:

- a) Regulation 31(1) read with Regulation 4(1)(e) of the LODR Regulations.
- b) Clause 49 (II) (A) (2) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) and Regulation 17(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja's resignation w.e.f. May 29, 2022), Regulation 18(1)(d) of LODR Regulations, Clause 49 (III) (A) (1) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) read with regulation 103(2) of LODR regulations and Regulation 18(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja's resignation w.e.f. May 29, 2022), Regulation 19(1)(c) of LODR Regulations and Regulation 4(1)(c) of LODR Regulations.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15HB of SEBI Act and 23A(a) of the SCR Act?

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 and 23J of the SCR Act, 1956?

22. Before proceeding further, it will be appropriate to refer to the relevant provisions:

LODR Regulation, 2015

Regulation 31- Holding of specified securities and shareholding pattern.

(1) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –

(a) one day prior to listing of its securities on the stock exchange(s);

(b) on a quarterly basis, within twenty one days from the end of each quarter; and,

(c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:

Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year.

Clause 49 (II) (A) (2) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014

Clause 49 - Corporate Governance

II. Board of Directors

A. Composition of Board

2. Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and in case the company does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors. Provided that where the regular non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

III – Audit Committee

A. Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.

Regulation 17(1)(b) of LODR Regulations

17. Board of Directors.

(1) The composition of board of directors of the listed entity shall be as follows:

(b) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.-For the purpose of this clause, the expression "related to any promoter" shall have the following meaning:

(i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;

(ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

Regulation 18- Audit Committee.

(1) Every listed entity shall constitute a qualified and independent audit committee in

accordance with the terms of reference, subject to the following:

(b) [At least] two-thirds of the members of audit committee shall be independent directors [and in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors].

(d) The chairperson of the audit committee shall be an independent director and he [she] shall be present at Annual general meeting to answer shareholder queries.

Regulation 103- Repeal and savings-

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the

commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

Regulation 19 - Nomination and remuneration committee.

(1) The board of directors shall constitute the nomination and remuneration committee as follows:-

(c) at least [two-thirds]of the directors shall be independent directors

Regulation 4 - Principles governing disclosures and obligations.

(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:

(c)The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(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.

FINDINGS

23. I have gone through the submissions made by the Noticee and the other material on record and I now proceed to deal with the same. Before proceeding with the matter on merits, I first deal with the preliminary submission of the Noticee that there has been an unexplained inordinate delay in issuance of SCN, proceedings did not initiate within reasonable time, and this inordinate delay has severely prejudiced the noticee. In this regard, I note that the Investigation as regards the violation Securities Law is an exhaustive, time consuming process, which may require detailed analysis of the case facts. I further note that the case was initiated in May 2022. The examination in the matter was concluded in September 2023 and thereafter adjudication proceedings were approved on October 20, 2023. The undersigned was appointed Adjudicating Officer in the matter on December 26, 2023 and the SCN was issued in January 04, 2024. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act or Regulations which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

24. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (decided on February 28, 2019) in which it was held that:

“There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc.”

25. I also place reliance on the judgement of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Girraj Kumar Gupta HUF (Appeal No. 424/ 2019) dated August 11, 2021, wherein Hon'ble SAT held that, *“We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in the October, 2017 and accordingly we find that there is no inordinate delay in the initiation of the proceedings. The contention raised is, thus, erroneous and cannot be accepted.”*

26. In view of the aforesaid and placing reliance on the aforesaid judgments, I find that SCNs in the present proceeding have been issued within a reasonable period of time and there has been no delay in issuance of SCN. I note that in the case of Bharat J Patel & Others vs. SEBI, decided vide order dated September 8, 2020, the Hon'ble SAT ('Hon'ble Securities Appellate Tribunal') had emphatically iterated that “whether delay has caused prejudice to the parties would depend on the facts of each case.” I note that the Noticee have merely stated that prejudice has been caused to them due to the alleged delay. However, the Noticee has failed to demonstrate what prejudice has been caused to them. Hence the contention of the Noticee is not tenable.

27. I now proceed to deal with the merits of the case in respect of the alleged contraventions by the Noticee.

ISSUE I: Whether Noticee has violated the following provision of securities law:

a) Regulation 31(1) read with Regulation 4(1)(e) of the LODR Regulations.

i. Alleged incorrect classification of PLHFL in shareholding pattern for quarter December 2018 and March 2019

28. During examination, it was observed that the PLHFL acquired 8700 shares of Noticee in quarter ending December 2018 and 2,36,469 in quarter ending in March 2019. The details of the same is given in the following table:

Name of the Acquirer	Date of acquisition	No. of Shares acquired by PLHFL
PLHFL	29.11.2018	200
PLHFL	30.11.2018	5500
PLHFL	03.12.2018	3000
PLHFL	14.01.2019	5000
PLHFL	15.01.2019	5000
PLHFL	16.01.2019	5000
PLHFL	22.01.2019	12000
PLHFL	25.01.2019	7000
PLHFL	07.02.2019	1000
PLHFL	08.02.2019	5000
PLHFL	12.02.2019	11000
PLHFL	14.02.2019	5000
PLHFL	15.02.2019	14000
PLHFL	18.02.2019	10000
PLHFL	19.02.2019	15000
PLHFL	20.02.2019	10000
PLHFL	22.02.2019	8519
PLHFL	25.02.2019	11000
PLHFL	26.02.2019	12000
PLHFL	27.02.2019	24950
PLHFL	01.03.2019	10000
PLHFL	05.03.2019	15000
PLHFL	06.03.2019	15000
PLHFL	07.03.2019	15000
PLHFL	19.03.2019	20000
Total		245169

29. It was also observed during examination, that the shareholding of Sumitra Narang (Promoter of Noticee) as on March 31, 2018 in PLHFL was 21.42% (i.e. shareholding of Sumitra Narang in PLHFL as on March 31, 2018 was 12,27,800 and total shares issued by PLHFL as on March 31, 2018 was 57,25,750). Since Sumitra Narang holds more than

20% shareholding of PLHFL, it was observed that PLHFL falls under the category of “promoter group” in terms of ICDR Regulations.

30. However, in the shareholding pattern for the quarters of December 2018 and March 2019 filed by the Noticee with BSE, the shareholding of PLHFL was not reflected under the category of “promoter & promoter group”. Therefore, it was alleged in the SCN that the Noticee has incorrectly disclosed the shareholding pattern for the quarters of December 2018 and March 2019 and is in alleged violation of Regulation 31(1) read with Regulation 4(1)(e) of the LODR Regulations.

31. Noticee in its reply to the SCN submitted that all disclosures under PIT regulations, 2015 and SAST regulations, 2011 w.r.t. shareholding of PLHFL is filed under "Promoter and Promoter Group" category. Therefore, the public at large knew that PLHFL was a promoter group company and that PLHFL had acquired shares in the Noticee.

32. I note that regulation 31(1) r/w regulation 4(1)(e) of the LODR regulation provides that the listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board within the timelines as specified and it shall ensure that the dissemination made are adequate, accurate, explicit, timely and presented in a simple language.

33. I note from the material available before me that Ms. Sumitra Narang is the promoter of the Noticee and is holding 12,27,800 shares of PLHFL out of total 57,25,750 shares issued by PLHFL which is 21.4% shareholding of PLHFL (i.e. more than 20%). As per regulation 2(1)(pp) of the ICDR regulation, 2018 promoter group includes body corporate in which the promoter holds 20% or more of the equity share capital, therefore, as Ms. Sumitra Narang is the promoter of the Noticee and is holding more than 20% shares of the PLHFL, I observe that PLHFL is the promoter of the Noticee.

34. I note from the material available before me that in the shareholding pattern filed by the Noticee with BSE for the quarter ending December 2018 and March 2019, PLHFL was not reflected under the category “promoter and promoter group”, however, I note from the BSE website that the disclosure filed by the Noticee under SAST regulation, 2011 and PIT regulation 2015, for the acquisitions made by the PLHFL from November 2018 to March 2019, PLHFL is reflected under the category of promoter / promoter group. In view of the above, it does not appear that there was any intent on the part of the Noticee to not disclose PLHFL as its promoter/promoter group for the quarter ending December 2018 and March

2019 as this information was already in public domain and from the June 2019 quarter onwards PLHFL was reflected under category promoter/promoter group in its shareholding pattern.

35. Therefore, I observe that with regard to incorrect disclosure of shareholding pattern for the quarters of December 2018 and March 2019 there is a violation of regulation 31(1) r/w regulation 4(1)(e) of the LODR regulation. However the aforesaid violation is unintentional, technical and venial in nature. I am therefore inclined to hold that a penalty for the aforesaid violation may not be justified.

ii. Alleged incorrect classification of RFCL as public shareholder

36. During examination it was observed that as on June 30, 2023 RFCL was holding 6.07% shares of the Noticee and RFCL has been classified as a public shareholder of Noticee.

37. It was also observed during examination that Manan Narang is classified as the promoter of Noticee and Sumitra Narang is the mother of Manan Narang and promoter of Noticee and Herika Narang is the wife of Manan Narang and promoter of Noticee and they collectively hold approximately 21.80% of the shareholding of RFCL.

38. In view of the above, it was alleged in the SCN that the Noticee has incorrectly classified RFCL as a public shareholder instead of “promoter & promoter group” in the shareholding pattern, resulting in alleged incorrect disclosures to shareholders and alleged violation of Regulation 31(1) read with Regulation 4(1)(e) of the LODR Regulations.

39. Noticee in its reply to the SCN submitted that Mr. Manan Narang was the promoter of Noticee, however, Mr. Manan Narang is no longer a shareholder of Noticee and therefore RFCPL is not a promoter of the Noticee.

40. I note that regulation 31(1) r/w regulation 4(1)(e) of the LODR regulation provides that the listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the timelines as specified and it shall ensure that the dissemination made are adequate, accurate, explicit, timely and presented in a simple language.

41. Further, as per regulation 2(1)(pp) of the ICDR regulation, 2018, “promoter group” includes any body corporate in which 20% or more of the equity share capital is held by the promoter

or an immediate relative of the promoter. Further, parents and spouse are included in the definition of immediate relative.

42. I note from the material available before me that Mr. Manan Narang is the promoter of the Noticee, Ms. Sumitra Narang (promoter of Noticee) is the mother of Mr. Manan Narang and Ms. Herika Narang (also promoter of Noticee) is the wife of Mr. Manan Narang. Total shareholding of Ms. Sumitra Narang and Ms. Herika Narang (immediate relatives of Mr. Manan Narang) as on March 31st March, 2022 in RFCL was approx. 21.80% shares i.e. more than 20%. Further, I note from the BSE website that as on March 2022, RFCL was holding 6.07% shares of the Noticee. I observe that as per regulation 2(1)(pp) of the ICDR regulation, 2018 the RFCL should have been classified under the category of “promoter and promoter group” in the shareholding pattern of the Noticee. However RFCL was classified in the public shareholder category.

43. In view of the above, I observe that the Noticee has incorrectly classified RFCL as a public shareholder instead of “promoter & promoter group” in the shareholding pattern, thereby Noticee made incorrect disclosures to shareholders and violated Regulation 31(1) read with Regulation 4(1)(e) of the LODR Regulations.

b) Clause 49 (II) (A) (2) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) and Regulation 17(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja’s resignation w.e.f. May 29, 2022), Regulation 18(1)(d) of LODR Regulations, Clause 49 (III) (A) (1) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) read with regulation 103(2) of LODR regulations and Regulation 18(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja’s resignation w.e.f. May 29, 2022), Regulation 19(1)(c) of LODR Regulations and Regulation 4(1)(c) of LODR Regulations.

44. During examination it was observed that Mr. Ashok Ahuja was employed by Noticee on a part-time basis since April 01, 2009 and was receiving remuneration to the extent of approximately INR 22,000/- a month till August 31, 2015. From the next day onwards i.e. from September 01, 2015, Mr. Ashok Ahuja was working part-time with PLHFL and PLHFL has common promoters with Noticee and PLHFL was also disclosed under the category of “promoter & promoter group” of Noticee in the annual report of FY 2018-19 onwards. Mr. Ashok Ahuja was then appointed as Independent Director (ID) of Noticee (w.e.f. September

30, 2015) for a period of 5 years, while being employed with PLHFL. He was again re-appointed w.e.f. September 29, 2020 for another period of 5 years. However, he ceased to be a directors of the Noticee with effect from May 29, 2022.

45. Further it was also observed during examination that Mr. Ashok Ahuja was appointed as a director of Shree Ambe Rubbers Pvt. Ltd in September 2015 and Satish Narang, Naveen Narang and Manan Narang (promoters of Noticee) are the shareholders of Shree Ambe Rubbers Pvt. Ltd. Thus, it was alleged in the SCN that Mr. Ashok Ahuja was incorrectly classified as an Independent Director by Noticee

46. As Mr. Ashok Ahuja was incorrectly classified as an Independent Director by Noticee therefore, it was alleged in the SCN that the independence requirement of following boards and committees were not fulfilled:-

- a) Independence requirements of Board {w.e.f. September 30, 2015 till the resignation of Mr. Ashok Ahuja w.e.f. May 29, 2022} was allegedly not fulfilled, therefore, it was alleged that Noticee violated Clause 49 (II) (A) (2) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) and Regulation 17(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja's resignation w.e.f. May 29, 2022)
- b) Mr. Ashok Ahuja became the Chairperson of audit committee of the Noticee w.e.f. May 27, 2017 till the time of his resignation w.e.f. May 29, 2022, therefore, it was alleged that Noticee violated Regulation 18(1)(d) of LODR Regulations.
- c) Independence requirements of Audit Committee (w.e.f. September 30, 2015 till the resignation of Mr. Ashok Ahuja w.e.f. May 29, 2022) was allegedly not fulfilled therefore, it was alleged that Noticee violated Clause 49 (III) (A) (1) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) read with regulation 103(2) of LODR regulations and Regulation 18(1)(b) of LODR Regulations (from December 01, 2015 till Mr. Ahuja's resignation w.e.f. May 29, 2022).
- d) Independence requirements of nomination and remuneration committee w.e.f. May 27, 2017 till the time of Mr. Ahuja's resignation w.e.f. May 29, 2022, was not fulfilled, therefore, it was alleged that Noticee violated Regulation 19(1)(c) of LODR Regulations.

- e) Noticee allegedly made misleading statements in its annual reports / CG reports that half of the Board is independent and it meets the composition requirements of the Audit Committee in terms of the LODR Regulations. Therefore, it was alleged that Noticee violated Regulation 4(1)(c) of LODR Regulations.

47. It may be noted that listing agreement issued vide SEBI circular dated CIR/CFD/POLICYCELL/2/2014 dated April 17, 2014 was in force till November 30, 2015 and thereafter LODR regulations came in force with effect from December 01, 2015.

48. Noticee in its reply to the SCN submitted that Mr. Ashok Ahuja had no material pecuniary relationship with the Noticee and was working on the part time basis with the Noticee.

49. I note that Mr. Ashok Ahuja was appointed as the independent director of the Noticee w.e.f September 2015 and as per the Annual reports of the Noticee filed from FY 2015-16 till FY 2021-22 and the Corporate Governance (CG) report for the quarter of June 2022 (Mr. Ashok Ahuja resigned in May 2022), was on the Board of different Committees detail composition of which are as given below:

Table 1

FY	Directors on Board	Composition - AC	Composition – NRC**	Composition - SRC
2015-16	1. Satish Chander Narang, Promoter, Non-Executive Chairman 2. Naveen Narang, Promoter, MD 3. Mansi Narang, Promoter, NED 4. Dinesh Kumar, ID 5. Mukul Dhamija, ID 6. Rakesh Pahwa, ID (resigned w.e.f. August 16, 2015) 7. Ashok Ahuja w.e.f. September 30, 2015	Dinesh Kumar, Chair Mukul Dhamija Naveen Narang Rakesh Pahwa (resigned w.e.f. August 16, 2015) Ashok Ahuja w.e.f. September 30, 2015	Mukul Dhamija, Chair Satish Narang Dinesh Kumar Rakesh Pahwa (resigned w.e.f. August 16, 2015) Ashok Ahuja w.e.f. September 30, 2015	Satish Narang, Chair Dinesh Kumar Mukul Dhamija Rakesh Pahwa (resigned w.e.f. August 16, 2015) Ashok Ahuja w.e.f. September 30, 2015
2016-17	1. Satish Chander Narang 2. Naveen Narang 3. Mansi Narang 4. Dinesh Kumar 5. Mukul Dhamija 6. Ashok Ahuja	Dinesh Kumar, Chair Ashok Ahuja Mukul Dhamija Naveen Narang	Mukul Dhamija, Chair Dinesh Kumar Ashok Ahuja Satish Narang	Satish Narang, Chair Mukul Dhamija Ashok Ahuja Dinesh Kumar
2017-18	1. Satish Chander Narang 2. Naveen Narang 3. Mansi Narang	Ashok Ahuja, (Chair w.e.f. May 27, 2017) Mukul Dhamija	Mukul Dhamija, Chair Ashok Ahuja Satish Narang	Mansi Narang, Chair w.e.f. May 27, 2017 Mukul Dhamija

FY	Directors on Board	Composition - AC	Composition – NRC**	Composition - SRC
	4. Dinesh Kumar 5. Mukul Dhamija 6. Ashok Ahuja	Naveen Narang Dinesh Kumar (ceased to be Chair and member w.e.f. May 27, 2017)	Dinesh Kumar (ceased to be member w.e.f. May 27, 2017)	Ashok Ahuja Satish Narang (ceased to be Chair and member w.e.f. May 27, 2017) Dinesh Kumar (ceased to be member w.e.f. May 27, 2017)
2018 - 19	1. Satish Chander Narang 2. Naveen Narang 3. Mansi Narang 4. Kartar Chand Ahuja, ID w.e.f. Mar. 28, 2019 5. Jawahar Lal, ID w.e.f. Apr. 16, 2018 6. Dinesh Kumar, ID (resigned w.e.f. Sept. 24, 2018) 7. Mukul Dhamija, ID (resigned w.e.f. Mar. 28, 2019) 8. Ashok Ahuja	Ashok Ahuja, Chair Mukul Dhamija (replaced with Jawahar Lal post resignation) Naveen Narang	Mukul Dhamija, Chair (replaced with Jawahar Lal post resignation) Ashok Ahuja Satish Narang	Mansi Narang, Chair Ashok Ahuja Mukul Dhamija (replaced with Jawahar Lal post resignation)
2019 - 20	1. Satish Chander Narang 2. Naveen Narang 3. Mansi Narang 4. Kartar Chand Ahuja 5. Ashok Ahuja 6. Jawahar Lal	Ashok Ahuja, Chair Naveen Narang Jawahar Lal	Jawahar Lal, Chair Satish Narang Ashok Ahuja	Mansi Narang, Chair Ashok Ahuja Jawahar Lal
2020 – 21	1. Satish Chander Narang 2. Naveen Narang 3. Mansi Narang 4. Jawahar Lal 5. Kartar Chand Ahuja (ceased to be director w.e.f. Sept. 27, 2020 due to demise) 6. Gourav, ID w.e.f. Dec. 24, 2020 7. Ashok Ahuja	Ashok Ahuja, Chair Naveen Narang Jawahar Lal	Jawahar Lal, Chair Satish Narang Ashok Ahuja	Mansi Narang, Chair Ashok Ahuja Jawahar Lal
2021 - 22	1. Satish Chander Narang 2. Naveen Narang 3. Mansi Narang 4. Jawahar Lal, ID till Nov. 14, 2021 5. Gourav, ID 6. Jaiveer Singh, ID (from Sept. 04 till Sept. 29, 2021)	Ashok Ahuja, Chair Jawahar Lal till Nov. 14, 2021 Gourav w.e.f. Nov. 14, 2021 Naveen Narang	Jawahar Lal, Chair till Nov. 14, 2021 Gourav, Chair w.e.f. Nov. 14, 2021 Ashok Ahuja Satish Narang	Mansi Narang, Chair Ashok Ahuja Jawahar Lal, till Nov. 14, 2021 Gourav, w.e.f. Nov. 14, 2021

FY	Directors on Board	Composition - AC	Composition – NRC**	Composition - SRC
	7. Shubham Mittal, ID w.e.f. Nov. 14, 2021 8. Ashok Ahuja			
2022 – 23*	1. Satish Chander Narang 2. Naveen Narang 3. Mansi Narang 4. Gourav, ID 5. Shubham Mittal, ID 6. Ashok Ahuja till May 29, 2022 7. Naresh Kumar Mansharamani, ID w.e.f. May 29, 2022	Ashok Ahuja, Chair till May 29, 2022 Gourav, Chair w.e.f. May 29, 2022 Naveen Narang Shubham Mittal, member w.e.f. May 29, 2022	Shubham Mittal, Chair and member w.e.f. May 29, 2022 Gourav Ashok Ahuja till May 29, 2022 Satish Narang	Mansi Narang, Chair Ashok Ahuja till May 29, 2022 Gourav Shubham Mittal, member w.e.f. May 29, 2022

*As per CG report for quarter ended June 2022

** Nomination and Remuneration Committee (NRC)

50. As per Clause 49(II)(B)(1)(e)(i) of the erstwhile listing agreement and Regulation 16(1)(b)(vi)(A) and 16(1)(b)(iv) of LODR Regulations, the eligibility condition of the person to be appointed as an independent director are as follows-

- a) Employee of a listed entity (in the past 3 years) should not be appointed as an Independent Director.
- b) Apart from director's remuneration, there should not be any material pecuniary relationship with the listed entity, or with its promoters.

51. I note from the material available before me that Mr. Ashok Ahuja was employed by Noticee on a part-time basis since April 01, 2009 and was receiving remuneration to the extent of approximately INR 22,000/- a month till August 31, 2015. He was engaged in administrative work of Noticee, relating to vetting of documents of properties purchased / sold by the Noticee and was responsible for carrying out the registration of properties. Thereafter, Mr. Ashok Ahuja was appointed as an Independent Director (ID) of Noticee (w.e.f. September 30, 2015) for a period of 5 years. He was again re-appointed w.e.f. September 29, 2020 for another period of 5 years. He ceased to be an Independent director of the Noticee with effect from May 29, 2022.

52. I further note that from September 01, 2015 till March 31st 2021, Noticee was working part-time with PLHFL. From the extract of the annual return filed by PLHFL with MCA for FY 2014-15, I also note that PLHFL has common promoters with Noticee (namely Satish Chander Narang, Sumitra Narang, Manan Narang, Nidhi Narang, Naveen Narang)

additionally Satish Chander Narang was whole time director of PLHFL. Further PLHFL was also disclosed under the category of “promoter & promoter group” of Noticee in the annual report of FY 2018-19 onwards. Noticee in its reply to the SCN submitted that provisions of regulation 16(1)(b)(vi)(A) of LODR regulations are not applicable to Mr. Ashok Ahuja, as the said regulation is applicable only to the full time employment. The submission of the Noticee is devoid of any merits as the Regulation does not provide that it is applicable only to full time employment. Further it may be noted that Independent Directors are those directors who do not have a pecuniary relationship with the company, its promoters/promoter group companies, management or its subsidiaries, which may affect the independence of their judgment. In the instant case I observe that Mr. Ashok Ahuja was an employee of the Noticee in the last three years before his appointment as its independent director and had a pecuniary relationship with PLHFL (promoter of Noticee from November 2018 onwards) and was thus not qualified to be appointed as the Independent Director in terms of Clause 49(II)(B)(1)(e)(i) of the erstwhile listing agreement and Regulation 16(1)(b)(vi)(A) and 16(1)(b)(iv) of LODR Regulations. Therefore, Mr. Ashok Ahuja was incorrectly classified as its Independent Director by the Noticee.

53. As per proviso to Clause 49 (II) (A) (2) of the erstwhile listing agreement and Regulation 17(1)(b) of LODR Regulations, if the non-executive Chairman of the company is a promoter of the company then at least one-half of the Board of the company shall consist of independent directors. As observed in the table 1 above, Mr. Satish Chander Narang is the Non-executive chairman of the board of the Noticee as well as the promoter of the Noticee. Therefore, at least one-half of the Board of the Noticee shall consist of independent directors and in the instant case it should have been 3 Independent Directors. Mr. Ashok Ahuja was appointed as an Independent Director of Noticee w.e.f. September 30, 2015. As observed that Mr. Ashok Ahuja was incorrectly classified as an Independent Director by the Noticee, therefore, the Independence requirements of Board {w.e.f. September 30, 2015 till the resignation of Mr. Ashok Ahuja w.e.f. May 29, 2022 (refer table 2 below)} was not fulfilled as the number of independent director stands at 2. Therefore, I observe that Noticee violated Clause 49 (II) (A) (2) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) and Regulation 17(1)(b) of LODR Regulations (w.e.f. December 01, 2015).

54. Given that Mr. Ashok Ahuja was not qualified to be independent Director I would now analyze whether the Board Composition of the other Committees was as per the extant law.

Table 2

FY	Whether at least half of the Board is independent	Whether two-thirds of AC is independent	Whether Chair of AC and NRC is independent	Whether at least half (2/3rd w.e.f. Jan 01, 2022) of NRC is independent	Whether SRC has at least one ID (w.e.f. April 2019)
2015 – 16*	No <i>Total directors – 6 IDs - 2</i>	No <i>Total member – 4 IDs - 2</i>	AC – Yes NRC – Yes	Yes	
2016 – 17	No <i>Total directors – 6 IDs - 2</i>	No <i>Total member – 4 IDs - 2</i>	AC – Yes NRC – Yes	Yes	
2017 – 18	No <i>Total directors – 6 IDs - 2</i>	No <i>Total member – 3 (4 till May 27, 2017) IDs – 1 (2 till May 27, 2017)</i>	AC – No (w.e.f. May 27, 2017) NRC – Yes	No (w.e.f. May 27, 2017) <i>Total member – 3 IDs - 1</i>	
2018 – 19	Till Apr 15 – No <i>Total directors – 6 IDs – 2</i>	No <i>Total member – 3 IDs - 1</i>	AC – No NRC – Yes	No <i>Total member – 3 IDs – 1</i>	
	Apr 16 till Sept 24 – No <i>Total directors – 7 IDs – 3</i>				
	Sept 25, 2018 onwards - No <i>Total directors – 6 IDs – 2</i>				
2019 – 20	No <i>Total directors – 6 IDs – 2</i>	No <i>Total member – 3 IDs - 1</i>	AC – No NRC – Yes	No <i>Total member – 3 IDs – 1</i>	Yes
2020 – 21	No <i>Total directors – 6 IDs – 2</i>	No <i>Total member – 3 IDs - 1</i>	AC – No NRC – Yes	No <i>Total member – 3 IDs – 1</i>	Yes
2021 – 22	No <i>Total directors – 6 IDs – 2</i>	No <i>Total member – 3 IDs - 1</i>	AC – No NRC – Yes	No <i>Total member – 3 IDs - 1</i>	Yes
2022 – 23**	No <i>Total directors – 6 IDs – 2</i>	No <i>Total member – 3 IDs - 1</i>	AC – No NRC – Yes	No <i>Total member – 3 IDs - 1</i>	Yes

*W.e.f. September 30, 2015, when Ashok Ahuja was appointed as ID

****Till May 29, 2022 when Ashok Ahuja resigned**

- a) As per regulation 18(1)(d) of LODR regulations, the chairperson of the audit committee shall be an independent director. As observed that Mr. Ashok Ahuja was incorrectly classified as an Independent Director by the Noticee, and Mr. Ashok Ahuja became the Chairperson of audit committee of the Noticee w.e.f. May 27, 2017 till the time of his resignation w.e.f. May 29, 2022. As Mr. Ashok Ahuja was not qualified as independent director, the audit committee did not have independent director as its chairperson. Therefore, I observe that Noticee violated Regulation 18(1)(d) of LODR Regulations.
- b) I note that as per proviso to Clause 49 (III) (A) (1) of the erstwhile listing agreement and Regulation 18(1)(b) of LODR Regulations two-thirds of the members of audit committee shall be independent directors. As Mr. Ashok Ahuja was incorrectly classified as an Independent Director by the Noticee. Therefore, as observed at table 2 above, two third members of Audit committee was not independent directors, therefore the independence requirements of Audit Committee w.e.f. September 30, 2015 was not fulfilled as the number was falling below the requisite number of 3 till 2016-17 and 2 from 2017-18. Therefore, I observe that Noticee violated Clause 49 (III) (A) (1) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) read with regulation 103(2) of LODR regulations and Regulation 18(1)(b) of LODR Regulations (w.e.f. December 01, 2015)
- c) As per regulation 19(1)(c) of LODR regulations, at least two-thirds of the directors of nomination and remuneration committee shall be independent directors. In the instant case, the number of independent directors should have been 2. However, as Mr. Ashok Ahuja was incorrectly classified as an Independent Director by the Noticee, the number of independent director stood at 1. Hence the independence requirements of nomination and remuneration committee w.e.f. May 27, 2017, was not fulfilled. Therefore, I observe that Noticee violated Regulation 19(1)(c) of LODR Regulations.
- d) As per regulation 4(1)(c) of LODR regulations, the listed entity shall refrain from misrepresentation and ensure that the information provided to stock exchange(s) and investors is not misleading. However, I note that due to the violations as established above at para 53, 54(a), 54(b) and 54(c) arising from the wrong classification of Mr. Ahuja as independent, the statements and affirmations made by the Noticee in its annual reports / CG reports that half of the Board is independent are incorrect. Further,

the affirmations in the quarterly Corporate Governance reports that the Noticee meets the composition requirements of the Audit Committee are incorrect. Similarly, the affirmations w.r.t composition of NRC (CG report for quarter ended June 2017 till Mar. 2022) being in terms of the LODR Regulations, is incorrect. Therefore, I observe that the Noticee violated Regulation 4(1)(c) of LODR Regulations.

55. In view of the above, I observe that Noticee has violated Clause 49 (II) (A) (2) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) and Regulation 17(1)(b) of LODR Regulations (w.e.f. December 01, 2015), Regulation 18(1)(d) of LODR Regulations, Clause 49 (III) (A) (1) of the erstwhile listing agreement issued vide SEBI Circular dated CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (for the period September 30, 2015 till November 30, 2015) read with regulation 103(2) of LODR regulations and Regulation 18(1)(b) of LODR Regulations (w.e.f. December 01, 2015), Regulation 19(1)(c) of LODR Regulations and Regulation 4(1)(c) of LODR Regulations.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15HB of SEBI Act and 23(A)(a) of the SCR Act, 1956?

56. In view of the violations as established above, I would refer to Judgment of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}, in which Hon'ble Supreme Court has 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....."

57. Thus, I am of the view that it is a fit case for penalty under section 15HB of the SEBI Act, and 23(A)(a) of the SCR Act, 1956 which reads as given below:

Section 15HB – Penalty for contravention where no separate penalty has been provided.

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

23A- Any person, who is required under this Act or any rules made thereunder,—

(a) to furnish any information, document, books, returns or [report to the recognised stock exchange or to the Board, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder, or who furnishes] [*** false, incorrect or incomplete information, document, books, return or report], shall be liable to a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees] for each such failure;

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act and 23J of the SCR Act, 1956?

58. While determining the quantum of penalty under sections 15HB of the SEBI Act and 23(A)(a) of the SCR Act, 1956, it is important to consider the factors stipulated in section 15J of SEBI Act and 23J of the SCR Act, 1956, which reads as under:-

SEBI Act, 1992

15J - Factors to be taken into account while adjudging quantum of penalty.

While adjudging quantum of penalty under section 15-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.”

SCR Act, 1956

23J - Factors to be taken into account while adjudging quantum of penalty:

While adjudging the 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.

59. With regard to disclosures Hon'ble SAT in the case of M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014), has 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.”

Hon'ble SAT, in the aforesaid order, has articulated the importance of true and timely disclosures.

60. In view of the charges as established, the facts and circumstances of the case and the judgment referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and 23J of the SCR Act, 1956 as stated above. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee nor has been alleged by SEBI. 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. In my opinion in a disclosure based regime the essence is about correct and timely disclosures which, if compromised with, may pose threat to orderly functioning of the securities markets and /or loss of investor confidence in the integrity of the securities market. With regard to requirement of independent director, it is pertinent to note that the independent directors are responsible for ensuring better governance by actively involving in various committees set up the company. I also observe that the purpose of mandating minimum number of independent directors is to improve ethical behaviour, corporate governance and business practices of the company which in turn may increase the shareholders value and trust. However, I find that the Noticee failed to adhere to the best practices of corporate governance as a listed entity. It is observed from the records that the Noticee has not been penalized by SEBI in the past.

ORDER

61. Having considered the facts and circumstances of the case, the material available on record, the submissions made by the Noticee, the factors mentioned in Section 15J of the SEBI Act and 23J of the SCR Act, 1956, and also taking into account judgment of the Hon'ble Supreme Court in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, and Section 23-I of the SCR Act read with Rule 5 of SCR Rules I hereby impose following penalty under Section 23(A)(a) of the SCR Act, 1956 and Section 15HB of the SEBI Act, 1992 on the Noticee:

S. No.	Name of entity	Penalty Provisions	Penalty (Rs.)
1	Maxheights Infrastructure Limited	Section 23(A)(a) of the SCR Act, 1956	2,00,000/- (Rupees Two Lakh Only)
		Section 15HB of the SEBI Act, 1992	7,00,000/- (Rupees Seven Lakh Only)
		Total	9,00,000/- (Rupees Nine Lakh Only)

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

63. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

64. 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 and 23JB of SCR Act, 1956 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Place: Mumbai

Date: June 25, 2024

BARNALI MUKHERJEE
ADJUDICATING OFFICER