**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. Order/AN/PR/2023-24/29521-29523]

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

In respect of:

| S. No. | Name of the Noticee | PAN |
|---|---|---|
| 1 | Pravin Shivdas Herlekar | AAAPH2923H |
| 2 | Rishikesh Pravin Herlekar | AEHPH1905G |
| 3 | Vaman Ganapati Acharya | AGGPA8960R |

**In the matter of Omkar Speciality Chemicals Limited**

## A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') initiated Adjudication Proceedings under section 15HA and 15HB of the SEBI Act, 1992 (hereinafter also referred to as "**SEBI Act**") in respect of Omkar Speciality Chemicals Limited (hereinafter also referred as "**Noticee 1/OSCL/the company**"), Pravin Shivdas Herlekar (hereinafter also referred as "**Noticee 2**"), Rishikesh Pravin Herlekar (hereinafter referred as **"Noticee 3**"), Vaman Ganapati Acharya (hereinafter also referred as "**Noticee 4")** for the alleged violations of the following provisions of law:

   1.1. **Noticee 1:** Sections 12A (b), (c) of the SEBI Act read with Regulations 3 (c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 {hereinafter also referred as **"PFUTP Regulations"**} and Regulations 4(1)(a), 4(1)(b), 23(4), 33(1), 34(3), 48 of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 {hereinafter also referred as **"LODR Regulations**"}.

1.2. **Noticee 2:** Sections 12A (b), (c) of the SEBI Act read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the PFUTP Regulations; Regulations 17(8), 33(2)(a) of LODR Regulations read with Section 27 of SEBI Act; Regulation 4(2)(f) of the LODR Regulations read with Section 27 of SEBI Act ; Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the LODR Regulations read with Section 27 of SEBI Act.

1.3. **Noticee 3**: Sections 12A (b), (c) of the SEBI Act read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the PFUTP Regulations; Regulations 17(8), 33(2)(a) of LODR Regulations read with Section 27 of SEBI Act, 1992; Regulation 4(2)(f) of the LODR Regulations read with Section 27 of SEBI Act.

1.4. **Noticee 4:** Sections 12A (b), (c) of the SEBI Act read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the PFUTP Regulations; Regulations 17(8), 33(2)(a) of the LODR Regulations read with Section 27 of SEBI Act.

*(Noticee 2, Noticee 3 and Noticee 4 collectively also referred to as "Noticees", unless the context specifies otherwise)*

## B. APPOINTMENT OF ADJUDICATING OFFICER

2. Whereas, the Competent Authority of SEBI, was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticees, the Competent Authority of SEBI, therefore, in exercise of the powers conferred upon him under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rule, 1995 (hereinafter also referred to as "**SEBI Adjudication Rules**") read with Section 19 of the SEBI Act, 1992, appointed the undersigned as Adjudicating Officer (hereinafter referred as "AO") vide communique dated November 02, 2022, to inquire into and adjudicate under Sections 15HA and 15HB of the SEBI Act, the aforesaid alleged violation against the Noticees.

## C. SHOW CAUSE NOTICE, REPLY and HEARING

3. A common Show Cause Notice bearing No. SEBI/HO/EAD/EAD5/P/OW/2022/ 64912 /1-7 dated December 30, 2022 (hereinafter also referred to as "SCN") was served upon the Noticees in terms of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 to show cause as to why penalty should not be imposed under Sections 15HA and 15HB of the SEBI Act, for the alleged violations.

4. The allegations inter alia brought out in the SCN are as under:

"….

***4.1. Noticee-1: Omkar Speciality Chemicals Limited (OSCL)***

*………*

***4.1.1. Non-disclosure of related party transactions (RPTs)***

*Information was sought from the company vide summons dated September 05 and 16, 2022 regarding reason/rationale for not showing inter alia, Delicare Lifesciences Private Limited as related party in annual accounts of the company for the FY 2018-19, 2019-20 and 2020-21.*

*Company vide its letter dated September 19, 2022 (placed at **Annexure-B**) had inter-alia submitted the following:*

> *"……………*
>
> *they had inadvertently not added Delicare as related party in the annual report, but have taken omnibus approval of the same in the Audit Committee and Board meeting held in 05.02.2018 for the said transaction.*
>
> *……………."*

*<u>Summary of transactions of OSCL with Delicare Lifesciences Private Limited ('Delicare')</u>*

*The details of transactions between OSCL and Delicare as per the submission made by company vide its letter dated September 19, 2022 (**Annexure-B**) during the investigation period are as under:*

**Rs. in crores**

| **Particulars** | **2018-19** | **2019-20** | **2020-21** |
|---|---|---|---|
| Total sales made to Delicare | 17.41 | 49.88 | 12.41 |
| Total purchases made from Delicare | 11.98 | 45.62 | 6.69 |
| Total Revenue of OSCL | 42.65 | 56.88 | 45.13 |
| Total purchases of OSCL | 24.85 | 48.91* | 24.32 |
| % of sales made to Delicare as compared to total revenue of OSCL | 40.82% | 87.69% | 27.50% |
| % of purchases made from Delicare as compared to total purchase of OSCL | 48.20% | 93.23% | 27.51% |

**including Rs. 3.55 crores, the amount of estimated insurance claim not receivable*

*It was observed that subsequent to OSCL being declared as NPA by banks during FY 2018-19, OSCL started doing business with Delicare to support its working capital requirement and in FY 2018-19 OSCL has generated its 40.82% revenue from Delicare and made 48.20% of its purchases from Delicare.*

*…..*

*It was observed that in Delicare, the promoters and Executive Directors of OSCL viz. Mr. Pravin Herlekar and Mr. Rishikesh Herlekar held 50% of shares each till June 26, 2018 and Mr. Rishikesh Herlekar was also a director till March 27, 2019. Thus Delicare was related party to OSCL till March 27, 2019 as per regulation 2(1) (zb) of SEBI (LODR) Regulations, 2015 and transactions of OSCL with Delicare till March 27, 2019 were related party transactions.*

*OSCL vide its letter dated September 19, 2022 (placed at Annexure-B) has inter-alia submitted that they had inadvertently not added Delicare as related party in the annual report, but have taken omnibus approval of the same in the Audit Committee and Board meeting held in 05.02.2018 for the said transaction. Further, OSCL vide letter dated September 28, 2022 (placed at Annexure-C) has inter-alia submitted that they had not taken approval of shareholder for the transactions with Delicare in FY 2018-19. Thus, OSCL has violated regulation 23(4) of SEBI (LODR) Regulations, 2015.*

*<u>Regulatory provisions with respect to disclosures of Related Party Transactions</u>*

*As per regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company is required to comply with all the applicable and notified Accounting Standards. Under section 133 of the Companies Act, 2013* *read with the Companies (Indian Accounting Standards) Rules, 2015, the Ministry of Corporate Affairs has notified the Indian Accounting Standards ('IND AS'), which have been made applicable to listed entities since April 1, 2017. During the Investigation Period, the new accounting standards i.e. IND AS was applicable to OSCL.*

*…..*

*Thus, non-disclosures of Related Party Transactions by company with Delicare during FY 2018-19 was not in accordance with Ind AS 24 (Related Party Disclosures). Therefore, the company had violated regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of SEBI (LODR) Regulations, 2015.*

***In view thereof, it is alleged that Noticee-1 has violated Regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of SEBI (LODR) Regulations, 2015.***

***4.1.2. Failure to obtain shareholders' approval for RPTs***

*………..*

*It was observed that subsequent to OSCL being declared as NPA by banks during FY 2018-19, OSCL started doing business with Delicare to support its working capital requirement and in FY 2018-19 OSCL has generated its 40.82% revenue from Delicare and made 48.20% of its purchases from Delicare.*

*………*

*It was observed that in Delicare, the promoters and Executive Directors of OSCL viz. Mr. Pravin Herlekar and Mr. Rishikesh Herlekar held 50% of shares each till June 26, 2018 and Mr. Rishikesh Herlekar was also a director till March 27, 2019. Thus Delicare was related party to OSCL till March 27, 2019 as per regulation 2(1) (zb) of SEBI (LODR) Regulations, 2015 and transactions of OSCL with Delicare till March 27, 2019 were related party transactions. OSCL vide its letter dated September 19, 2022 (placed at Annexure-B) has inter-alia submitted that they had inadvertently not added Delicare as related party in the annual report, but have taken omnibus approval of the same in the Audit Committee and Board meeting held in 05.02.2018 for the said transaction. Further, OSCL vide letter dated September 28, 2022 (placed at Annexure-C) has inter-alia submitted that they had not taken approval of shareholder for the transactions with Delicare in FY 2018-19.*

***In view thereof, it is alleged that Noticee-1 has violated Regulations 23(4) of SEBI (LODR) Regulations, 2015.***

***4.1.3. Published financial results/ statements that were mis-stated to the extent of ₹21.02 crores, ₹21.02 crores, ₹20.64 crores, ₹20.73 crores in FY 2018-19, 2019-20, 2020-21 and 2021-22 respectively, which operated as a device/ scheme/ artifice to deceive and defraud the investors/ shareholders dealing in the equity shares of Company by under reporting losses during these years. Failure to prepare financial statements in accordance with the applicable and notified Accounting Standards (IND AS) and publishing financial statements which do not present a true and fair view of the company's affairs.***

*In this regard, the following was inter alia observed by SEBI:*

*……*

*The credit facilities extended to the company by its lenders viz. Bank of Baroda ('BOB'), were classified as NPA on March 30, 2018 and by Axis Bank on June 30, 2018 and by NKGBS Co-operative Bank on October 10, 2018. Subsequently, company had stopped recognizing the interest expenses. Further, in FY 2018-19, the company had not recognized interest Rs. 11.09 crores and reversed accrued and due interest Rs. 9.93 crores, which was already provided. In this regard, the statutory auditors of the company had qualified their audit reports for 2018-19, 2019-20, 2021-22.*

*The company has disclosed a net profit after tax (before Other Comprehensive Income) of Rs. 2.01 crore for in its last filed annual account for the FY 2020-21. Had the interest amounting to Rs. 20.64 crore been recognized as an expense; the loss would have been Rs.18.63 crore. This would have significantly altered the perception of public investors and materially affected their investment decisions.*

*On examination of the Annual Accounts for previous years, it was observed that the company has been following the above accounting practice of non-recognition of interest as an expenses due on NPA account since FY 2018-19. As per the annual account for the FY 2018-19 to 2020-21 and the quarterly result for quarter and year ended March 31, 2022; the details of non-provisioning of interest is as follows:*

**Rs. in crores**

| Financial Year | Non-provisioning of interest | Remark |
|---|---|---|
| 2018-19 | 21.02 | As per the annual report of the company for the FY 2018-19. Company had not recognized interest Rs. 11.09 crores and reversed accrued and due interest Rs. 9.93 crores |
| 2019-20 | 21.02 | As per the annual report of the company for the FY 2019-20 |
| 2020-21 | 20.64 | As per the annual report of the company for the FY 2019-20 |
| 2021-22 | 20.73 | As per the quarterly result for quarter and year ended March 31, 2022 |

*Therefore, the company has understated the expenses and losses during FY 2018-19 to FY 2021-22. The details of understatement of losses by not providing the interest due on NPA accounts as an expenses are as under:*

| Particulars | FY ended March 31, 2019 | FY ended March 31, 2020 | FY ended March 31, 2021 | FY ended March 31, 2022 |
|---|---|---|---|---|
| **Interest on the loans from banks classified as Non-Performing Assets (NPA) not provisioned (A)** | **(21.02)** | **(21.02)** | **(20.64)** | **(20.73)** |
| **Net Profit / (loss) after Tax (B)** | **(16.87)** | **(14.63)** | **2.01** | **(12.61)** |
| **Net Profit/ (loss) after Tax after adjustment of Interest due on loans: (C=A+B)** | **(37.89)** | **(35.65)** | **(18.63)** | **(31.24)** |
| **Percentage of under reporting of loss (B/C*100)** | **55.48%** | **58.96%** | **110.79%** | **66.36%** |

*From the above it was observed that OSCL has understated the expenses and losses in FY 2018-19 to FY 2021-22. Information were sought from the company vide summons dated September 05 and 16, 2022 regarding the accounting treatment done for the interest expenses during FY 2018-19 to 2021-22.*
*Company submission:*
*Company vide its letter dated September 19, 2022 (placed at Annexure-B) had inter-alia submitted the following:*
*"………..*
*Our account has been classified as non-performing assets by our lenders, the Company is in discussion with its Bankers for settlement of dues (inclusive of interest and other charges, if any) by way of suitable structures. Bank of Baroda and Axis Bank have not debited any interest pending the said proposal. Hence, the company has not provided for interest during the year 31st March 2019, 31st March 2020, 31st March 2021 and 31st March 2022, The Statutory Auditors have qualified their Review Report in the respect of the said matter. The necessary net effect shall be given in the books once the banks conclude decision on settlement of our debt.*
*……………..."*

*Regulatory provisions with respect to Accounting Standards*
*As per regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company is required to comply with all the applicable and notified Accounting Standards. Under section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, the Ministry of Corporate Affairs has notified the Indian Accounting Standards ('IND AS'), which have been made applicable to listed entities since April 1, 2017. During the Investigation Period, the new accounting standards i.e. IND AS was applicable to OSCL.*

*Accounting Standards*
*In order to understand whether the reversal and non-provisioning of interest was in compliance with the applicable and notified accounting standards, relevant extracts of the IND AS with respect to recognition of interest and financial liability are reproduced below.*

*The relevant extract of definition of 'Financial Liability', as defined under 'IND AS 32 - Financial Instruments: Presentation', is reproduced as under:*
*"……….*
*A financial liability is any liability that is:*
*(a) a contractual obligation:*
*(i) to deliver cash or another financial asset to another entity;*
*……..…"*
*Relevant extract of clause 35 of 'IND AS 32 – Financial Instruments: Presentation' is reproduced as under:*
*"……………*
*Interest, dividends, losses and gains relating to a financial instrument or a component that is a financial liability shall be recognised as income or expense in profit or loss.*
*…………"*

*Relevant extract of clause 8 of 'IND AS 23 – Borrowing Costs' is reproduced as under:*

*"…………*
*An entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them*
*……………."*

*Relevant extract of clause 3.3.1 of 'IND AS 109 – Financial Instruments' is reproduced as under:*

*"………….*
*An entity shall remove a financial liability (or a part of a financial liability) from its balance sheet when, and only when, it is extinguished — i.e. when the obligation specified in the contract is discharged or cancelled or expires*
*…………..."*

*Opinion of the Expert Advisory Committee (EAC) of Institute of Chartered Accountants of India (ICAI):*

*It may be noted that earlier SEBI had sought opinion of ICAI on the accounting practice of non-provisioning of interest on loan being declared as NPA by lenders/ banks in the matter of Radha Madhav Corporation Limited. The Committee vide email dated June 28, 2018 (Annexure-E) had stated the following.*
*The EAC has inter alia stated the following:*

*"………….*
*The Committee notes that the interest expense accrued on outstanding loans is a borrowing cost which should be recognized as an expense in the period in which it is incurred (unless it is directly attributable to the acquisition, construction or production of a qualifying asset). With regard to reversal of the provision made for interest payable on the outstanding loans, the Committee is of the view that the unpaid interest is a 'liability', which as per the paragraph 61 of the Framework for the Preparation and Presentation of Financial Statements can be derecognized only when the present obligation is settled or extinguished. Further, in the context of Indian Accounting Standards, the Committee is of the view that the credit facility granted by the State Bank of India/AARC and Bank of Baroda to the company and interest thereon is a 'financial liability' under Ind AS 32 as it is an obligation of the company to repay the credit facility availed by it along with the interest. As per the requirements of Ind AS 109 (which deals with recognition, measurement and derecognition of financial liability), the company can remove a financial liability from its balance sheet when and only when, it is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires.*

*Incidentally, the Committee notes that as per the prudential norms of RBI, the banks should not recognise interest as income on accrual basis for non-performing assets; rather the same should be recognised on receipt basis. However, the Committee is of the view that non- recognition of interest income in the books of account of banks (lenders) due to such prudential norms of RBI does not discharge the borrower from its liability in respect of payment of interest on credit facilities granted to it by banks/AARC. In other words, the company cannot avoid its contractual liability in respect of interest payable on credit facilities availed by it, on the pretext that the same has not been recognised as income by the banks as whether the lenders recognises the same as income or not is of no consequence as far as borrower company is concerned. Further, till the ongoing settlement process is not finalised, liability of the company is not extinguished.*

*Accordingly, the Committee is of the view that the treatment accorded by the company in the extant case of reversal of interest expense/payable and non-provision of interest expense is not in accordance with Accounting Standards, notified under the Companies (Accounting Standards) Rules, 2006 and Indian Accounting Standards, notified under the Companies (Indian Accounting Standards) Rules, 2015.*
*……………"*

*Opinion of Ministry of Corporate Affairs:*

*Since Ministry of Corporate Affairs (MCA) is the authority that notifies accounting standards for companies, SEBI also sought opinion of MCA on the aforesaid opinion of ICAI.*

*MCA, vide letter dated October 14, 2019 (**Annexure-F**), had stated that "it is in agreement with the views expressed by ICAI which is comprehensive and self-contained. The financial liability of the company continues and it cannot be reversed."*

*Observations on the reply of the company:*

*…..*
*As per IND AS 109, the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. Therefore, the financial liability of the company for the interest component was not extinguished at the time of publishing of financial statements during the investigation period.*
*Since the banks had not waived off the interest liability of the company at the time of publishing of financial statements during investigation period, the financial liability of the company cannot be considered to be extinguished and the same had to be accounted for in the books of accounts and disclosed in the financial statements by the company.*

*Further, as per opinion of expert committee of ICAI (which was also accepted by the MCA), the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. In the instant case, the company had acknowledged in its letter dated September 19, 2022 that the financial resolution was being discussed and planned with the banks. Therefore, the financial liability of the company for the interest component was not extinguished at the time of publishing of the respective financial statements during the investigation period.*

*Therefore, the explanation of the company was not satisfactory since the liability of the company was not extinguished on account of bank classifying the loan under NPA. Mere, reclassification of loan the company as NPA by lenders / banks does not absolve the company's contractual obligation of interest payment against the loans taken. During FY 2018-19 to FY 202122, Company did not recognise interest due on NPA accounts. Hence, it is concluded that the accounting treatment of interest was not in accordance with the applicable and notified Accounting Standards. Therefore, the company had violated regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of SEBI (LODR) Regulations, 2015.*

***In view thereof, it is alleged that Noticee-1 has violated Regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of SEBI (LODR) Regulations, 2015.***

*Further the non-recognition of interest due to banks in the financial statements has significantly altered the declared profit position of the company in a significant way. The underreporting was to the extent of 55.48% in FY 2018-19, 58.96% in FY 2019-20, 110.79% in FY 2020-21 and 66.36% in FY 2021-22.*
*From the above, it was observed that by failing to recognize interest expense on loans in the books of accounts, the company had under reported the quantum of loss appearing in its profit and loss account. Had the interest expense been recognised, the loss would have been significantly higher. Consequently, the published financial statements / results of the company did not give a true and fair view of the financial performance and position of the company, resulting in alleged violation of Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of SEBI (PFUTP)Regulations, 2003.*
*…….*

*……The underreporting of losses continued even after the auditor had qualified the audit report from FY 2018-19 to FY 2021-22. Therefore, the published financial statements / results of the company did not give a true and fair view of the financial performance and position of the company as it significantly under reported the losses, thereby published manipulated financial statements and disseminated the same to the stock exchanges.*

*Thus, the non-compliance with accounting standards has not only resulted into violation of LODR Regulations but also resulted in the violation of SEBI (PFUTP) Regulations, 2003.*
*……*

*Thus the company, its directors and the Audit committee, adopted the financial statements that significantly under reported the losses. The under reporting of losses continued even after the auditor qualified the audit reports since FY 2018-19. Had the real financial position of the company was not withheld in the published financial statements, it was likely to have influenced the decision of investors dealing in securities. Further the audit committee failed to review the information as mandated under Part C of Schedule II read with regulation 18 (3) of SEBI (LODR) Regulations, 2015.*

***In view thereof, it is alleged that Noticee-1 has violated Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of SEBI (PFUTP) Regulations, 2003.***

***4.2. Noticee-2: Pravin Shivdas Herlekar (Chairman & MD and member of Audit Committee)***

***4.2.1. Failure to discharge their duties in ensuring that the published financial statements were in accordance with the applicable and notified Accounting Standards (IND AS) and that the financial statements present a true and fair view of the company's affairs. Being signatories to the financial statements that under reported losses, while specific violation was pointed out by the statutory auditor in its qualified report.***

*In this regard, the following was inter alia observed by SEBI:*

*Role of Directors:*

*A company acts through its board of directors. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are expected to exercise the powers in bona fide manner and in the interest of all stakeholders of the company.*

*……..*

***Role of Executive directors:***

*As per the Annual Reports of the company the attendance details of Executive Directors at Board Meetings during FY 2018-19 to FY 2020-21 are as under:*

| Name of the Director | Designation | Particulars of Attendance of Board Meeting. | | |
|---|---|---|---|---|
| | | FY 2018-19 | FY 2019-20 | FY 2020-21 |
| **Pravin Shivdas Herlekar** | **Chairman and Managing Director** | **4** | **4** | **6** |
| Subhash Murlidhar Ambatkar | Executive Director | - | - | 6 |
| Prakash Rao Harishanker | Executive Director | 4 | 4 | - |
| Rishikesh Pravin Herlekar | Whole-time Director | 4 | 3 | - |

*The Chairman and Managing Director, Pravin Shivdas Herlekar has attended all the board meetings during the FY 2018-19 to 2020-21 and being in-charge of operations and decision making process, is held responsible for the violations committed by the company*.

*The statement of the CMD Mr. Pravin Herlekar was recorded on September 21, 2022, wherein he has inter-alia submitted that "he has no knowledge about the provisions of Ind AS and they initiated discussions with the bank for restructuring of loans and submitted a detailed proposal restructuring to the bank during May-June 2018." Further, statement of the WTD Mr. Rishikesh Herlekar was recorded on September 26, 2022, "wherein he has inter-alia submitted that he has no knowledge about the provisions of Ind AS and they had made many efforts, follow-ups with banks for restructuring. However, till date no positive response is received from bank."*

*In this connection, it may be noted that the view of the MCA and expert advisory committee of ICAI (discussed in details in pre-pages) clearly states that the liability of the of the company with respect to the credit facility offered by banks and the interest thereon is a financial liability under AS 32 and it is an obligation of the company to repay the credit facility availed by it along with interest. As per AS 109 the company can remove the financial liability from its balance sheet, when and only when, it is extinguished, i.e., when the obligation specified in the contract is discharged or cancelled or expires. In the instant case the liability was not discharged or cancelled or expired. No documents could be produced by the company with respect to proof of discharge or cancellation or expiry of the liability. There are no written records to suggest that the banks indeed agreed to any negotiation with the company. The directors themselves has accepted that all their loans were declared as NPAs. Accordingly, it is concluded that the P&L of the company was not prepared as per the accounting standards. The fact that it majorly under reported the losses in the P&L indicate that the non-adherence to the relevant accounting standards were purposefully done to overstate the financials of the company by understating its huge losses.*

*Further it is also seen that the under reporting of losses continued even after the auditor highlighted the issue and qualified his every audit reports since FY 2018-19 and the directors were aware of the same. Noticee-2 had signed the financial statements for FY 2018-19, 2019-20 & 2020-21 (Annexure-BB).*

*Therefore, it is concluded that the Executive Directors of the company namely Mr. Pravin Shivdas Herlekar and Mr. Rishikesh Pravin Herlekar violated Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 and regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.*

***In view thereof, it is alleged that Noticee-2 has violated Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 and regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.***

***4.2.2. Being signatories to the compliance certificates as per regulation 17 (8) of the SEBI (LODR) Regulations, 2015, which were found to be untrue.***

*In this regard, the following was inter alia observed by SEBI:*

***Role of CEO and CFO:***
*Under regulation 17(8) of SEBI (LODR) Regulations, 2015, the Chief Executive Officer ('CEO') and the Chief Financial Officer ('CFO') shall provide the compliance certificate to the board of directors. Further, under Regulation 33(2)(a) of SEBI (LODR) Regulations, 2015, it is the duty of the CEO and CFO of the listed entity to certify that the published financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading while placing the financial results.*

*In the instant case, as per the Annual report of company for the FY 2018-19, MD Mr. Pravin Shivdas Herlekar and Ex-CFO Mr. Rishikesh Pravin Herlekar have signed the compliance certificate for the financial year ended March 31, 2019* ***(Annexure-J)****. Considering that the non-disclosures of RPTs and accounting treatment of interest are not in accordance with the applicable and notified Accounting Standards and the published financial statements of the company do not present a true and fair view of the company's affairs, MD, Ex-CFO, CEO and present CFO, by certifying the misstated financial statement as true and fair, have violated Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and the compliance certificates provided by the CEO and CFO under regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 were found to be untrue.*

*Mr. Pravin Shivdas Herlekar and Mr. Rishikesh Pravin Herlekar who were the CMD and CFO of the company respectively during FY 2018-19 have signed the compliance certificates; further, Mr. Rishikesh Pravin Herlekar and Mr. Vaman Ganapati Acharya, who were the CEO and the CFO of the company respectively during FY 2019-20 and 2020-21 have signed the compliance certificates, are responsible for non-compliance of Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015.*

***In view thereof, it is alleged that Noticee-2 has violated Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 were found to be untrue.***

***4.2.3 Being members of the audit committee, they failed to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement were correct, sufficient and credible.***

*In this regard, the following was inter alia observed by SEBI:*

***Role of Audit Committee:***
*In any listed company, the Audit Committee is expected to play a vital role as far as ensuring compliance with existing accounting standards, applicable laws and regulations are concerned. Under SEBI (LODR) Regulations, 2015, Audit Committee is entrusted with oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible. The attendance of Audit committee members in the audit committee meetings during the Investigation Period were as under:*

| No. | Audit Committee member | Designation | 2018-19 | 2019-20 | 2020-21 |
|---|---|---|---|---|---|
| **1** | **Pravin Shivdas Herlekar** | **Chairman & Managing Director** | **-** | **1** | **5** |
| 2 | Laxmikant Ramprasad Kabra | Non-Executive & Non Independent Director | 4 | 4 | - |
| 3 | Sitendu Krishnakumar Sharma | Independent director | 4 | 3 | - |
| 4 | Sanjivani Satish Patare | Independent director | 4 | 4 | 5 |
| 5 | Archana Prakash Dakhale | Independent director | - | - | 2 |

(Source: Annual Reports)

*The role of the Audit Committee is defined under SEBI (LODR) Regulations, 2015, wherein, the Audit Committee is required to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.*

*In the instant case, Audit Committee had failed to ensure that the published financial statements were in accordance with the applicable accounting standards and presented a true and fair view of the company's affairs, during the investigation period, even though the auditor had qualified the audit report with respect to non-recognition of interest.*

***In view thereof, it is alleged that Noticee-2 has violated Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.***

***4.3 Noticee-3: Rishikesh Pravin Herlekar (Whole-time Director, ex-CFO and CEO)***

***4.3.1 Failure to discharge their duties in ensuring that the published financial statements were in accordance with the applicable and notified Accounting Standards (IND AS) and that the financial statements present a true and fair view of the company's affairs .Being signatories to the financial statements that under reported losses, while specific violation was pointed out by the statutory auditor in its qualified report*.**

*In this regard, the following was inter alia observed by SEBI:*

***Role of Directors:***
*A company acts through its board of directors. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are expected to exercise the powers in bona fide manner and in the interest of all stakeholders of the company.*

*……*

***Role of Executive directors:***
*As per the Annual Reports of the company the attendance details of Executive Directors at Board Meetings during FY 2018-19 to FY 2020-21 are as under:*

| Name of the Director | Designation | Particulars of Attendance of Board Meeting. | | |
|---|---|---|---|---|
| | | FY 2018-19 | FY 2019-20 | FY 2020-21 |
| Pravin Shivdas Herlekar | Chairman and Managing Director | 4 | 4 | 6 |
| Subhash Murlidhar Ambatkar | Executive Director | - | - | 6 |
| Prakash Rao Harishanker | Executive Director | 4 | 4 | - |
| **Rishikesh Pravin Herlekar** | **Whole-time Director** | **4** | **3** | **-** |

*Whole-time Director, Rishikesh Pravin Herlekar son of the CMD and shares same address as the CMD, had been promoter director in the company, had attended seven board meeting in FY 2018-19 and 2019-20 and being in-charge of operations and decision making process, is held responsible for the violations committed by the company.*

*The statement of the CMD Mr. Pravin Herlekar was recorded on September 21, 2022, wherein he has inter-alia submitted that "he has no knowledge about the provisions of Ind AS and they initiated discussions with the bank for restructuring of loans and submitted a detailed proposal restructuring to the bank during May-June 2018." Further, statement of the WTD Mr. Rishikesh Herlekar was recorded on September 26, 2022, "wherein he has inter-alia submitted that he has no knowledge about the provisions of Ind AS and they had made many efforts, follow-ups with banks for restructuring. However, till date no positive response is received from bank."*

*In this connection, it may be noted that the view of the MCA and expert advisory committee of ICAI (discussed in details in pre-pages) clearly states that the liability of the of the company with respect to the credit facility offered by banks and the interest thereon is a financial liability under AS 32 and it is an obligation of the company to repay the credit facility availed by it along with interest. As per AS 109 the company can remove the financial liability from its balance sheet, when and only when, it is extinguished, i.e., when the obligation specified in the contract is discharged or cancelled or expires. In the instant case the liability was not discharged or cancelled or expired. No documents could be produced by the company with respect to proof of discharge or cancellation or expiry of the liability. There are no written records to suggest that the banks indeed agreed to any negotiation with the company. The directors themselves has accepted that all their loans were declared as NPAs. Accordingly, it is concluded that the P&L of the company was not prepared as per the accounting standards. The fact that it majorly under reported the losses in the P&L indicate that the non-adherence to the relevant accounting standards were purposefully done to overstate the financials of the company by understating its huge losses.*

*Further it is also seen that the under reporting of losses continued even after the auditor highlighted the issue and qualified his every audit reports since FY 2018-19 and all the directors were aware of the same. Noticee-3 had signed the financial statements for FY 2018-19, 2019-20 & 2020-21 (**Annexure-BB).***

*Therefore, it is concluded that the Executive Directors of the company namely Mr. Pravin Shivdas Herlekar and Mr. Rishikesh Pravin Herlekar violated Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 and regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.*

***In view thereof, it is alleged that Noticee-3 has violated Regulations Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 and Regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.***

***4.3.2 Being signatories to the compliance certificates as per Regulation 17 (8) of the SEBI (LODR) Regulations, 2015, which were found to be untrue.***

*In this regard, the following was inter alia observed by SEBI:*

***Role of CEO and CFO:***
*Under Regulation 17(8) of SEBI (LODR) s, 2015, the Chief Executive Officer ('CEO') and the Chief Financial Officer ('CFO') shall provide the compliance certificate to the board of directors. Further, under Regulation 33(2)(a) of SEBI (LODR) Regulations, 2015, it is the duty of the CEO and CFO of the listed entity to certify that the published financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading while placing the financial results.*

*In the instant case, as per the Annual report of company for the FY 2018-19, MD Mr. Pravin Shivdas Herlekar and Ex-CFO Mr. Rishikesh Pravin Herlekar have signed the compliance certificate for the financial year ended March 31, 2019. Further, Mr. Rishikesh Pravin Herlekar (CEO) and Mr. Vaman Ganapati Acharya (present CFO) have signed the compliance certificates for the financial years ended March 31, 2020 and March 31, 2021 **(Annexure-J)**. Considering that the non-disclosures of RPTs and accounting treatment of interest are not in accordance with the applicable and notified Accounting Standards and the published financial statements of the company do not present a true and fair view of the company's affairs, MD, Ex-CFO, CEO and present CFO, by certifying the misstated financial statement as true and fair, have violated Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and the compliance certificates provided by the CEO and CFO under Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 were found to be untrue.*

*Mr. Pravin Shivdas Herlekar and Mr. Rishikesh Pravin Herlekar who were the CMD and CFO of the company respectively during FY 2018-19 have signed the compliance certificates; further, Mr. Rishikesh Pravin Herlekar and Mr. Vaman Ganapati Acharya, who were the CEO and the CFO of the company respectively during FY 2019-20 and 2020-21 have signed the compliance certificates, are responsible for non-compliance of Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015.*

***In view thereof, it is alleged that Noticee-3 has violated Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 were found to be untrue.***

***4.4 Noticee-4: Vaman Ganapati Acharya (CFO):***

***4.4.1 Being signatories to the financial statements that under reported losses, while specific violation was pointed out by the statutory auditor in its qualified report. Being signatories to the compliance certificates as per Regulation 17 (8) of the SEBI (LODR) Regulations, 2015, which were found to be untrue.***

*In this regard, the following was inter alia observed by SEBI:*

***Role of CEO and CFO:***
*Further, under Regulation 17(8) of SEBI (LODR) Regulations, 2015, the Chief Executive Officer ('CEO') and the Chief Financial Officer ('CFO') shall provide the compliance certificate to the board of directors. Further, under Regulation 33(2)(a) of SEBI (LODR) Regulations, 2015, it is the duty of the CEO and CFO of the listed entity to certify that the published financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading while placing the financial results.*

*In the instant case, as per the Annual report of company for the FY 2018-19, MD Mr. Pravin Shivdas Herlekar and Ex-CFO Mr. Rishikesh Pravin Herlekar have signed the compliance certificate for the financial year ended March 31, 2019. Further, Mr. Rishikesh Pravin Herlekar (CEO) and Mr. Vaman Ganapati Acharya (present CFO) have signed the compliance certificates for the financial years ended March 31, 2020 and March 31, 2021* ***(Annexure-J)****. Considering that the non-disclosures of RPTs and accounting treatment of interest are not in accordance with the applicable and notified Accounting Standards and the published financial statements of the company do not present a true and fair view of the company's affairs, MD, Ex-CFO, CEO and present CFO by certifying the misstated financial statement as true and fair is alleged to have violated Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and the compliance certificates provided by the CEO and CFO under Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 were found to be untrue.*

*Mr. Pravin Shivdas Herlekar and Mr. Rishikesh Pravin Herlekar who were the CMD and CFO of the company respectively during FY 2018-19 have signed the compliance certificates; further, Mr. Rishikesh Pravin Herlekar and Mr. Vaman Ganapati Acharya, who were the CEO and the CFO of the company respectively during FY 2019-20 and 2020-21 have signed the compliance certificates, are responsible for non-compliance of Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015*

*Further, Noticee-4 had signed the financial statements for FY 2019-20 & 2020-21 (****Annexure-BB).***

***In view thereof, it is alleged that Noticee 4 has violated Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 were found to be untrue.***

…."

5. Vide email dated January 03, 2023 and email dated January 16, 2023, Noticee 1's Interim Resolution Professional inter alia submitted National Company Law Tribunal (NCLT) order dated December 12, 2022 and informed that Corporate Insolvency Resolution Process had been commenced in respect of Noticee 1 and moratorium had been imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016. Accordingly, this order deals with the violations alleged in respect of Noticee 2, Noticee 3 and Noticee 4.

6. Vide letters dated January 16, 2023, Noticee 2, 3 and 4 submitted their respective replies to the SCN. Thereafter, vide Hearing Notice dated February 16, 2023, Noticee 2, 3 and 4 were granted an opportunity of hearing on February 21, 2023. In this regard, Noticee 2, 3 and 4, through their common Authorized Representative ("**AR**") (Authorization letter received through email dated February 20, 2023) availed the opportunity of hearing through video conferencing on the scheduled date i.e. February 21, 2023. During the hearing, the AR relied upon and reiterated the written

submissions made by respective Noticee's i.e. Noticee 2, 3 and 4 vide their letters dated January 16, 2023. During the hearing, as regards the replies to the SCN, the AR inter alia indicated that the written submissions dated January 16, 2023 as submitted by Noticee 2, 3 and 4 were complete and that there were no additional/further submissions to be made in respect of the Noticee 2, 3 and 4. The relevant extracts of the reply of the Noticees are reproduced in the subsequent paragraphs.

7. The key submissions made by Noticee 2 vide letter dated January 16, 2023, as reply to the SCN, are as under:

*"….*

*This has reference to the captioned notice, with regard to discharge of duties as Chairman & Managing director and member of Audit Committee and being signatory to the financial statements and CEO and CFO certification of the financial results for the year 2018-19 and for the year 2020-21. I would like to submit as under:*

1. *with regard to the treatment of the unapplied interest expenses. I would like to state that, myself (Former Chairman and Managing Director), Audit Committee and other Directors has taken decisions to not to provide for unapplied interest expenses and give the necessary disclosure for non-provisioning of interest for reason mentioned below in audited financials under interest expenses, Directors report, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification.*

    - *Bank of Baroda had classified the company's loans as NPA on 30.03.2018 and Axis Bank had classified the company's loans as non-performing asset on 05th October 2018 and not debited any interest post NPA.*
    - *I, (Former Chairman and Managing Director) started the discussion with the bankers for settlement of dues (inclusive of interest and other charges, if any) by way of suitable structures.*
    - *Consequent upon our account being declared as an NPA, Bank of Baroda had issued a Notice under the SARFAESI Act, 2002 under section 13(2) wherein they had indicated various outstanding loans of the Company. However, the Company had pointed out certain errors pertaining to the amount of liabilities mentioned by the Bank in the said SARFAESI Notice. The Company also had made a presentation to the Bank to rectify the errors in the said Notice in order to arrive at precise financial liability which can be freezed. However, the Bank has not made any corrections in the said notice and in view of the same, the Company had challenged the SARFAESI Notice in DRT III (vide our Petition No. O.A. No. 161 of2021) which is still on. The Court had observed that, there is prima facie evidence to justify Company's stand in this matter and the Court had also stated the further actions by the Bank in this regard. In view of this, the precise liability of the principle amount of the loan outstanding and consequently the interest there on has not been clearly defined and freezed. Hence, the Company cannot work out the exact interest expenses andprovidethe samein its financialstatements. However, the auditors have mentioned the estimated interest amount in their audit report and the disclosure for not providing the interest expenses in the financialstatement has been given by the management in the footnotes in quarterly results, directors report, financial statement under interest expenses and Annexure I, statement of impact on qualification.*
    - *The company has given necessary disclosure of non-provisioning of interest expenses by way of foot note in all quarterly results announced for FY 2018-19 to FY 2021-22 and 30th June 2022. All through the process auditors had identified and highlighted unapplied interest expenses amount by the Banks and note with full transparency was given by the company as footnote for shareholders and the other stakeholders. (Copy enclosed as Annexure 1). I therefore deny that the company have not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of interest expenses.*
    - *With reference to the opinion of the ICAI as provided in the Notice, I would also like to reiterate that unapplied interest on outstanding loan was identified and highlighted by the auditors and given as a note with full transparency to the shareholders. I therefore deny that the company has not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of outstanding interest.*
    - *With regard to the MCA Comment and the ICAI opinion, I would also like to rely on the NFRA Circular dated 20.10.2022 which describe the fact that such a similar practice was being followed by many companies under Ind AS 109. The company is very committed to complying with the provisions of various regulations and strived to make all the necessary disclosures to stakeholders. The company has clearly brought out in audited financials under interest expenses, Directors reports, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification by way of note that consequent upon NPA of our account the major lenders Bank of Baroda and Axis Bank has not charged interest to our Account. Our Director has takendecision not to provideforunappliedinterest*

expenses considering that the Company is in discussion with the Banker for settlement of dues with suitable structure. The necessary net effect will be given once conclusion by the Bankers on settlement of our dues.

- It may also be noted that, in view of the above referred NFRA circular dated 20.10.2022, the Company has duly taken note of the said Circular and has started recognizing the necessary interest expenses. It may also be noted that the Company has also provided the interest for all the previous periods starting from 2018-19 till date to comply with the instructions given in NFRA Circular. The company has provided the interest expenses for the year 2018-19 to 2020-22 under exceptional item as prior period expenses and started regularly providing the interest expenses w.e.f April 2022 and same is reflected financial results for the quarter ended September 2022 with necessary footnote in this regard. Attached as Annexure 2. Financial results for the quarter ended September 2022.
- It is evident that, the company have NOT intentionally hidden or suppressed the unapplied interest expense in any of our disclosures.

2. With regard to your allegations against me (Former Chairman and Managing Director and member of the Audit Committee) as alleged in Paragraph 4.2 I would like to submit that members of our Audit Committee extremely diligent and have always raised the necessary queries during the meetings. Since myself (Former Chairman and Managing Director) and other members were aware of the negotiation process that was going on and were reasonably confident that, the total liability payable to the Banks (comprising of principle amount and the interest) will be suitably restructured by the Banks while working out the settlement/Resolution process. I would also like to submit that the loss was not understated. The company had made the necessary disclosure of the non-providing of interest expenses as a foot note to the quarterly disclosure and as a note in the Directors Report and the Financial Statements in the Annual Report. Hence I humbly submit that I have not violated the provisions of Sections 12A (b) & (c) of the SEBI Act, read with Regulations 3(c), 3(d), 4(1), 4(2)(f) (k) and (r) read with 2(l)(b) and 2(l)(c)(l) of the SEBI(PFUTP) Regulations, 2005 and Regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of the SEBI Act, 19992.

3. With regard to your allegation in Paragraph 4.2.2. being signatories to the compliance certificates issued under Regulation 17(8) of the SEBI (LODR) Regulations, 2015, I would like to submit that no false certificates were given by me (Former Chairman and Managing Director) and CFO of our Company with regard to the treatment of the outstanding interest expenses. The statements gave the correct position and all the disclosures were made to the stakeholders as explained in the above paragraphs.

4. With regard to the non-disclosure of Delicare Lifesciences Private Limited as a Related Party in the Annual Accounts of the Company during the Financial Years ended March 31, 2019, I would like to submit as under:

a) As per the Provision of Section 2(76) and Section 1BB Companies Act 2013, Delicare Lifesciences Pvt. Ltd. was the related party to Omkar Speciality Chemicals Ltd. till 27/03/2019. My self(Mr. Pravin Shivdas Herlekar) was a Director in this Company with 50% stake. I resigned from the Directorship on 02/02/2017 and also transferred my stake on 26/06/2018. Mr. Rishikesh Pravin Herlekar was a Director in the Company holding 50% stake. He resigned from the Directorship on 27/03/2019 and transferred his entire stake on 26/06/2018. Subsequent to my resignation and resignation of Mr. Rishikesh Pravin Herlekar, Delicare Lifesciences Pvt. Ltd. has ceased to be a related party. Hence Delicare Lifesciences Pvt. Ltd. was related party only in the year 2018 -19.

b) The company had inadvertently not added Delicare Lifesciences Pvt. Ltd. as related party in the annual report. Since our Company was declared as an NPA and myself and other directors were trying to set the affairs right, The company had overlooked the fact that Delicare Lifesciences Pvt. Ltd. was a related party and had to be included in the Annual Report I necessary approvals to be taken. The company has however taken necessary omnibus approval of the same in the Audit Committee and Board meeting held in 06.02.2018 for the said transactions. The company has also kept the Audit Committee informed of the same post entering into the transaction. I request you to kindly take a lenient view as this was only due to inadvertence without any malafide intention and due to the circumstances that the Company was in.

In view of the submissions made, I submit that I had not violated Sections 12A (b) & (c) of the SEBI Act, read with Regulations 3(c), 3(d), 4(1), 4(2)(t) (k) and (r) and Regulation 17(8) and Regulation 33(2)(a) of SEBI LODR Regulations, 2015.

5. With regard to your allegations under Paragraph 4.2.3 I would like to submit that our Audit Committee extremely diligent and have always raised the necessary queries during the meetings. Since myself (Former Chairman and Managing Director) and other members were aware of the negotiation process that was going on and were reasonably confident that, the total liability payable to the Banks (comprising of principle amount and the interest) will be suitably restructured by the Banks while working out the settlement/Resolution process. We had made the disclosure of the outstanding interest as a foot note to the quarterly disclosure and as a note in the Directors Report and the Financial Statements in the Annual Report under interest expenses. I would also like to submit that the loss was not understated. Hence I would like to submit that I had not violated Regulation 18(3) read with Clauses A(1), (4), (5) under Part C of Schedule II of the SEBI LODR Regulations, 2015 read with Section 27 of the SEBI Act, 1992.

6. I would like to submit that, as a signatory I have signed the financial statement and CEO and CFO certificate and also instructed CEO and CFO to sign the Financial statements and CEO and CFO Certificate for the year 2018-19 to 2020-21 based on decision taken by myself (Former Chairman and Managing Director), Audit Committee and other directors.

7. *I wish to state that, Corporate Insolvency Resolution Process of our Company (Omkar Speciality Chemicals Ltd.) under the provisions of the Insolvency and Bankruptcy Code 2016 has commenced vide Order No. lA 1521/2022 dated 05.12.2022 by the Hon'ble National Company Law Tribunal, Mumbai Bench. Further Mr. Arun Ramchandra Gaikwad has been appointed as Interim Resolution Professional to execute the necessary procedure in this regard. This is for your information and records.*

*Hence, the financials gives true and fair view of the affairs of the company and compliance with applicable accounting standards. The statements gave the correct position and all the disclosures were made to the stakeholders as explained in the above paragraphs. In view of the above submissions made,*
*I submit that, I have not violated Sections 12A (b) & (c) of the SEBI Act, read with Regulations 3(c), 3(d), 4(1), 4(2)(f) (k) and (r) and Regulation 17(8) and Regulation 33(2)(a) of SEBI LODR Regulations, 2015.*

*In view of the submission made I request you to take a lenient view and drop all further proceedings against me. I am desirous of availing the opportunity of personal hearing. I undertake to keep you informed of any change in the correspondence address till the proceedings are completed…*
*…."*

8. The key submissions made by Noticee 3 vide letter dated January 16, 2023, as reply to the SCN, are as under:

*"….*
*This has reference to the captioned notice, with regard to discharge of duties as whole time director and CEO and also signatory to the financial statements and CEO and CFO certification of the financial results for the year 2018-19 and for the year 2020-21. I would like to submit as under:*

1. *With regard to your allegation against me at Paragrpah 4.3.1 I would like to humbly submit that I had been extremely diligent as a Director and CFO of the Company. I was aware of the negotiation process that was going on and was reasonably confident that, the total liability payable to the Banks (comprising of principle amount and the interest) will be suitably restructured by the Banks while working out the settlement/Resolution process. The loss was therefore not understated and necessary disclosure of the non-accounting of unapplied interest expenses was given as a foot note to the quarterly disclosure, Directors Report and the Financial Statements in the Annual Report under interest expenses was made. Hence, I humbly submit that I have not violated the provisions of Sections 12A (b) & (c) of the SEBI Act, read with Regulations 3(c), 3(d), 4(1), 4(2)(f) (k) and (r) read with 2(1)(b) and 2(1)(c)(l) of the SEBI (PFUTP) Regulations, 2005 and Regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of the SEBI Act, 19992*

2. *With regard to the treatment of the unapplied interest expenses. I would like to state that, the Former CMD, Audit Committee and Directors has taken decisions to not to provide for unapplied interest expenses and give the necessary disclosure for non-provisioning of interest for reason mentioned below in audited financials under interest expenses, Directors report, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification.*
   - *Bank of Baroda had classified the company's loans as NPA on 30.03.2018 and Axis Bank had classified the company's loans as non-performing asset on 05th October 2018 and not debited any interest post NPA.*
   - *The Former CMD started the discussion with the bankers for settlement of dues (inclusive of interest and other charges, if any) by way of suitable structures.*
   - *Consequent upon our account being declared as an NPA, Bank of Baroda had issued a Notice under the SARFAESI Act, 2002 under section 13(2) wherein they had indicated various outstanding loans of the Company. However, the Company had pointed out certain errors pertaining to the amount of liabilities mentioned by the Bank in the said SARFAESI Notice. The Company also had made a presentation to the Bank to rectify the errors in the said Notice in order to arrive at precise financial liability which can be freezed. However, the Bank has not made any corrections in the said notice and in view of the same, the Company had challenged the SARFAESI Notice in DRT III (vide our Petition No. O.A. No. 161 of2021) which is still on. The Court had observed that, there is prima facie evidence to justify Company's stand in this matter and the Court had also stated the further actions by the Bank in this regard. In view of this, the precise liability of the principle amount of the loan outstanding and consequently the interest there on has not been clearly defined and freezed. Hence, the Company cannot work out the exact interest expenses and provide the same in its financial statements. However, the auditors have mentioned the estimated interest amount in their audit report and the disclosure for not providing the interest expenses in the financial statement has been given by the management in the footnotes in quarterly results, directors report, financial statement under interest expenses and Annexure I, statement of impact on qualification.*
   - *The company has given necessary disclosure of non-provisioning of interest expenses by way of foot note in all quarterly results announced for FY 2018-19 to FY 2021-22 and 30th June 2022. All through the process auditors had identified and highlighted unapplied interest expenses amount by the Banks and note with full transparency was given by the company as footnote for shareholders and the other stakeholders. (Copy enclosed as Annexure 1). I therefore deny that the company have not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of interest expenses.*

- *With reference to the opinion of the ICAI as provided in the Notice, I would also like to reiterate that unapplied interest on outstanding loan was identified and highlighted by the auditors and given as a note with full transparency to the shareholders. I therefore deny that the company has not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of outstanding interest.*
- *With regard to the MCA Comment and the ICAI opinion, I would also like to rely on the NFRA Circular dated 20.10.2022 which describe the fact that such a similar practice was being followed by many companies under Ind AS 109. The company is very committed to complying with the provisions of various regulations and strived to make all the necessary disclosures to stakeholders. The company has clearly brought out in audited financials under interest expenses, Directors reports, and all quarterly results announced by the company and also in Annexure 1 impact of Audit qualification by way of note that consequent upon NPA of our account the major lenders Bank of Baroda and Axis Bank has not charged interest to our Account. Our Director has taken decision not to provide for unapplied interest expenses considering that the Company is in discussion with the Banker for settlement of dues with suitable structure. The necessary net effect will be given once conclusion by the Bankers on settlement of our dues.*
- *It is evident that, the company have NOT intentionally hidden or suppressed the unapplied interest expense in any of our disclosures.*
- *It may also be noted that, in view of the above referred NFRA circular dated 20.10.2022, the Company has duly taken note of the said Circular and has started recognizing the necessary interest expenses. It may also be noted that the Company has also provided the interest for all the previous periods starting from 2018-19 till date to comply with the instructions given in NFRA Circular. The company has provided the interest expenses for the year 2018-19 to 2020-22 under exceptional item as prior period expenses and started regularly providing the interest expenses w.e.f April 2022 and same is reflected financial results for the quarter ended September 2022 with necessary footnote in this regard. Attached as Annexure 2. Financial results for the quarter ended September 2022.*

*3.With regard to the non-disclosure of Delicare Lifesciences Private Limited as a Related Party in the Annual Accounts of the Company during the Financial Years ended March 31, 2019, I would like to submit as under:*

*a) As per the Provision of Section 2(76) and Section 1BB Companies Act 2013, Delicare Lifesciences Pvt. Ltd. was the related party to Omkar Speciality Chemicals Ltd. till 27/03/2019. Mr. Pravin Shivdas Herlekar was a Director in this Company with 50% stake. He resigned from the Directorship on 02/02/2017 and also transferred his stake on 26/06/2018. Mr. Rishikesh Pravin Herlekar was a Director in the Company holding 50% stake. He resigned from the Directorship on 27/03/2019 and transferred his entire stake on 26/06/2018.Subsequent to resignation of Mr. Pravin Shivdas Herlekar and Mr. Rishikesh Pravin Herlekar, Delicare Lifesciences Pvt. Ltd.has ceased to be a related party hence Delicare Lifesciences Pvt. Ltd. was related party only in the year 2018-19.*

*b) The company had inadvertently not added Delicare Lifesciences Pvt. Ltd. as related party in the annual report. Since our Company was declared as an NPA and the directors were trying to set the affairs right, The company had overlooked the fact that Delicare was a related party and had to be included in the Annual Report I necessary approvals to be taken. The company have however taken necessary omnibus approval of the same in the Audit Committee and Board meeting held in 06.02.2018 for the said transactions. The company have also kept the Audit Committee informed of the same post entering into the transaction. I request you to kindly take a lenient view as this was only due to inadvertence without any malafide intention and due to the circumstances that the Company was in.*

*4. I would like to submit that, as a signatory I have signed the financial statement and CEO and CFO certificate based on the instruction and decision taken by the Fortner CMD, Audit Committee and other directors.*

*5. I wish to state that, Corporate Insolvency Resolution Process of our Company (Omkar Speciality Chemicals Ltd.) under the provisions of the Insolvency and Bankruptcy Code 2016 has commenced vide Order No. lA 1521/2022 dated 05.12.2022 by the Hon'ble National Company Law Tribunal, Mumbai Bench. Further Mr. Arun Ramchandra Gaikwad has been appointed as Interim Resolution Professional to execute the necessary procedure in this regard. This is for your information and records.*

*Hence, the financials gives true and fair view of the affairs of the company and compliance with applicable accounting standards. The statements gave the correct position and all the disclosures were made to the stakeholders as explained in the above paragraphs. I signed the compliance certificate for the year 2019-20 and for the year 2020-21 based on the decisions taken by the Former CMD, Audit Comittee and the directors. In view of the above submissions made, I submit that, I have not violated Sections 12A (b) & (c) ofthe SEBI Act, read with Regulations 3(c), 3(d), 4(1), 4(2)(f) (k) and (r) and Regulation 17(8) and Regulation 33(2)(a) of SEBI LODR Regulations, 2015.*

*In view of the submission made I request you to take a lenient view and drop all further proceedings against me. I am desirous of availing the opportunity of personal hearing. I undertake to keep you informed of any change in the correspondence address till the proceedings are completed. I also enclosing the copies of PAN Card and address proof as Annexure 2 to this letter.*

…."

9. The key submissions made by Noticee 4 vide letter dated January 16, 2023, as reply to the SCN, are as under:

"….

*This has reference to the captioned notice, with regard to being signatory to the financial statements and CEO and CFO certification of the financial results for the year 2019-20 and for the year 2020-21. I would like to submit as under:*

1. *With regard to the treatment of the unapplied interest expenses. I would like to state that, the Former CMD, Audit Committee and the Directors has taken decisions to not to provide for unappliedinterestexpensesandgivethenecessarydisclosurefornon-provisioning of interest for reason mentioned below in audited financials under interest expenses, Directors report, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification.*
   - *Bank of Baroda had classified the company's loans as NPA on 30.03.2018 and Axis Bank had classified the* company's loans *as non-performing asset on 05th October2018 and not debited any interest post NPA.*
   - *The Former CMD started the discussion with the bankers for settlement of dues (inclusive of interest and other charges, if any) by way of suitable structures.*
   - *Consequent upon our account being declared as an NPA, Bank of Baroda had issued a Notice under the SARFAESI Act, 2002 under section 13(2) wherein they had indicated various outstanding loans of the Company. However, the Company had pointed out certain errors pertaining to the amount of liabilities mentioned by the Bank in the said SARFAESI Notice. The Company also had made a presentation to the Bank to rectify the errors in the said Notice in order to arrive at precise financial liability which can be freezed. However, the Bank has not made any corrections in the said notice and in view of the same the Company had challenged the SARFAESI Notice in DRT III (vide our Petition No.O.A. No. 161. Of 2021) which is still on. The Court had observed that, there is prima facie evidence to justify Company's stand in this matter and the Court had also stated the further actions by the Bank in this regard. In view of this, the precise liability of the principle amount of the loan outstanding and consequently the interest thereon has not been clearly defined and freezed. Hence, the Company cannot workout the exact interest expenses and provide the same in its financial statements. However, the auditors have mentioned the estimated interest amounting their audit report and the disclosure for not providing the interest expenses in the financial statement has been given by the management in the footnotes in quarterly results, directors report, financial statement under interest expenses and Annexure I, statement of impact on qualification.*
   - *The company has given necessary disclosure of non-provisioning of interest expenses by way of foot note in all quarterly results announced for FY 2018-19 to FY 2021-22 and 30th June 2022. All through the process auditors had identified and highlighted unapplied interest expenses amount by the Banks and note with full transparency was given by the company as footnote for shareholders and the other stakeholders. (Copy enclosed as Annexure 1). I therefore deny that the company have not complied with the provision of lnd AS or the Indian GAAP with regard to the accounting of interest expenses.*
   - *With reference to the opinion of the ICAI as provided in the Notice, I would also like to reiterate that unapplied interest on outstanding loan was identified and highlightedbytheauditorsandgivenasanotewithfulltransparencytothe shareholders. I therefore deny that the company has not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of outstanding interest.*
   - *With regard to the MCA Comment and the ICAI opinion, I would also like to rely on the NFRA Circular dated 20.10.2022 which describe the fact that such a similar practice was being followed by many companies under Ind AS 109. The company is very committed to complying with the provisions of various regulations and strived to make all the necessary disclosures to stakeholders. The company has clearly brought out in audited financials under interest expenses, Directors reports, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification by way of note that consequent upon NPA of our account the major lenders Bank of Baroda and Axis Bank has not charged interest to our Account. Our Directorhastakendecisionnottoprovideforunappliedinterestexpenses considering that the Company is in discussion with the Banker for settlement of dues with suitable structure. The necessary net effect will be given once conclusion by the Bankers on settlement of our dues.*
   - *It is evident that, the company have NOT intentionally hidden or suppressed the unapplied interest expense in any of our disclosures.*
   - *It may also be noted that, in view of the above referred NFRA circular dated 20.10.2022, the Company has duly ,taken note of the said Circular and has started recognizing the necessary interest expenses. It may also be noted that the Company has also provided the interest for all the previous periods starting from 2018-19 till date to comply with the instructions given in NFRA Circular. The company has provided the interest expenses for the year 2018-19 to 2020-22 under exceptional item as prior period expenses and*

*started regularly providing the interest expenses w.e.fApril2022andsameisreflected financial results for the quarter ended September 2022 with necessary footnote in this regard. Attached as Annexure 2. Financial results for the quarter ended September 2022.*

2. *With regard to the non-disclosure of Delicare Lifesciences Private Limited as a Related Party in the Annual Accounts of the Company during the Financial Years ended March 31, 2019, I would like to submit as under:*

*a) As per the Provision of Section 2(76) and Section IBB Companies Act 2013, Delicare Lifesciences Pvt.Ltd. was the related party to Omkar Speciality Chemicals Ltd. till 27/03/2019. Mr. Pravin Shivdas Herlekar was a Director in this Company with 50% stake. He resigned from the Directorship on 02/02/2017 and also transferred his stake on 26/06/2018. Mr. Rishikesh Pravin Herlekar was a Director in the Company holding 50% stake. He resigned from the Directorship on 27/03/2019 and transferred his entire stake on 26/06/2018. Subsequent to resignation of Mr. Pravin Shivdas Herlekar and Mr. Rishikesh Pravin Herlekar, Delicare Lifesciences Pvt. Ltd.has ceased tobe a related party hence Delicare Lifesciences Pvt. Ltd. was related party only in the year 2018-19.*

*b)The company had inadvertently not added Delicare Lifesciences Pvt. Ltd.as related party in the annual report. Since our Company was declared as an NPA and the directors were trying to set the affairs right, The company had overlooked the fact that Delicare was a related party and had to be included in the Annual Report I necessary approvals to be taken. The company have however taken necessary omnibus approval of the same in the Audit Committee and Board meeting held in 06.02.2018 for the said transactions. The company have also kept the Audit Committee informed of the same post entering into the transaction. I request you to kindly take a lenient view as this was only due to inadvertence without any malafide intention and due to the circumstances that the Company was in.*

*c) Further, I am appointed as CFO of the company with effect from 13.09.2019 and non- disclosure of related party transactions related to Delicare Lifesciences Pvt. Ltd. was in financial year 2018-19 and I have not signed financials of financial year 2018-19.*

3. *I would like to submit that, as a signatory I have signed the financial statement and CEO and CFO certificate based on the instruction and decision taken by the Former CMD, Audit Committee and the directors.*

4. *I wish to state that, Corporate Insolvency Resolution .Process of our Company (Omkar Speciality ChemicalsLtd.) under the provisions of the Insolvency and Bankruptcy Code 2016has commencedvideOrder No.IA 152112022 dated05.12.2022by theHon'ble National Company Law Tribunal, MubaiBench. Further Mr. Arun Ramchandra Gaikwad has been appointed as Interim Resolution Professional to execute the.necessary procedure in this regard. This is for your information and records.*

*Hence, the financials gives true and fair view of the affairs of the company and compliance with applicable accounting standards. The statements gave the correct position and all the disclosures were made to the stakeholders as explained in the above paragraphs. I signed the compliance certificate for the year 2019-20 and for the year 2020-21 based on the decisions taken by the Former CMD, Audit Committee and directors. In view of the above submissions made, I submit that, I have not violated Sections 12A (b) & (c) of the SEBI Act, read with Regulations 3(c), 3(d), 4(1), 4(2)(t) (k) and (r) and Regulation 17(8) and Regulation 33(2)(a) of SEBILODR Regulations, 2015.*

*In view of the submission made I request you to take a lenient view and drop all further proceedings against me. I am desirous of availing the opportunity of personal hearing. I undertake to keep you informed of any change in the correspondence address till the proceedings are completed. I also enclosing the copies of PAN Card and address proof as Annexure 2 to this letter.*

…."

## D. CONSIDERATION OF ISSUES AND FINDINGS

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

**Issue No. I:** Whether Noticees have violated the provisions of SEBI (PFUTP) Regulations and SEBI (LODR) Regulations, as alleged in the SCN?

**Issue No. II:** If yes, whether the violations on the part of the Noticee 2, 3 and 4 would attract monetary penalty under Sections 15HA and 15HB of the SEBI Act, 1992?

**Issue No. III:** If yes, what should be the monetary penalty that can be imposed upon the Noticee 2, 3 and 4?

11. The relevant extracts of the provisions of law alleged to have been violated are as under:

**SEBI Act**

*"…*

***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

***12A.*** *No person shall directly or indirectly—*

*(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

*(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

*…"*

**PFUTP Regulations**

*"……..*

***Definitions***

*2. (1) In these regulations, unless the context otherwise requires,—*

*……………..*

*(b) "dealing in securities" includes:*

*(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;*

*(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and*

*(iii) any act of providing assistance to carry out the aforementioned acts.*

*(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce an other person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

*(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

*…………..*

***3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly—*

*………….*

*(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

*(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on are cognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

*……………...*

***4. Prohibition of manipulative, fraudulent and unfair trade practices***

*(1) Without prejudice to the provisions of Regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.*

*Explanation.–For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.*

*(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:—*

*……………….*

*(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

*……………….*

*(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;*

*……………….*

*(r) Knowingly planting false or misleading news which may induce sale or purchase of securities.*

*…………..”*

**SEBI (LODR) Regulations, 2015**

*"…………..*

***Principles governing disclosures and obligations.***

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

*…*

*(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.*

*…*

*(f)* ***Responsibilities of the board of directors:*** *The board of directors of the listed entity shall have the following responsibilities:*

*(i) Disclosure of information:*

*(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.*

*(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.*

*……………..”*

12. I now proceed to deal with the allegations in respect of the Noticees, as brought out in the SCN.

**Issue No. I: Whether Noticees have violated the provisions of SEBI (PFUTP) Regulations and SEBI (LODR) Regulations, as alleged in the SCN?**

In this regard, this order deals with the allegations sequentially, the most common allegation across the Noticees is being dealt initially, followed in said sequence by other allegations accordingly, considering that some allegations are common for the Noticees and/or atleast two of the Noticees and that the replies/submissions of the concerned Noticees are also similar in nature with respect to those allegations.

Allegation in respect of Noticee 2 and Noticee 3:

12.1. It was inter alia alleged in the SCN in respect of Noticee 2 and Noticee 3 (being Executive Directors of OSCL during relevant period) that they failed to discharge their duties in ensuring that the published financial statements were in accordance with the applicable and notified Accounting Standards (IND AS) and that the financial statements present a true and fair view of the company's affairs. Being signatories to the financial statements that under reported losses, while specific violation was pointed out by the statutory auditor in its qualified report.

In view thereof, it was alleged that Noticee 2 and Noticee 3 violated provisions of Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 and Regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.

Allegation in respect of Noticee 4:

12.2. Noticee 4, being signatory to the financial statements that under reported losses, while specific violation was pointed out by the statutory auditor in its qualified report.

In view thereof, it was alleged that Noticee 4 violated provisions of Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003.

12.3. In this regard, it is noted from material available on record that the above allegations inter alia emanate from common facts and circumstances, therefore, for sake of brevity, the allegations under para 12.1 and 12.2 are being dealt accordingly, as under:

12.3.1. In this regard, as noted from material available on record, the key developments and observations by SEBI in respect of OSCL, Noticee 2 and Noticee 3 (Executive Directors at the relevant period) and Noticee 4(Chief Financial Officer at relevant period) are as follows:

12.3.1.1. The credit facilities extended to OSCL by its lenders viz. Bank of Baroda ('BOB'), were classified as NPA on March 30, 2018 and by Axis Bank on June 30, 2018 and by NKGBS Co-operative Bank on October 10, 2018. Subsequently, OSCL had stopped recognizing the interest expenses. Further, in FY 2018-19, OSCL had not recognized interest of Rs. 11.09 crores and reversed accrued and due interest of Rs. 9.93 crores, which was already provided. In this regard, the statutory auditors of the company had qualified their audit reports.

12.3.1.2. As per regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company was required to comply with all the applicable and notified Accounting Standards. Under section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, the Ministry of Corporate Affairs has notified the Indian Accounting Standards ('IND AS'), which had been made applicable to listed entities since April 1, 2017. During the Investigation Period, the new accounting standards i.e. IND AS were applicable to OSCL.

12.3.1.3. In order to understand whether the reversal and non-provisioning of interest was in compliance with the applicable and notified accounting standards, relevant extracts of the IND AS with respect to recognition of interest and financial liability are reproduced as follows:

The relevant extract of definition of 'Financial Liability', as defined under 'IND AS 32 - Financial Instruments: Presentation', is reproduced as under:

> *"A financial liability is any liability that is:*
> *(a) a contractual obligation:*
> *(i) to deliver cash or another financial asset to another entity;…"*

Relevant extract of clause 35 of 'IND AS 32 – Financial Instruments: Presentation' is reproduced as under:

> *"Interest, dividends, losses and gains relating to a financial instrument or a component that is a financial liability shall be recognised as income or expense in profit or loss."*

Relevant extract of clause 8 of 'IND AS 23 – Borrowing Costs' is reproduced as under:

> *"An entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them."*

Relevant extract of clause 3.3.1 of 'IND AS 109 – Financial Instruments' is reproduced as under:

> *"An entity shall remove a financial liability (or a part of a financial liability) from its balance sheet when, and only when, it is extinguished — i.e. when the obligation specified in the contract is discharged or cancelled or expires."*

12.3.1.4. Earlier SEBI had sought opinion of Institute of Chartered Accountants of India ("ICAI") on the accounting practice of non-provisioning of interest on loan being declared as NPA by lenders/ banks in the matter of Radha Madhav Corporation Limited. The Expert Advisory Committee ("EAC") has *inter alia* stated the following:

*"…The Committee notes that the interest expense accrued on outstanding loans is a borrowing cost which should be recognized as an expense in the period in which it is incurred (unless it is directly attributable to the acquisition, construction or production of a qualifying asset). With regard to reversal of the provision made for interest payable on the outstanding loans, the Committee is of the view that the unpaid interest is a 'liability', which as per the paragraph 61 of the Framework for the Preparation and Presentation of Financial Statements can be derecognized only when the present obligation is settled or extinguished. Further, in the context of Indian Accounting Standards, the Committee is of the view that the credit facility granted by the State Bank of India/AARC and Bank of Baroda to the company and interest thereon is a 'financial liability' under Ind AS 32 as it is an obligation of the company to repay the credit facility availed by it along with the interest. As per the requirements of Ind AS 109 (which deals with recognition, measurement and derecognition of financial liability), the company can remove a financial liability from its balance sheet when and only when, it is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires…"*

12.3.1.5. Since Ministry of Corporate Affairs (MCA) is the authority that notifies accounting standards for companies, SEBI also sought opinion of MCA on the aforesaid opinion of ICAI. In this regard, MCA inter alia stated that it is in agreement with the views expressed by ICAI which is comprehensive and self-contained. The financial liability of the company continues and it cannot be reversed.

12.3.1.6. Reclassification of the company as NPA by lenders / banks does not absolve the company's contractual obligation of interest payment against the loans taken. The interest on loans taken, which is a borrowing cost for the borrower, is required to be recognised as expense under IND AS 32 and IND AS 23. Further, as per IND AS 109, the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires.

12.3.1.7. Since the banks had not waived off the interest liability of the company at the time of publishing of financial statements during investigation period, the financial liability of the company cannot be considered to be extinguished and the same had to be accounted for in the books of accounts and disclosed in the financial statements by the company. Further, as per opinion of expert committee of ICAI (which was also accepted by the MCA), the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires.

12.3.1.8. Hence, it was concluded that the accounting treatment of interest was not in accordance with the applicable and notified Accounting Standards.

12.3.1.9. Further the non-recognition of interest due to banks in the financial statements had significantly altered the declared profit position of the company in a significant way. The underreporting was to the extent of 55.48% in FY 2018-19, 58.96% in FY 2019-20, 110.79% in FY 2020-21 and 66.36% in FY 2021-22.

12.3.1.10. From the above, SEBI observed that by failing to recognize interest expense on loans in the books of accounts, the company had under reported the quantum of loss appearing in its profit and loss account. Had the interest expense been recognised, the loss would have been significantly higher. Consequently, the published financial statements / results of the company did not give a true and fair view of the financial performance and position of the company.

12.3.2. In this regard, following was inter alia observed by SEBI in the Investigation Report in respect of role of Noticee 2, Noticee 3 and Noticee 4:

12.3.2.1. Company acts through its board of directors. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are expected to exercise the powers in bona fide manner and in the interest of all stakeholders of the company.

12.3.2.2. As per the Annual Reports of the company the attendance details of Executive Directors at Board Meetings during FY 2018-19 to FY 2020-21 are as under:

| **Name of the Director** | **Designation** | **Particulars of Attendance of Board Meeting.** | | |
|---|---|---|---|---|
| | | **FY 2018-19** | **FY 2019-20** | **FY 2020-21** |
| Pravin Shivdas Herlekar | Chairman and Managing Director | 4 | 4 | 6 |
| Rishikesh Pravin Herlekar | Whole-time Director | 4 | 3 | - |

12.3.2.3. The statement of the CMD Mr. Pravin Herlekar was recorded on September 21, 2022 wherein he has *inter-alia* submitted that "*he has no knowledge about the provisions of Ind AS and they initiated discussions with the bank for restructuring of loans and submitted a detailed proposal restructuring to the bank during May-June 2018*." Further, statement of the WTD Mr. Rishikesh Herlekar was recorded on September 26, 2022 "*wherein he has inter-alia submitted that he has no knowledge about the provisions of Ind AS and they had made many efforts, follow-ups with banks for restructuring. However, till date no positive response is received from bank*."

12.3.2.4. The Chairman and Managing Director, Pravin Shivdas Herlekar has attended all the board meetings during the FY 2018-19 to 2020-21 and being in-charge of operations and decision making process, is held responsible for the violations committed by the company. Whole-time Director, Rishikesh Pravin Herlekar son of the CMD and shares same address as the CMD, had been promoter director in the company, had attended seven board meeting in FY 2018-19 and 2019-20 and being in-charge of operations and decision making process, is held responsible for the violations committed by the company.

12.3.2.5. Noticee 4 also had signed the financial statements for FY 2019-20 & 2020-21.

12.3.3. The key submissions of Noticee 2 made vide letter dated January 16, 2023 as reply to the SCN, in this regard, are as under:

*"…*

*1. with regard to the treatment of the unapplied interest expenses. I would like to state that, myself (Former Chairman and Managing Director), Audit Committee and other Directors has taken decisions to not to provide for unapplied interest expenses and give the necessary disclosure for non-provisioning of interest for reason mentioned below in audited financials under interest expenses, Directors report, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification.*

*…*

- *Bank of Baroda had classified the company's loans as NPA on 30.03.2018 and Axis Bank had classified the company's loans as non-performing asset on 05th October 2018 and not debited any interest post NPA.*
- *I, (Former Chairman and Managing Director) started the discussion with the bankers for settlement of dues (inclusive of interest and other charges, if any) by way of suitable structures.*

*…*

- *The company has given necessary disclosure of non-provisioning of interest expenses by way of foot note in all quarterly results announced for FY 2018-19 to FY 2021-22 and 30th June 2022. All through the process auditors had identified and highlighted unapplied interest expenses amount by the Banks and note with full transparency was given by the company as footnote for shareholders and the other stakeholders. (Copy enclosed as Annexure 1). I therefore deny that the company have not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of interest expenses.*

*…*

- *With regard to the MCA Comment and the ICAI opinion, I would also like to rely on the NFRA Circular dated 20.10.2022 which describe the fact that such a similar practice was being followed by many companies under Ind AS 109. The company is very committed to complying with the provisions of various regulations and strived to make all the necessary disclosures to stakeholders. The company has clearly brought out in audited financials under interest expenses, Directors reports, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification by way of note that consequent upon NPA of our account the major lenders Bank of Baroda and Axis Bank has not charged interest to our Account. Our Director has takendecision not to provideforunappliedinterest expenses considering that the Company is in discussion with the Banker for settlement of dues with suitable structure. The necessary net effect will be given once conclusion by the Bankers on settlement of our dues.*
- *It may also be noted that, in view of the above referred NFRA circular dated 20.10.2022, the Company has duly taken note of the said Circular and has started recognizing the necessary interest expenses. It may also be noted that the Company has also provided the interest for all the previous periods starting from 2018-19 till date to comply with the instructions given in NFRA Circular. The company has provided the interest expenses for the year 2018-19 to 2020-22 under exceptional item as prior period expenses and started regularly providing the interest expenses w.e.f April 2022 and same is reflected financial results for the quarter ended*

*September 2022 with necessary footnote in this regard. Attached as Annexure 2. Financial results for the quarter ended September 2022.*

- *It is evident that, the company have NOT intentionally hidden or suppressed the unapplied interest expense in any of our disclosures.*

*…"*

12.3.4. The key submissions of Noticee 3 made vide letter dated January 16, 2023 as reply to the SCN, in this regard, are as under:

*"…*

1. *With regard to your allegation against me at Paragrpah 4.3.1 I would like to humbly submit that I had been extremely diligent as a Director and CFO of the Company. I was aware of the negotiation process that was going on and was reasonably confident that, the total liability payable to the Banks (comprising of principle amount and the interest) will be suitably restructured by the Banks while working out the settlement/Resolution process. The loss was therefore not understated and necessary disclosure of the non-accounting of unapplied interest expenses was given as a foot note to the quarterly disclosure, Directors Report and the Financial Statements in the Annual Report under interest expenses was made.*

*…*

2. *With regard to the treatment of the unapplied interest expenses. I would like to state that, the Former CMD, Audit Committee and Directors has taken decisions to not to provide for unapplied interest expenses and give the necessary disclosure for non-provisioning of interest for reason mentioned below in audited financials under interest expenses, Directors report, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification.*

    - *Bank of Baroda had classified the company's loans as NPA on 30.03.2018 and Axis Bank had classified the company's loans as non-performing asset on 05th October 2018 and not debited any interest post NPA.*
    - *The Former CMD started the discussion with the bankers for settlement of dues (inclusive of interest and other charges, if any) by way of suitable structures.*
      *…*
    - *With regard to the MCA Comment and the ICAI opinion, I would also like to rely on the NFRA Circular dated 20.10.2022 which describe the fact that such a similar practice was being followed by many companies under Ind AS 109. The company is very committed to complying with the provisions of various regulations and strived to make all the necessary disclosures to stakeholders. The company has clearly brought out in audited financials under interest expenses, Directors reports, and all quarterly results announced by the company and also in Annexure 1 impact of Audit qualification by way of note that consequent upon NPA of our account the major lenders Bank of Baroda and Axis Bank has not charged interest to our Account. Our Director has taken decision not to provide for unapplied interest expenses considering that the Company is in discussion with the Banker for settlement of dues with suitable structure. The necessary net effect will be given once conclusion by the Bankers on settlement of our dues.*
    - *It is evident that, the company have NOT intentionally hidden or suppressed the unapplied interest expense in any of our disclosures.*
    - *It may also be noted that, in view of the above referred NFRA circular dated 20.10.2022, the Company has duly taken note of the said Circular and has started recognizing the necessary interest expenses. It may also be noted that the Company has also provided the interest for all the previous periods starting from 2018-19 till date to comply with the instructions given in NFRA Circular. The company has provided the interest expenses for the year 2018-19 to 2020-22 under exceptional item as prior period expenses and started regularly providing the interest expenses w.e.f April 2022 and same is reflected financial results for the quarter ended September 2022 with necessary footnote in this regard. Attached as Annexure 2. Financial results for the quarter ended September 2022.*

*…"*

12.3.5. The key submissions of Noticee 4 made vide letter dated January 16, 2023 as reply to the SCN, in this regard, are as under:

*"…*

1. *With regard to the treatment of the unapplied interest expenses. I would like to state that, the Former CMD, Audit Committee and the Directors has taken decisions to not to provide for unappliedinterestexpensesandgivethenecessarydisclosurefornon-provisioning of interest for reason mentioned below in audited financials under interest expenses, Directors report, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification.*

*…*

- *The company has given necessary disclosure of non-provisioning of interest expenses by way of foot note in all quarterly results announced for FY 2018-19 to FY 2021-22 and 30th June 2022. All through the process auditors had identified and highlighted unapplied interest expenses amount by the Banks and note with full transparency was given by the company as footnote for shareholders and the other stakeholders. (Copy enclosed as Annexure 1). I therefore deny that the company have not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of interest expenses.*

*…*

3. *I would like to submit that, as a signatory I have signed the financial statement and CEO and CFO certificate based on the instruction and decision taken by the Former CMD, Audit Committee and the directors.*

*…"*

12.3.6. As regard the submissions by the Noticees that disclosures regarding non provisioning of interest were made in the audited financials under interest expenses, Directors reports, and all quarterly results announced by the company and also in Annexure I impact of Audit qualification, on perusal of the notes given in the statement of audited financial results for the quarter and year ended March 31, 2019, March 31, 2020 and March 31, 2021, it is noted that OSCL had inter alia disclosed that the Company had not provided for interest on various credit facilities/loans from the Banks which was classified as non-performing asset. Further, the Company has mentioned that they are in discussion with the Bankers for restructuring of its current debt inclusive of outstanding interest suitably. The necessary net effect shall be given in the books once the banks conclude decision on their proposal. Further, it is noted from the website of OSCL that these financial statements have been uploaded along with Independent Auditor's Report which contained the qualified opinion of the Auditor with regard to non-provisioning of the interest on loans which were declared as non-performing asset. The relevant extract of such notes of the statement of audited financial results are as follows:

Notes given in the statement of audited financial results for the quarter and year ended March 31, 2019:

*"…*
*After being classified as non-performing asset, the Company is in discussion with its Bankers for restructuring of its current debt inclusive of outstanding interest suitably. Bank of Baroda and Axis Bank have not debited any interest pending the said proposal. Hence, the company has not provided for interest amounting to Rs.1109.33 lakhs and Rs.525.56 lakhs during the year 31st March 2019 and current quarter on various credit facilities/loans from the said banks. The accumulated interest of Rs.993.01 lakhs which was provided till September 2018 has been shown as reversed as exceptional items. The statutory Auditors have qualified their Review Report in respect of the said matter. The necessary net effect shall be given in the books once the banks conclude decision on our proposal.*
*…"*

Notes given in the statement of audited financial results for the quarter and year ended March 31, 2020:

*"…*
*After being classified a non-performing asset, the Company is in discussion with its Bankers for suitable settlement of its current debt inclusive of outstanding interest. Bank of Baroda and Axis Bank have not debited any interest pending the said proposal. Hence, the Company has not provided interest for interest quarter ended 31st March 2020 and nine months ended 31st March 2020 Rs. 525.35 lacs and Rs.2101.51 Lacs respectively on various credit facilities/loans from the said Banks. The Statutory Auditors have qualified their Review Report in respect of the said matter. The necessary net effect shall be given in the books once the banks conclude decision on our proposal.*
*…"*

Notes given in the statement of audited financial results for the quarter and year ended March 31, 2021:

*"…*
*Our account has been classified as non-performing asset by our lenders. The Company is in discussion with its Bankers for settlement of the dues (inclusive of interest and other charges, if any) by way of suitable structures. Hence, the Company has not provided for interest on said loans. The necessary net effect shall be given in the book once the banks conclude decision on our proposal.*
*…"*

12.3.7. Further, on perusal of the Board's Report of OSCL for FY 2018-19 and FY 2019-2020 under the heading "Auditors and Auditor's Report" wherein Auditors had issued qualified opinion, it is noted that the OSCL Board had provided following explanation or comment on qualification, reservation or adverse remark or disclaimer made by the statutory auditors in this regard:

*"…*
*Our account has been classified as non-performing asset by our lenders, the Company is in discussion with its Bankers for restructuring of its current debt inclusive of outstanding interest suitably. Bank of Baroda and Axis Bank have not debited any interest pending the said proposal. Hence, the Company has not provided interest amounting to Rs. 1109.33 lakhs and Rs.525.56 lakhs during the year March 31, 2019 and current quarter on various credit facilities/loans from the said Banks. The accumulated interest of Rs.993.01 lakhs which was provided till September 2018 has been shown as reversed as exceptional items. The statutory Auditors have qualified their Review Report in respect of the said matter. The necessary net effect shall be given in the books once the banks conclude decision on our proposal.*
*…"*

*"…*

*Our account has been classified as non-performing asset by our lenders, the Company is in discussion with its Bankers for settlement of the dues (inclusive of interest and other charges, if any) by way of suitable structures. Bank of Baroda and Axis Bank have not debited any interest pending the said proposal. Hence, the Company has not provided for interest amounting to Rs.2101.51 lakhs and Rs.525.35 lakhs during the year March 31, 2020 and current quarter on various credit facilities/loans from the said Banks. The statutory Auditors have qualified their Review Report in respect of the said matter. The necessary effect shall be given in the books once the banks conclude decision on our proposal.*
*…"*

However, on perusal of Board's Report of OSCL for FY 2020-21, it was observed that such explanation was not provided for the qualification with respect to non-recognition of interest made by the Independent Auditor's report.

12.3.8. Further, on perusal of the Annexure 1-statement on impact of Audit qualifications (for audit report with modified opinion) submitted along with annual audited financial results for FY 2018-19 and FY 2019-2020 it is observed that similar explanation as above regarding non-provisioning of the interest had been made there as well by the management of OSCL.

12.3.9. In view thereof, in particular, that of the observations of the Investigation Report and submissions of Noticee 2 and Noticee 3 , I note that the Company had stopped accruing interest on its loan facilities which were classified as non-performing assets by respective Banks and had also reversed accrued and due interest of Rs.9.93 crores in FY 2018-19. In this regard, on perusal of the IND AS 23, 34 and 109 I note that such interest on the loans were borrowing cost and therefore financial liability for the company. The same could have been removed from the balance sheet only when it was extinguished i.e. when the obligation was discharged or cancelled or expired. I note that this view has also been supported by the opinion given by ICAI and MCA in this regard. In this regard, I note that the Noticees viz., Noticee 2, 3 and 4 have not demonstrated that the financial liability with regard to the accrued interest was extinguished/discharged. Accordingly, I note that the said non-provisioning of interest by the Company was not in compliance with the IND AS 23, 34 and 109. In this regard, it is noted that owing to the non-recognition of said due interest in the financial statements, the profit/loss position of the Company was altered to the extent of the non-provisioning of said interest amount, thereby resulting in the financial statements not presenting a true and fair view of the Company's affairs. However, in this regard, I also note that the aspect of non-recognition of such interest due to the banks was disclosed as part of financial results for the quarter and year ended March 31, 2019, March 31, 2020 and March 31, 2021, in the Board's report of OSCL for FY 2018-19 and FY 2019-2020 and in the Statement on Impact of Audit Qualifications for FY 2018-19 and FY 2019-2020, as also brought out in the foregoing.

12.3.10. In view of the above, as regards alleged violation of Regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992 in respect of Noticee 2 and Noticee 3, it is relevant to refer to the text of the same, given as under:

<u>*SEBI (LODR) Regulations, 2015*</u>

> *"…*
> ***Principles governing disclosures and obligations.***
> *4.(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*
> *…*
> *(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.*
> *…*
> *(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:*
> *(i) Disclosure of information:*
> *(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.*
> *(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.*
> *(ii)Key functions of the board of directors-*
> *(1)Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and*

*corporate performance, and overseeing major capital expenditures, acquisitions and divestments.*

*(2)Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.*

*(3)Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.*

*(4)Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.*

*(5)Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.*

*(6)Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.*

*(7)Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.*

*(8)Overseeing the process of disclosure and communications.*

*(9)Monitoring and reviewing board of director's evaluation framework.*

*(iii)Other responsibilities:*

*(1)The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.*

*(2)The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.*

*(3)Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.*

*(4)The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.*

*(5)Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.*

*(6)The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.*

*(7)The board of directors shall exercise objective independent judgement on corporate affairs.*

*(8)The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.*

*(9)The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.*

*(10)The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.*

*(11)When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.*

*(12)Members of the board of directors shall be able to commit themselves effectively to their responsibilities.*

> *(13)In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.*
> *(14)The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.*
> *..."*

12.3.11. In this regard, it is noted from Regulation 4(2) (f) (ii) (7) of LODR Regulations that inter alia, one of the key functions of the Board of Directors is to ensure the integrity of the listed entity's accounting and financial reporting systems, and that appropriate systems of control are in place and to ensure compliance with the law and relevant standards. I note that Noticee 2 and Noticee 3 being the director of OSCL at relevant period were required to ensure the integrity of the listed entity's accounting and financial reporting systems, and that appropriate systems of control are in place and to ensure compliance with the law and relevant standards. However, as already established in the foregoing, the non-provisioning of interest by the Company was not in compliance with the IND AS 23, 34 and 109 and therefore, the allegation that, Noticee 2 and Noticee 3 failed to discharge their duties in ensuring that the published financial statements were in accordance with the applicable and notified Accounting Standards (IND AS) and that the financial statements present a true and fair view of the company's affairs, stands established.

In view thereof, I hold that Noticee 2 and Noticee 3, violated Regulation 4(2)(f) of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.

12.3.12. It was inter alia alleged in the SCN that Noticee 2 and 3 by failing to discharge their duties in ensuring that the published financial statements were in accordance with the applicable and notified Accounting Standards (IND AS) and that the financial statements present a true and fair view of the company's affairs; and that Noticee 2, 3 and 4 by being signatory to the financial statements that under reported losses, while specific violation was pointed out by the statutory auditor in its qualified report, have violated provisions of Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003.

12.3.13. In this regard, it is noted that Noticee 2, 3 and 4, vide their respective letters dated January 16, 2023, as reply to the SCN, had broadly made identical submissions and had inter alia submitted that *"…The company has given necessary disclosure of non-provisioning of interest expenses by way of foot note in all quarterly results announced for FY 2018-19 to FY 2021-22 and 30th June 2022…note with full transparency was given by the company as footnote for shareholders and the other stakeholders…".*

12.3.14. In this regard, I also note that the aspect of non-recognition of such interest due to the banks was disclosed as part of financial results for the quarter and year ended March 31, 2019, March 31, 2020 and March 31, 2021, in the Board's report of OSCL for FY 2018-19 and FY 2019-2020 and in the Statement on Impact of Audit Qualifications for FY 2018-19 and FY 2019-2020, as also brought out in the foregoing.

12.3.15. In this regard, I note that the material available on record has not brought out evidently as to how the alleged violation in respect of the Noticees were fraudulent and/or unfair trade practice. Accordingly, the allegation regarding violation of provisions of Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 in respect of Noticee 2, Noticee 3 and Noticee 4, does not stand established.

Allegation in respect of Noticee 2, Noticee 3 and Noticee 4:

12.4. It was inter alia alleged in the SCN in respect of Noticee 2, Noticee 3 and Noticee 4 that they were signatories to the compliance certificates as per Regulation 17 (8) of the SEBI (LODR) Regulations, 2015, which were found to be untrue.

In view thereof, it was alleged that Noticee 2, Noticee 3 and Noticee 4 had violated Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015.

12.4.1. In this regard, following was inter alia observed by SEBI in the Investigation Report in respect of OSCL wherein the Noticee 2, Noticee 3 and Noticee 4 were signatories to the Compliance certificate under Regulation 17(8) of SEBI (LODR) Regulations, 2015, at relevant time for which the violations are alleged:

12.4.1.1. Subsequent to OSCL being declared as NPA by banks during FY 2018-19, OSCL started doing business with Delicare Lifesciences Private Limited (‘Delicare’) to support its working capital requirement and in FY 2018-19 OSCL has generated its 40.82% revenue from Delicare and made 48.20% of its purchases from Delicare.

12.4.1.2. In Delicare, the promoters and Executive Directors of OSCL viz. Mr. Pravin Herlekar and Mr. Rishikesh Herlekar held 50% of shares each till June 26, 2018 and Mr. Rishikesh Herlekar was also a director till March 27, 2019. Thus Delicare was related party to OSCL till March 27, 2019 as per regulation 2(1) (zb) of SEBI (LODR) Regulations, 2015 and transactions of OSCL with Delicare till March 27, 2019 were related party transactions.

12.4.1.3. As per regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company is required to comply with all the applicable and notified Accounting

Standards. Under section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, the Ministry of Corporate Affairs has notified the Indian Accounting Standards ('IND AS'), which have been made applicable to listed entities since April 1, 2017. During the Investigation Period, the new accounting standards i.e. IND AS was applicable to OSCL.

12.4.1.4. Further, as per clause A.1. of Schedule V read with regulation 34(3) of the SEBI (LODR) Regulations, 2015:

*"…The listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures..".*

Extract of Indian Accounting Standard (IND AS) 24: Related Party Disclosures

*18. If an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements. These disclosure requirements are in addition to those in paragraph 17. At a minimum, disclosures shall include:*

*(a) the amount of the transactions;*

*(b) the amount of outstanding balances, including commitments, and:*

*(i) their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement; and*

*(ii) details of any guarantees given or received;*

*(c) provisions for doubtful debts related to the amount of outstanding balances; and*

*(d) the expense recognised during the period in respect of bad or doubtful debts due from related parties.*

12.4.1.5. Thus, non-disclosures of Related Party Transactions by company with Delicare during FY 2018-19 was not in accordance with IND AS 24 (Related Party Disclosures).

12.4.1.6. As per the Annual report of company for the FY 2018-19, MD Mr. Pravin Shivdas Herlekar and then CFO Mr. Rishikesh Pravin Herlekar have signed the compliance certificate for the financial year ended March 31, 2019. Further, Mr. Rishikesh Pravin Herlekar (CEO) and Mr. Vaman Ganapati Acharya (then

CFO) have signed the compliance certificates for the financial years ended March 31, 2020 and March 31, 2021.

12.4.1.7. Considering that the non-disclosures of RPTs and accounting treatment of interest were not in accordance with the applicable and notified Accounting Standards and the published financial statements of the company do not present a true and fair view of the company's affairs, MD, Ex-CFO, CEO and present CFO, by certifying the misstated financial statement as true and fair are alleged to have violated Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and the compliance certificates provided by the CEO and CFO under regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 were allegedly found to be untrue.

12.4.2. In this regard, the key submissions of Noticee 2 made vide letter dated January 16, 2023 as reply to the SCN, are as under:

*"…*

*3. With regard to your allegation in Paragraph 4.2.2. being signatories to the compliance certificates issued under Regulation 17(8) of the SEBI (LODR) Regulations, 2015, I would like to submit that no false certificates were given by me (Former Chairman and Managing Director) and CFO of our Company with regard to the treatment of the outstanding interest expenses…*

*4. With regard to the non-disclosure of Delicare Lifesciences Private Limited as a Related Party in the Annual Accounts of the Company during the Financial Years ended March 31, 2019, I would like to submit as under:*

*…*

*b) The company had inadvertently not added Delicare Lifesciences Pvt. Ltd. as related party in the annual report. Since our Company was declared as an NPA and myself and other directors were trying to set the affairs right, The company had overlooked the fact that Delicare Lifesciences Pvt. Ltd. was a related party and had to be included in the Annual Report I necessary approvals to be taken. The company has however taken necessary omnibus approval of the same in the Audit Committee and Board meeting held in 06.02.2018 for the said transactions. The company has also kept the Audit Committee informed of the same post entering into the transaction. I request you to kindly take a lenient view as this was only due to inadvertence without any malafide intention and due to the circumstances that the Company was in.*

*…"*

12.4.3. In this regard, the key submissions of Noticee 3 made vide letter dated January 16, 2023 as reply to the SCN, are as under:

*"…*

*3. With regard to the non-disclosure of Delicare Lifesciences Private Limited as a Related Party in the Annual Accounts of the Company during the Financial Years ended March 31, 2019, I would like to submit as under:*

…

*b) The company had inadvertently not added Delicare Lifesciences Pvt. Ltd. as related party in the annual report. Since our Company was declared as an NPA and the directors were trying to set the affairs right, The company had overlooked the fact that Delicare was a related party and had to be included in the Annual Report I necessary approvals to be taken. The company have however taken necessary omnibus approval of the same in the Audit Committee and Board meeting held in 06.02.2018 for the said transactions. The company have also kept the Audit Committee informed of the same post entering into the transaction. I request you to kindly take a lenient view as this was only due to inadvertence without any malafide intention and due to the circumstances that the Company was in.*

*4. I would like to submit that, as a signatory I have signed the financial statement and CEO and CFO certificate based on the instruction and decision taken by the Former CMD, Audit Committee and other directors.*

*…"*

12.4.4. In this regard, the key submissions of Noticee 4 made vide letter dated January 16, 2023 as reply to the SCN, are as under:

*"…*

*2. With regard to the non-disclosure of Delicare Lifesciences Private Limited as a Related Party in the Annual Accounts of the Company during the Financial Years ended March 31, 2019, I would like to submit as under:*

*…*

*b)The company had inadvertently not added Delicare Lifesciences Pvt. Ltd.as related party in the annual report. Since our Company was declared as an NPA and the directors were trying to set the affairs right, The company had overlooked the fact that Delicare was a related party and had to be included in the Annual Report I necessary approvals to be taken. The company have however taken necessary omnibus approval of the same in the Audit Committee and Board meeting held in 06.02.2018 for the said transactions. The company have also kept the Audit Committee informed of the same post entering into the transaction. I request you to kindly take a lenient view as this was only due to inadvertence without any malafide intention and due to the circumstances that the Company was in.*

*c) Further, I am appointed as CFO of the company with effect from 13.09.2019 and non-disclosure of related party transactions related to Delicare Lifesciences Pvt. Ltd. was in financial year 2018-19 and I have not signed financials of financial year 2018-19.*

*3. I would like to submit that, as a signatory I have signed the financial statement and CEO and CFO certificate based on the instruction and decision taken by the Former CMD, Audit Committee and the directors.*

*…"*

12.4.5. In view thereof, as regards Related Party Transaction between Delicare and OSCL, I note that during FY 2018-2019, Delicare was a related party to OSCL and transactions between OSCL and Delicare were Related Party Transaction. I note that Noticee 2, Noticee 3 and Noticee 4 have neither denied nor disputed about the said transactions between Delicare and OSCL as being Related Party Transaction.

12.4.6. Further, as regards Noticee 4's submission that he was appointed as CFO in OSCL with effect from 13.09.2019 and that the Related Party Transactions pertained to FY 2018-2019, I note that in respect of Noticee 4, the allegation in the SCN regarding signing of compliance certificates which were untrue in so far as it was not in compliance with extant applicable IND AS, pertains to FY 2019-20 and FY 2020-21 when the Noticee 4 was CFO of OSCL.

12.4.7. As regards the non-recognition of interest, the same has been dealt in detail when dealing with allegations under paragraph 12.1 and 12.2., wherein it has been established that non-provisioning of interest by the Company was not in compliance with the IND AS 23, 34 and 109.

12.4.8. In this regard, it is relevant to refer to the text of Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015 which reads as under:

<u>SEBI (LODR) Regulations, 2015</u>

*"…*

***Board of Directors.***

*17…*

*(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.*

*…*

***PART B: COMPLIANCE CERTIFICATE***

*[See* ***Regulation 17(8)]***

*The following compliance certificate shall be furnished by chief executive officer and chief financial officer:*

*A.They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:*

*(1)these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;*

*(2)these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.*

*…"*

*"…*

***Financial results.***

*33…*

*(2)The approval and authentication of the financial results shall be done by listed entity in the following manner:*

*a)The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.*

12.4.9. I note from the above that, Regulation 17(8) read with Part B of Schedule II of SEBI (LODR) Regulations, 2015 requires the Chief Executive Officer and Chief Financial Officer to provide a compliance certificate to the board as specified therein and that Regulation 33 (2)(a) the SEBI (LODR) Regulations, 2015 requires the chief executive officer and chief financial officer of the listed entity to certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

12.4.10. In this regard, I note that the submissions of Noticee 2, Noticee 3 and Noticee 4 are broadly identical in nature. As regards the non-disclosure of Related Party Transactions, it is noted that the submissions of Noticee 2 and Noticee 3 are in nature of admission in so far as Noticee 2 have submitted that *"…The company had inadvertently not added Delicare Lifesciences Pvt. Ltd. as related party in the annual report…"* and Noticee 3 have submitted that *"…The company had inadvertently not added Delicare Lifesciences Pvt. Ltd. as related party in the annual report…".*

12.4.11. Further, as regards the non-recognition of interest, the same has been dealt in detail under paragraph 12.1 and 12.2 wherein it has been established that the non-recognition of interest was not in accordance with IND AS 23, 34 and 109.

12.4.12. In view thereof, I note that as per Regulation 17(8) read with Part B of Schedule II of SEBI (LODR) Regulations, 2015, it was inter alia required that *"….The following compliance certificate shall be furnished by chief executive officer and chief financial officer…these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations…".* However, the non-disclosure of the Related Part Transactions and the non-provisioning of the interest due to the banks was not in accordance with the extant accounting standards, as also dealt in the foregoing. Therefore, the allegation that Noticee 2, 3 and 4 were signatories to the compliance certificates as per Regulation 17 (8) of the SEBI (LODR) Regulations, 2015, which were found to be untrue in so far it was not in compliance with the extant IND AS, stands established.

12.4.13. In view thereof, I hold that the Noticee 2, 3 and 4, have violated provisions of Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015.

12.4.14. It was inter alia also alleged in the SCN that Noticee 2, 3 and 4 being signatories to the compliance certificates as per Regulation 17 (8) of the SEBI (LODR) Regulations, 2015, which were found to be untrue, had violated Sections 12A (b), (c) of the SEBI Act, 1992 read with Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) of the SEBI (PFUTP) Regulations, 2003 and Regulations 17(8) and 33(2)(a) of SEBI (LODR) Regulations, 2015.

12.4.15. In this regard, it is noted that Noticee 2, 3 and 4, vide their respective letters dated January 16, 2023, as reply to the SCN, had broadly made identical submissions and had inter alia submitted that *"…The company has given necessary disclosure of non-provisioning of interest expenses by way of foot note in all quarterly results announced for FY 2018-19 to FY 2021-22 and 30th June 2022…note with full transparency was given by the company as footnote for shareholders and the other stakeholders…".*

12.4.16. In this regard, as regards non- provisioning of interest as per IND AS, I note that the aspect of non-recognition of such interest due to the banks was disclosed as part of financial results for the quarter and year ended March 31, 2019, March 31, 2020 and March 31, 2021, in the Board's report of OSCL for FY 2018-19 and FY 2019-2020 and in the Statement on Impact of Audit Qualifications for FY 2018-19 and FY 2019-2020, as also brought out in the foregoing.

As regards the alleged violation of PFUTP Regulations relating to the Related Party Transactions, I note that the material available on record has not brought out specific and adequate details as to how the alleged violations in respect of Noticees were fraudulent and/or unfair trade practice. Accordingly, the allegation regarding violation of provisions of Sections 12A (b), (c) of the SEBI Act, 1992 read with

Regulations 3(c) & (d), 4(1), 4(2)(f), (k) & (r) read with 2(1)(b) & 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 in respect of Noticee 2, Noticee 3 and Noticee 4, does not stand established.

Allegation in respect of Noticee 2

12.5. Noticee 2, being member of the audit committee, failed to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement were correct, sufficient and credible. In view thereof, it was inter alia alleged that Noticee 2 had violated Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.

12.5.1. In this regard, following was inter alia observed by SEBI in the Investigation Report, in respect of OSCL wherein Noticee 2 was member of the Audit committee at relevant time for which the violations are alleged:

12.5.1.1. The attendance of Noticee 2 in the audit committee meetings being Audit committee member during the Investigation Period were as under:

| **No.** | **Audit Committee member** | **Designation** | **2018-19** | **2019-20** | **2020-21** |
|---|---|---|---|---|---|
| 1 | Pravin Shivdas Herlekar | Chairman & Managing Director | - | 1 | 5 |

12.5.1.2. The Audit Committee is required to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

12.5.1.3. The Audit Committee had failed to ensure that the published financial statements were in accordance with the applicable accounting standards and presented a true and fair view of the company's affairs, during the investigation period, even though the auditor had qualified the audit report with respect to non-recognition of interest. Therefore, it was alleged that Noticee 2, being the member of the Audit Committee have failed to discharge duties as required under regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.

12.5.2. In this regard, the key submissions of Noticee 2 made vide letter dated January 16, 2023 as reply to the SCN, are as under:

> *"…*
> *With regard to your allegations under Paragraph 4.2.3 I would like to submit that our Audit Committee extremely diligent and have always raised the necessary queries during the meetings. Since myself (Former Chairman and Managing Director) and other members were aware of the negotiation process that was going on and were reasonably confident that, the total liability payable to the Banks (comprising of principle amount and the interest) will be suitably restructured by the Banks while working out the settlement/Resolution process. We had made the disclosure of the outstanding interest as a foot note to the quarterly disclosure and as a note in the Directors Report and the Financial Statements in the Annual Report under interest expenses. I would also like to submit that the loss was not understated. Hence I would like to submit that I had not violated Regulation 18(3) read with Clauses A(1), (4), (5) under Part C of Schedule II of the SEBI LODR Regulations, 2015 read with Section 27 of the SEBI Act, 1992.*
> *…"*

12.5.3. In this regard, it is relevant to refer to the text of the aforesaid provisions alleged to have been violated:

<u>SEBI (LODR) Regulations, 2015</u>

> *"…*
> *Audit Committee.*
> ***18.** (3)The role of theaudit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.*
> ***…***
>
> ***SCHEDULE II: CORPORATE GOVERNANCE***
> ***…***
> ***PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE[SeeRegulation 18(3)]***
>
> *A. The role of the audit committee shall include the following:*
> *(1)oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible*
> *…*
> *(4)reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:*
> > *(a)matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;*

*(b)changes, if any, in accounting policies and practices and reasons for the same;*
*(c)major accounting entries involving estimates based on the exercise of judgment by management;*
*(d)significant adjustments made in the financial statements arising out of audit findings;*
*(e)compliance with listing and other legal requirements relating to financial statements;*
*(f)disclosure of any related party transactions;*
*(g)modified opinion(s) in the draft audit report;*

*(5)reviewing, with the management, the quarterly financial statements before submission to the board for approval;*
*…"*

12.5.4. In this regard, I note that as regards non-recognition of the interest, the audit committee was inter alia required to review with the management , the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to inter alia changes, if any, in accounting policies and practices and reasons for the same and to review disclosure of any related party transactions;

12.5.5. In this regard, it has already been established in the foregoing that the non-provisioning of interest by the Company was not in compliance with the IND AS 23, 34 and 109.

12.5.6. I note that Noticee 2, being the member of the Audit Committee of OSCL, had attended 6 meetings of the Audit committee i.e. one in FY 2019-20 and 5 in FY 2020-21. Despite being member of the Audit Committee and having attended the Audit Committee meetings, I note that even though the auditor had qualified the audit report with respect to non-recognition of interest, Noticee 2 had failed to ensure that the published financial statements were in accordance with the applicable accounting standards.

12.5.7. In view thereof, the allegation that Noticee 2, being member of the audit committee, failed to exercise oversight of the listed OSCL's financial reporting process and the disclosure of its financial information to ensure that the financial statement were correct, sufficient and credible, stands established.

12.5.8. In view thereof, I hold that Noticee 2, being member of the Audit Committee of OSCL has violated the provisions of Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the

SEBI (LODR) Regulations, 2015 read with Section 27 of SEBI Act, 1992.

**Issue No. II: If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15HA and 15HB of SEBI Act, 1992?**

13. It has been established in the preceding paragraphs that Noticee 2, Noticee 3 and Noticee 4 have violated the provisions of SEBI (LODR) Regulations, 2015

14. It is noted 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......"*

15. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that Noticees are liable for monetary penalty under section 15HB of the SEBI Act which provides as following: -

> *"…………*
>
> ***Penalty for contravention where no separate penalty has been provided**.*
>
> ***15HB.** 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.*
>
> *………..."*

**Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act?**

16. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

<u>SEBI Act</u>

*"………..*

*Factors to be taken into account while adjudging quantum of penalty.*

*15J. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*

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

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

*c. the repetitive nature of the default.*

*Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

*…………..."*

In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticees as a result of the violations committed by the Noticees. Moreover, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. I also note that, in respect of Noticee 2, administrative warning was issued in the matter of Lasa Supergenerics Limited. Further, I also note that Noticee 2 and 3 had inter alia submitted to SEBI that they had no knowledge about the provisions of Ind AS. However, I cannot ignore that in the instant matter, the Noticees had violated the extant applicable provisions of law. Such violations as in the instant matter inter alia related to not complying with applicable IND AS etc., compromises with the statutory requirements /frameworks and ought to be dealt with accordingly. In this regard, reference is also drawn to the Adjudication order dated August 26, 2022 in the matter of M/s Carnation Industries Limited. In view thereof, I am of the view that such violations on part of the Noticees needs to be dealt with imposition of suitable penalty.

## E. ORDER

17. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticees and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI Adjudication

Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticees, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticees in this case:

| S. No. | Name of the Noticee | Penalty Under Section | Penalty Amount (Rs.) |
|---|---|---|---|
| 1 | Pravin Shivdas Herlekar (Noticee 2) | 15HB of SEBI Act, 1992 | Rs. 3,00,000/- (Rupees Three Lakhs Only) |
| 2 | Rishikesh Pravin Herlekar (Noticee 3) | 15HB of SEBI Act, 1992 | Rs. 2,00,000/- (Rupees Two Lakhs Only) |
| 3 | Vaman Ganapati Acharya (Noticee 4) | 15HB of SEBI Act, 1992 | Rs. 1,00,000/- (Rupees One Lakh Only) |

18. The Noticees 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**

19. 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 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

**Date: September 28, 2023**
**Place: Mumbai**

**Amar Navlani**
**Adjudicating Officer**