BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AE/2022-23/18215-18216]

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

In respect of:

Noticee No.	Noticee Name	PAN
1	GKB Ophthalmics Limited	AAACG7070R
2	Mr. Gaurav Gupta	AECPK7502D

*(hereinafter collectively referred to as "**Noticees**")*

In the matter of GKB Ophthalmics Limited

BACKGROUND

1. Securities and Exchange Board of India (herein after referred to as "**SEBI**") received a complaint dated February 18, 2020 from one Mr. Rajiv Jhunjhunwala. The said complaint was also forwarded by the Ministry of Corporate Affairs ("**MCA"**) to SEBI vide its letter dated July 02, 2020. SEBI was also in receipt of a letter dated March 06, 2020, from the company, GKB Ophthalmics Limited (hereinafter referred to as "**Noticee 1/ Company/ GKB"**) addressed to Mr. Rajiv Jhunjhunwala. Based on the

aforesaid complaint, SEBI carried out an examination to ascertain if there was any violation of any of the provisions of SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 (herein after referred to as "**LODR Regulations, 2015**") and the circulars issued thereunder, by Noticee 1 and by Mr. Gaurav Gupta (herein after referred to as "**Noticee 2"**) (Noticee 1 & 2 are collectively called '**Noticees**').

2. Accordingly, pursuant to the examination, adjudication proceedings was initiated against Noticee 1 under Section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SC(R)A,1956**") read with Clause 2(i) of the Listing Agreement dated February 12, 2016 entered into between Company and Bombay Stock Exchange Ltd. (herein after referred to as "**BSE**"/ "**Exchange**") for the alleged violations of the provisions of the alleged violations of Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015), Regulations 31(1), 4(1)(c) and 4(1)(h) of LODR Regulations, 2015. Adjudication proceedings was also initiated against Noticee 2 under Section 15HB of the SEBI Act, 1992 for the alleged violations of Regulations 4(2)(f)(iii)(6) and 26(3) of LODR Regulations, 2015 read with Regulation 17(5)(a) of LODR Regulations, 2015 read with para 3 and para 8 of the Company's Code of Conduct for Directors and Senior Management.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer (**AO**) by SEBI vide order dated April 05, 2021 to inquire into and adjudge under Section 23E of SC(R)A, 1956 read with Clause 2(i) of the Listing Agreement dated February 12, 2016 entered into between Company and Bombay Stock Exchange Ltd. and Section 15HB of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice (**SCN**) dated August 12, 2021 was issued to the Noticees, under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and Rule 4(1) of the Securities Contracts (Regulation) (Procedure For Holding Inquiry And Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SC(R) Adjudication Rules**") in the matter to show cause as to why an inquiry should not be held against them under Rule 4 of the SEBI Adjudication Rules and Rule 4 of the SC(R) Adjudication Rules and penalty be not imposed for the alleged violations of Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015), Regulations 31(1), 4(1)(c) and 4(1)(h) of LODR Regulations, 2015 by Noticee 1 and alleged violations of Regulations 4(2)(f)(iii)(6) and 26(3) of LODR Regulations, 2015 read with Regulation 17(5)(a) of LODR Regulations, 2015 read with para 3 and para 8 of the Company's Code of Conduct for Directors and Senior Management by Noticee 2.

5. The allegation levelled in the SCN are summarized as follows –

   a) *Noticee 1 is a listed entity on BSE and Noticee 2 was one of the directors of Noticee 1.*
   b) *During the course of an examination, comments were sought from Noticee 1. The matter was also referred to BSE for examination of allegations pertaining to non-classification of certain persons as promoters. The reply submitted by Noticee 1, vide email dated May 14, 2020 enclosing its reply vide letters dated May 13, 2020 and September 15, 2020 are placed as* ***Annexure- 4****. The reply or information or comments or clarification submitted or provided by BSE vide its email dated December 03, 2020, February 04,2021 and March 17, 2021 are placed as* ***Annexure- 5****.*

c) *Based on replies submitted by BSE and Noticee 1 and the allegation raised in the complaint of Mr. Rajiv Jhunjhunwala, SEBI observed the following:*

A. ***Non- classification of certain persons as promoters:***

i. It was observed that prior to listing of shares on BSE, the Noticee 1's equity shares were listed on regional stock exchanges. As per the shareholding patterns for December 31, 2009 and March 31, 2010 submitted by Noticee at the time of listing on BSE, Mr. Brijendra Kumar Gupta and Mr. Rajendra Kumar Gupta were categorized as "Public" and were holding more that 1% of total number of shares.

*ii. It was observed that Noticee 1 had not disclosed the names of Mr. Brijendra Gupta, Mr. Rajendra Kumar Gupta, and Mr. Narendra Kumar Gupta (deceased) in the Promoter and Promoter Group Category of the Shareholding Pattern filed with BSE although these entities were immediate Relatives i.e. brothers of Mr. Krishna Gopal Gupta ("**brothers of KGG**") (Promoter and Managing Director of the Company) and should have formed part of the Promoter and Promoter Group.*

iii. As per regulation 2(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, "promoter group" includes immediate relative i.e. brother of the promoter. Accordingly, the Company should have included the names of the brothers of KGG in under Promoter/Promoter Group category in the shareholding patterns filed by the Company to exchange.

iv. As per clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015), a listed entity was required to submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities.

v. It is therefore alleged that by not including the names of brothers of KGG under 'Promoter / Promoter Group' category in the quarterly shareholding patterns filed by the Company since the time of listing on

BSE till date In view of the above, Noticee1 has violated Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015).

B. Wrong re-classification of certain persons from Promoter to Public category

i. SEBI observed certain discrepancies in the re-classification application of Mr. Krishna Murari Gupta, Ms. Usha Gupta, Mr. Aditya Gupta and Mr. Vivek Gupta ("KMG & Others") for reclassification from Promoter to Public category.

ii. The shareholding of the aforesaid entities aggregated to 17.177 percent of the share-capital at that time. It was observed that Noticee 1 failed to meet the criteria mentioned in the erstwhile Exchange Checklist for Reclassification which stated that Outgoing Promoters and/ or Promoter Group entities along with persons acting in concert shall not hold more than ten percent of the paid-up equity capital of the company and the Company had not submitted the consent letter from the aforesaid promoters who wanted themselves to reclassify.

iii. It was observed that Noticee 1 reclassified KMG & Others from Promoters to Public category without getting approval of BSE for the said reclassification as required under erstwhile regulation 31A(2) of LODR Regulations,2015.

iv. It is, therefore, alleged that Noticee 1, by not including the names of KMG & Others under 'Prompter / Promoter Group' category in the shareholding patterns filed from quarter ending March 2018 till date, has violated Regulation 31(1) of LODR Regulations, 2015.

C. False/deceptive statement:

i. It was observed that Noticee 1 had obtained shareholders' approval for the preferential allotment by the Company in its Extraordinary General Meeting ("EGM") held on June o4, 2018. As per the Explanatory Statement *to the EGM Notice dated May 10, 2018(Annexure -6), the object of the preferential issue was to fund the future growth plans of the Company, both organically or inorganically.*

ii. Further, it was observed that Noticee 1, in its disclosure of outcome of its Board Meeting dated May 10, 2018 i.e. on the same date as that of the EGM Notice, inter alia, stated "In order to fund this new joint venture (between SOMO Vision Co. Ltd., South Korea and the Company) and to support future growth of its business and in order to further augment the financial resources of the Company and, the Board of Directors have approved the following proposed preferential issues…."

iii. It was observed that the said disclosures specifically indicated funding the new Joint Venture as one of the purposes of the preferential issue, while EGM Notice only broadly mentioned funding of future growth plans of the Company as one of the purposes of the preferential issue.

iv. Noticee 1, in its disclosures of outcome of its Board Meeting dated August 14, 2019, intimated its Board's decision to defer the Joint Venture Project and to approve an additional new project of starting a Lens Prescription Laboratory in UAE.

v. Accordingly, it was observed that although the objects of the preferential issue included funding of future growth plans, specifically stating "in order to fund this new Joint Venture" (which was later deferred), in the disclosure of board meeting outcome dated May 10, 2018 was misleading to the existing shareholders (for seeking approval of the preferential issue) and the prospective investors (for seeking investment in the preferential issue). The disclosures made by Noticee for outcome of Board Meeting held on May 10, 2018 is placed as ***Annexure-7****.*

vi. In view of the same, it is alleged that Noticee 1 has violated Regulation 4(1)(c) of LODR Regulations,2015. Further, it is alleged that by providing misleading information, which has undermined the interest of the stakeholders, Noticee 1 has violated Regulation 4(1)(h) of LODR Regulations,2015.

D. Disqualification of Director:

i. During the course of examination, it was observed that Noticee 2 had been disqualified as a director by the Registrar of Companies, Goa, Daman & Diu under Section 164(2) of the Companies Act, 2013 for a period of 5 years from November, 2016 to October, 2021. As per Section 164(2) of the Companies Act, 2013,

"No person who is or has been a director of a company which –
(a) has not filed financial statements or annual returns for any continuous period of three financial years…
shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so….."

ii. On perusal of Form DIR-8 dated April 01, 2017 submitted by Noticee 2 to the Company, it was observed that Noticee 2 had disclosed his directorship in Alchemy Concepts Pvt Ltd.(ACPL). However, Noticee 2 had not disclosed his disqualification under Section 164(2) of Companies Act, 2013.

iii. As per regulation 4(2) (f) (iii) (6) of LODR Regulations, 2015, the Board of directors of a listed entity are required to maintain high ethical standards. Further, the Noticee 1's Code of Conduct for Directors and Senior Management (copy placed as Annexure- 8) requires the Directors to act and conduct free from fraud and deception (para 3 on 'Honest and Ethical Conduct') and not seek to take unfair advantage of the Company through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing (para 8 on 'Fair Dealing'). Regulation 26(3) r/w 17(5)(a) of LODR Regulations,2015 requires all members of board of directors to affirm compliance with the code of conduct.

iv. It was observed that Noticee 2, as a director of ACPL, was not aware about ACPL not filing financial statements / annual returns for three continuous financial years which led to his disqualification under Section 164(2)(a) of Companies Act, 2013.

v. Despite this fact, Noticee 2 continued to be a director of the Company for the period from November 01, 2016 to April 19, 2019 even after being disqualified.

vi. In view of the above, it is alleged that Noticee 2 has violated Regulation 4(2)(f)(iii)(6) of LODR Regulations,2015, and Regulation 26(3) read with 17(5)(a) of LODR Regulations,2015 read with paras 3 and 8 of the Company's Code of Conduct for Directors and Senior Management for his period of directorship in the Company from November 01, 2016 to April 19, 2019

6. The SCN was served on the Noticees. Vide letter dated September 13, 2021, Noticee 1 submitted reply to the SCN. The main contentions made therein is summarized as under –

i. We wish to bring to your kind notice that certain key developments in the matter have not been brought on record by SEBI while placing of the facts before the learned Officer. There has been engagement with the BSE Limited ("BSE") which facts would have an impact on the outcome of these proceedings and also aid in the determination of issues raised by SEBE There-fore, in the present adjudication between us as the Noticee and SEBI„ it is relevant to provide complete background of the matter all the recent developments which will demonstrate that SEBI's allegations are not sustainable. While we have explained our case in detail in this response and also addressed the concerns of SEBI, should the learned Officer decide to conduct an Inquiry into the matter, we request for a personal hearing in the matter to explain the issues in and demonstrate our bonafides.

ii. The submissions of the Noticee, in a nutshell, are as under:

(a) *Mr. Brijendra Kumar Gupta and Mr. Rajendra Kumar Gupta ("Brothers of KGG"/ "Brothers") ever since 2009, i.e., prior to the Noticee being listed on BSE, have been classified as public shareholders. In none of the public disclosures or listing application, we had disclosed the brothers of KGG as promoter group. Rightly so, the senior aged brothers were never involved in the affairs of the Noticee nor were ever engaged in any policy* *decisions taken by the management of the Noticee at any point of time. Out of the three brothers, one of them namely Narendra Kumar Gupta expired in the year 2018. The total shareholding of the two living brothers, namely, Mr. Brijendra Kumar Gupta and Mr. Rajendra Kumar Gupta as on date is 5% of the total shareholding of the Noticee.*

(b) *The reclassification of KMG & Others was in accordance with the advice and directions of BSE, and was intimated to BSE, way back in 2018. There are ongoing discussions with the BSE in this regard and the issue stands resolved at BSE which is explained below;*

(c) *No false and/ or deceptive statements have been provided to the shareholders of the Noticee. There is no incorrect statement provided to begin with as explained below;*

(d) *The disqualification of Noticee No. 2 by the ROC, Goa, has been challenged before the Goa Bench of the Hon'ble Bombay High Court vide Writ Petition No. 42 of 2019, and is sub-judice. It is relevant to note that the disqualification was never informed to Noticee No. 2 and there was no occasion for Noticee No. 2 to even be alerted or informed about the disqualification. The moment the information was made known, the matter is being contested by Noticee No. 2. Even the issue on the merits of the case filed by Noticee No. 2 is briefly captured below.*

iii. *Without prejudice to the aforesaid, the Noticee submits that the violations, if any, committed by the Noticee cannot be considered as serious violations as there is no mala fide intent whatsoever and definitely not to avoid any compliance with the minimum public shareholding requirements. The public holding is much beyond the minimum threshold of 25 percent. The Noticee submits that its public shareholding for the quarter ended June 30, 2021, was 40.76%. There is no intent otherwise in the classification made by us, even assuming the same to be incorrect as we do not tend to gain in any manner or cause any loss to the shareholders. The Noticee, at each and every stage, has apprised the shareholders of the developments in the management and affairs of the Noticee, and has also obtained the required resolutions from the shareholders, prior to effecting any measures in this regard. It is therefore humbly prayed that the adjudication proceedings be disposed of forthwith, without any penalty.*

iv. *With this brief conspectus of the allegation and the response, we wish to provide a brief summary of our background.*

Brief Background

(a) The Noticee was incorporated as a public unlisted company in 1981. The shares of the Noticee were closely held by family and friends of Mr. Krishna Gopal Gupta. The Noticee is engaged in the business of manufacturing ophthalmic lenses and exporting the same to various counties across the globe.

(b) While initially the Brothers of KGG were on the board of directors of the Noticee, they ceased to be Directors of the Noticee with effect from September 19, 2009 and ceases to even be involved in the discussions pertaining to the Noticee. Thereafter the Brothers had no control over the operations of the Noticee and were in no manner involved in the business of the Noticee.

(c) Over the period, the Noticee has grown substantially in the ophthalmic lens industry, together with its subsidiaries, sister concerns and group companies. The Noticee has also collaborated with SOMO Holdings & Technology Co. Limited, South Korea for manufacturing Hi-Index Lenses. The said project is currently in the mobilization stage. The Noticee has always kept the shareholders informed of each and every' development in the company, including of the aforesaid collaboration, and has also ensured due compliances with all the applicable legal provisions. Except the present proceedings, there are no proceedings against the Noticee whatsoever.

Relationship of the Noticee with the Brothers of KGG

(d) For the purposes of the allegations raised in the SCN, it is important to note that the Brothers of Mr. Krishna Gopal Gupta (the Promoter and Managing Director of the Noticee) namely, Mr. Brijendra Gupta and Mr. Rajendra Gupta were directors on the Board of the Noticee and were holding more than 1% of the total number of shares of the Noticee.

(e) As stated above, on September 19, 2009, the Brothers of KGG ceased to be directors of the Noticee. It is noteworthy, that the Brothers of KGG have not been involved in the day-to-day affairs or management of the Noticee ever since.

Listing of the Noticee on BSE

(f) On May 27, 2010, the Noticee made an application to the BSE, to get listed on the platform of the BSE. Given the cessation of the Brothers of KGG as directors of the Noticee, they were classified as public shareholders of the Noticee. Besides this, the Brothers were never involved or had any intention to be part of management or any policy decision of the company in any manner. This was clearly informed to the management and the advisors who were engaged during the listing of the company on the BSE. While the definition of promoter group includes immediate relatives of the promoters, it was clearly mentioned to the promoters that the Brothers would not be engaged in any manner or consulted for any decisions or affairs of the company and were not to be treated as part of the promoter group of the company. In this regard, we crave leave to file an Affidavit of Krishna Gopal Gupta, who is willing to depose these facts on oath and submit the same to SEBI

Relationship of the Noticee with KMG & Others

(g) For the purposes of the second allegation, KMG & Others were holding 17.177% of the shareholding and formed a part of the Promoter/ Promoter Group of the Noticee.

(h) In the year 2017, KMG & Others requested the Noticee to be reclassified from the Promoter Group to the Public category, as over the last few years, KMG & Others had not been actively involved in the business of the Noticee. The Noticee intimated BSE and SEBI about the said reclassification request, vide a letter dated August 18, 2017, requesting for an exemption from seeking approval of the shareholders.

(i) It is pertinent to note that KMG & Others do not exercise any control over the affairs of the Noticee and are in no manner involved, in the decision making process of the company, nor are they engaged in the management or day-to-day affairs of the Noticee. KMG & Others have their own independent business.

(j) On receipt of the request letters, the Noticee sought for the approval of its Board of Directors vide a resolution dated August 10, 2017. Thereafter, the Noticee made an application to BSE on September 12, 2017. requesting for reclassification of shares of KMG & Others to Public Category. In response to the Noticee's communication, BSE, vide an email dated September 22, 2017, directed the Noticee to provide certain documents, including approval of the shareholders of the Noticee. Pursuant thereto, the Noticee took approval of its shareholders, vide a special resolution through postal ballot, on January 29, 2018. The Noticee intimated the BSE of the same vide a letter dated January 29,

2018, which contains the resolution passed by the shareholders of the Noticee. Copy of the letters dated August 18, 2017, September 12, 2017 and intimation letter dated January 29, 2018, addressed to BSE is annexed hereto and marked as "Annexure — A (Colly)". Pursuant thereto, KMG & Others have been classified as public shareholders of the Noticee. It is pertinent to note that no anomalies were raised by BSE with respect to the reclassification of KMG & Others.

(k) Thereafter, vide an email dated February 26, 2018, the BSE informed the Noticee that the outgoing promoters were holding more than 10% of the shareholding of the Noticee. On February 28, 2018, the Noticee responded to the BSE, seeking a clarification on the same. Thereafter, there was no further communication from BSE and BSE accepted the shareholding patterns filed by the Noticee, disclosing KMG & Others as Public category, with effect from the quarter ended March 31, 2018. Copy of the correspondence exchanged with BSE has been annexed hereto and marked as "Annexure — B"

(l) BSE later raised this issue again, only in 2020. It is after various discussions with the BSE, the reclassification was yet again made and KMG & Others were classified into the Promoter Group of the Noticee. The Noticee, vide an email dated March 16, 2021, has already informed BSE that KMG & Others will be included in the Promoter/Promoter Group of the Noticee and will be reflected as such in the shareholding pattern for the quarter ended March 31, 2021. The issue regarding the reclassification does not survive, therefore. Copy of the correspondence exchanged with BSE in this regard is annexed hereto and marked as "Annexure — C".

Preferential Allotment of the Noticee

(m) On June 04, 2018, the Noticee, at its EoGM, sought the consent of its shareholders for issuance of 6,50,000 equity shares and 7,50,000 equity conveltible warrants ("Preferential Issue").

(n) The objective of the preferential issue was clearly set out in the Explanatory Statement as under:

"Object of the Preferential Issue:

Funds raised through the present issue are proposed to be utilized:

(i) to scale up the operations in the present business;

(ii) to fund the future growth plans of the Company both organically or inorganically.

(iii) also to meet long term capital requirements of the Company and other general corporate purpose.

In this regard, it is submitted that the term "inorganic growth" necessarily implies investment and does not relate to intrinsic accruals. Therefore, funding a joint venture would fall under paragraph (ii) of the above explanatory statement.

(o) The Noticee, in accordance with the outcome of its Board meeting held on May 10, 2018, had sought to invest the proceeds of the Preferential Issue towards a joint venture project between SOMO Vision Company Limited, South Korea, wherein the Noticee was supposed to hold 50.01% equity shares ("JV Project").

(p) The Noticee, in its outcome of the Board meeting held on August 13, 2021 submitted to BSE an update on the JV Project. It was informed that the structural work for the JV Project has been rapidly progressing. However, the restrictions on international travel on account of the ongoing pandemic, have been delaying the training of the engineers in South Korea for the last one vear, which is an integral aspect of the JV Project.

(q) The Noticee, through its outcome of Board Meetings has always given an update on the JV Project impressing upon the efforts taken by the management to commission the project as soon as possible. The present delay in the project is only due to the restrictions on international travel.

v. *The detailed submissions of the Noticee as hereunder:*

Allegation regarding incorrect classification of the Brothers of KGG

vi. *While we have explained this issue below, it is humbly submitted that the alleged violation has been raised by BSE for the first time in 2020 although the events pertain to the year 2009-2010 and which has been accepted by the BSE at the time of listing. It was only recently, that BSE having accepted the shareholding until 2020, raised the issue for the first time. We have given our explanation vide our email dated March 16, 2021 and the matter is now resting with BSE.*

vii. *As set out hereinabove, in the Listing Application made by the Noticee to BSE, the shareholding of the Brothers of KGG were categorically classified as public, as they did not exercise any control directly or indirectly over the Noticee, and they had ceased to be directors of the Noticee in the year 2009 itself. Accordingly, they had requested the Noticee not to categorise them under the Promoter/ Promoter Group.*

viii. *The Noticee submits that the classification of the Brothers of KGG as public was in accordance with the understanding of the Noticee of the then applicable law and was not undertaken with the mala fide intent of avoiding compliance with minimum public shareholding requirements.* *In this regard, the Noticee states that in the Listing Application submitted to BSE in 2010, the Promoter/ Promoter Group of the Noticee held 65.94% of the total shareholding of the Noticee, and Mr. Brijendra Gupta and Mr. Rajendra Gupta held 3.83% and 1.99% shareholding respectively.*

ix. *It was only on February 12, 2021 (which is II years post the listing of the company and submitting the shareholding quarterly under Clause 35 of the Listing Agreement) that BSE called upon the Noticee to reclassify the Brothers of KGG, along with the Late Mr. Narendra Kumar Gupta, as part of Promoter/ Promoter Group. The Board of Directors of the Noticee had considered and deliberated upon this issue at its meeting held on March 24, 2021, and resolved that considering there was no involvement of the Brothers of KGG and Late Mr. Narendra Kumar Gupta in the business affairs of the Noticee, and the factual position that these individuals were classified as public shareholders right at the time of listing of the Noticee's securities with the BSE, after obtaining necessary approvals, the Board deemed it fit to continue to classify them as the public shareholders. Copy of the minutes of the Board Meeting dated March 24, 2021, is annexed hereto and marked as "**Annexure – D**". In this regard, the Noticee had also addressed an email dated March 16, 2021 (Annexure C) to the BSE, and the matter is now pending with the BSE. The Noticee has not received any response from the BSE in this regard. The Noticee submits that it would be difficult to ask aged persons to agree to be shown as Promoter Group when they had clearly disagreed.*

The reclassification of KMG & others was in accordance with the advice and directions of BSE, and was intimated to BSE, way back in 2018

x. *At the cost of repetition, the Noticee states and submits that BSE advised the Noticee to seek for approval from shareholders of the Noticee. The Noticee took* *approval of its Board vide a resolution dated August 10, 2017, and thereafter received shareholder approval vide a special resolution through postal ballot, on January 29, 2018. The Noticee intimated the BSE of the same vide a letter dated January 29, 2018, which contains the resolution passed by the shareholders of the Noticee.*

xi. *Subsequently, the Noticee received an e-mail from BSE dated February 12, 2021, advising the management to file a revised shareholding pattern, classifying KMG & Others into Promoter shareholding retrospectively from March 31, 2018, as one of the conditions for reclassification remained unfulfilled, i.e., the outgoing promoters should be holding less than 10% of the shareholding of the Noticee, whereas KMG & Others held 17.177% of the shareholding of the Noticee.*

xii. *The Noticee respectfully submits that the BSE should have pointed out this anomaly/ non-compliance in March 2018, i.e., when the Noticee intimated BSE of the said reclassification. The Noticee has thereafter shown KMG & Others as public shareholders, and it is noteworthy that neither the BSE nor the Registrar & Share Transfer Agent ever objected to the same.*

xiii. *The Noticee further submits that the statutory documents/ returns which are already completed and filed cannot be amended retrospectively, i.e., from 2018, to include the names of KMG & Others as Promoter/ Promoter Group. The Noticee after seeking legal and financial advice, and in accordance with the decision of the Board, vide the resolution passed on March 24, 2021 (Annexure D herein), has reclassified KMG & Others as part of the Promoter/ Promoter Group.*

xiv. *Accordingly, the shareholding pattern of the Noticee, for the quarter ending March 31, 2021, shows KMG & Others as part of the Promoter/ Promoter Group of the Noticee.*

<u>No false and/ or deceptive statements have been provided to the shareholders of the Noticee</u>

xv. *The Noticee states that the Explanatory Statement to the EoGM, dated June 04, 2018, clearly sets out the objective of the Preferential Issue, as has been stated hereinabove. The Noticee further submits that the Explanatory Statement includes the object to utilize the proceeds of the Preferential Issue to fund growth plans of the Noticee, "**inorganically**", which includes investment in the JV Project.*

xvi. *Subsequent to the approval from the shareholders of the Noticee, the Noticee vide an email dated July 14, 2018, circulated the Offer Letter and the Information Memorandum to the investors who had consented to subscribe to the Preferential Issue. The Offer Letter disclosed the objects of the offer as under:*

"To meet the future Capital expenditure of the Company and 50.01% Subsidiary which is in association with M/S Somo Vision Co. Ltd. for the manufacture and sale of Hi-Index lenses.

This should be read with Information Memorandum (IM) attached." (Emphasis supplied)

xvii. *Further, the objects of the Preferential Issue, as per the Information Memorandum, were as under:*

"The funds raised through this Issue shall be utilized to maintain the capital expenditure as well as the long term working capital as may be required for funding the operations of the Company and that of its subsidiaries."

*Copies of the Offer Document and the Information Memorandum have been annexed hereto and marked as "**Annexure – E**" and "**Annexure – F**" respectively.*

xviii. *The Noticee submits that the proceeds of the Preferential Issue are being used to fund the JV Project, as had been disclosed to the shareholders at the time of the issue. Further, the Noticee has consistently kept the shareholders well informed of the status and progress of the JV Project, vide its Board Meeting agendas, and shareholders meetings.*

xix. *The Noticee further submits that the Offer Document and Information Memorandum have to be read in consonance with each other, and cannot be read independently of each other.*

xx. *The question of misstatement in the prospectus and misutilization of IPO proceeds was recently discussed in the matter of* ***__Mohandas Shenoy Adige vs. Securities and Exchange Board of India__****. Vide an order dated August 26, 2021, the Hon'ble Securities Appellate Tribunal has held that, "… the finding given by the WTM that there is a misstatement in the prospectus which was done deliberately from the very inception in order to misuse the IPO proceeds and divert the IPO proceeds through ICDs to group companies is perverse and based on surmises and conjectures which a prudent person cannot arrive at. It is settled law that a finding must be based on some facts but in the instant case the facts which has been brought on record shows that there is no misstatement in the prospectus and, therefore, the question of having some ulterior design from the very inception to divert the proceeds through ICDs is in our opinion stretching it a bit too far."*

xxi. *The said Order further observed that, "If a statement made in the prospectus is not adhered to by the Company it does not become a misstatement. At best it can be a case of the Company violating the terms and conditions of the prospectus."*

xxii. *The Noticee respectfully submits that it is not the case that the Noticee has mis-utilised the proceeds of the Preferential Issue or made a false/ deceptive statement in relation to the Preferential Issue. The Noticee has utilised the proceeds in accordance with the representations made to the shareholders and there exists no question of any misrepresentations and/ or misleading statements advanced to the shareholders. In any event, the utilisation has been towards expansion of business and the theme of the proposal for which shareholders' approval was obtained has never been changed or diluted in any manner.*

__The disqualification of Noticee no. 2 by the ROC, Goa, has been challenged before the Goa Bench of the Hon'ble Bombay High Court vide Writ Petition No. 42 of 2019, and is sub-judice__

xxiii. *The Noticee states that the disqualification of Noticee No. 2 under Section 164(2) of the Companies Act, 2013, refers to the directorship of Noticee No. 2 in Alchemy Concepts Private Limited ("**ACPL**"). ACPL was incorporated with the prospect of engaging in the business of import and export of art, novelties, religious articles, antiques, historical items, etc. and set up gallery/ exhibitions of such items in India and abroad. The Noticee understands that ACPL never commenced business activities, never held a board meeting, never opened a bank account, and never allotted any shares to its promoters, since incorporation. As such, ACPL never filed its financial statements and its name was struck off by the Ministry of Corporate Affairs, and consequentially, the directors of ACPL, including Noticee No. 2, were disqualified from occupying and/ or continuing in the position of a director of ACPL and/ or any other company.*

xxiv. *In relation to this allegation, the SCN has alleged violation of Regulation 4(2)(f)(iii)(6) read with Regulations 26(3) and 17(5)(a) of the LODR, read with paragraphs 3 and 8 of the Company's Code of Conduct for Directors and Senior Management.*

xxv. *Regulation 4(2)(f)(iii)(6) of the LODR states that "the board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders." The Noticee submits, that it has, at all times maintained a high ethical standard and worked in favour of the interest of its stakeholders.*

xxvi. *Further, Regulations 26(3) and 17(5)(a) of the LODR provide, inter alia that the members of the board shall affirm compliance with the code of conduct of the board, on an annual basis; and that the board of directors shall lay down a code of conduct for all members of the board and senior management of a listed entity. The Noticee states that the board of the Noticee has formulated a Code of Conduct for the Board of Directors and Senior Management ("**Code of Conduct**"), which is strictly adhered to by the Board of Directors of the Noticee.*

xxvii. *The SCN also alleges violation of paragraphs 3 and 8 of the Code of Conduct. Paragraph 3 of the Code of Conduct emphasise that the directors/ senior management shall act in accordance with the highest standards of professional* *integrity, and shall act free from fraud and deception. Paragraph 8 emphasises that the directors shall be fair in carrying out their duties and responsibilities, and should act in good faith, with due care, competence and diligence, in the best interest of the company, and should not seek to take unfair advantage of the company through manipulation, concealment, abuse of information, misrepresentation, etc.*

xxviii. The Noticee states that the Noticee No. 2 was unaware of his disqualification, and on becoming aware of the same, he immediately challenged his disqualification before the Goa Bench of the Hon'ble Bombay High Court, and resigned from his post of directorship of the Noticee

xxix. In light of the above, the Noticee humbly submits that there has been no violation of any SEBI regulations or of the Code of Conduct of the Noticee, by the Noticee or Noticee No. 2.

xxx. Noticee No. 2 holds 8.09% of the total shareholding of the Noticee. Further, the present Board composition of the Noticee has been provided hereinbelow:

Sr.	***Name***	***Start Date***
1.	*Krishna Gopal Gupta*	*02.07.1982*
2.	*Vikram Gupta*	*24.07.1996*
3.	*Anil Vithal Palekar*	*26.09.2015*
4.	*Sadashiv Vasudev Shet*	*26.09.2015*
5.	*Joseph Agnelo Ambrosio Dcosta*	*29.12.2011*
6.	*Shashi Kumar Katreddi*	*31.03.2015*
7.	*Subhash Sadashiv Redkar*	*14.08.2019*

xxxi. Noticee No. 2 was not an officer in default as he was not involved in the decision-making process or the day-to-day operations of the Noticee. As has been stated above, the Noticee as well as the Noticee No. 2 were not served with any notice intimating them of the disqualification and were therefore unaware of the disqualification of Noticee No. 2.

xxxii. Furthermore, the Noticee No. 2 on becoming aware of his disqualification, promptly challenged the disqualification before the Goa Bench of the Hon'ble Bombay High Court vide Writ Petition No. 42 of 2019, which is pending *adjudication and final disposal. It is therefore respectfully submitted that SEBI ought not to penalize the Noticees on this ground, which is evidently sub-judice before the Goa Bench of the Hon'ble Bombay High Court.*

xxxiii. *In conclusion, it is most humbly submitted that Noticee has not violated any provisions of law.*

7. Noticee 2 submitted reply to the SCN vide his letter dated September 13, 2021 and the main contentions made therein are summarized as below –

i. *The submissions of the Noticee, in a nutshell, are as under:*

The disqualification of the Noticee by the ROC, Goa, has been challenged before the Goa Bench of the Hon'ble Bombay High Court vide Writ Petition No. 42 of 2019, and is sub-judice. It is relevant to note that the disqualification was never informed to the Noticee and there was no occasion for the Noticee to even be alerted or informed about the disqualification. The moment the information was made known, the matter is being contested by the Noticee. The issue on the merits of the petition filed by the Noticee is briefly captured below.

ii. *Without prejudice to the aforesaid, the Noticee submits that the violations, if any, committed by the Noticee cannot be considered as serious violations as there is no mala fide intent whatsoever. The Noticee, at each and every stage, has followed the due process of law and has strived to abide by the SEBI Act, read with the rules and regulations thereof.*

iii. *A brief summary of the background of the Noticee is provided hereinbelow:*

(a) *The Noticee become a director of the board of directors of GKB, with effect from July 03, 1999 and resigned from the said directorship on April 19, 2019.*

(b) *The Noticee holds 8.09% of the total shareholding of the Noticee.*

(c) *The Noticee was also on the board of directors of other entities, including one Alchemy Concepts Private Limited ("**ACPL**"). ACPL was incorporated with the prospect of engaging in the business of import and export of art, and other articles, and also to organise galleries/ exhibitions of such*

items, globally. However, due to certain reasons, ACPL never commenced business activities. The Noticee submits that ACPL never held a board meeting, never opened a bank account, and never allotted any shares to its promoters since inception.

(d) *In view of the above, ACPL never filed its financial statements, and therefore, its name was struck of by the Ministry of Corporate Affairs, and consequently, the directors of ACPL, including the Noticee, were disqualified from occupying and/ or continuing in the position of a director of ACPL and/ or any other company.*

(e) *The Noticee submits that he was unaware of the strike off of ACPL, and of his disqualification.*

(f) *On becoming aware of the same, the Noticee immediately challenged his disqualification before the Goa Bench of the Hon'ble Bombay High Court, vide Writ Petition No. 42 of 2019.*

(g) *Thereafter, the Noticee also resigned from his position of directorship in GKB.*

iv. *The detailed submissions of the Noticee are as hereunder:*

(a) *The Noticee states that his disqualification under Section 164(2) of the Companies Act, refers to his directorship in ACPL.*

(b) *In relation to this allegation, the SCN has alleged violation of Regulation 4(2)(f)(iii)(6) read with Regulations 26(3) and 17(5)(a) of the LODR, read with paragraphs 3 and 8 of the Code of Conduct.*

(c) *Regulation 4(2)(f)(iii)(6) of the LODR states that "the board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders." The Noticee submits, that it has, at all times maintained a high ethical standard and worked in favour of the interest of GKB and its shareholders.*

(d) *Further, Regulations 26(3) and 17(5)(a) of the LODR provide, inter alia that the members of the board shall affirm compliance with the code of conduct of the board, on an annual basis; and that the board of directors shall lay down a code of conduct for all members of the board and senior management of a listed entity. The Noticee states that the board of GKB had formulated the Code of Conduct, which has, at all times, been strictly adhered to by Noticee.*

(e) The SCN also alleges violation of paragraphs 3 and 8 of the Code of Conduct. Paragraph 3 of the Code of Conduct emphasise that the directors/ senior management shall act in accordance with the highest standards of professional integrity and shall act free from fraud and deception. Paragraph 8 emphasises that the directors shall be fair in carrying out their duties and responsibilities, and should act in good faith, with due care, competence and diligence, in the best interest of the company, and should not seek to take unfair advantage of the company through manipulation, concealment, abuse of information, misrepresentation, etc.

(f) The Noticee reiterates that he was unaware of his disqualification, and on becoming aware of the same, he immediately challenged his disqualification before the Goa Bench of the Hon'ble Bombay High Court, and resigned from his post of directorship of GKB.

(g) In light of the above, the Noticee humbly submits that there has been no violation of any SEBI regulations or of the Code of Conduct, by the Noticee.

(h) The Noticee was not an officer in default as he was not involved in the decision-making process or the day-to-day operations of GKB. As has been stated above, the Noticee was not served with any notice intimating him of the disqualification and was therefore unaware of his disqualification.

(i) Without prejudice to the above, the Noticee submits that his disqualification itself is bad in law. It has come to the knowledge of the Noticee that in November 2016, the ROC released a list, disqualifying several directors under Section 164(2)(a) of the Companies Act, due to non-filing of financial statements by the companies, for the financial years 2013-2014, 2014-2015 and 2015-2016. In July 2017, the name of ACPL was struck off by the ROC, for not filing annual returns for a continuous period of three years, in accordance with Section 248 of the Companies Act. It is pertinent to note that the relevant provisions of the Companies Act, 2013, were to be applicable from April 1, 2014. Therefore, the first year of default for non-filing of annual returns should legally be considered as financial year 2014-2015. However, prior to the completion of three consecutive defaults by ACPL, in filing its financial statements, ROC stuck the company off.

(j) The Noticee further submits that on June 23, 2017, ACPL filed Form STK 2, for winding up of the company. However, the form was marked for resubmission, with the remark that ACPL had already been struck off. The Noticee submits that the tenure of three financial years under the Companies Act could only have been completed by October 2017.

Therefore, the strike off of ACPL prior to that was premature, illegal and bad in law.

(k) *The Noticee on becoming aware of his illegal disqualification, promptly challenged the disqualification before the Goa Bench of the Hon'ble Bombay High Court, which is pending adjudication and final disposal. It is therefore respectfully submitted that SEBI ought not to penalize the Noticee on this ground, which is evidently sub-judice before the Goa Bench of the Hon'ble Bombay High Court.*

v. *In conclusion, it is most humbly submitted that Noticee has not violated any provisions of law.*

8. A personal hearing was held in respect of Noticees 1 and 2 before the undersigned on May 18, 2022 wherein the authorized representatives of Noticees appeared and reiterated the submissions made by the Noticees vide their replies dated September 13, 2021. Accordingly, the hearing proceedings were concluded.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the allegations made in the SCN, material available on record, and the submissions made by the Noticees. The issues that arise for consideration in the present case are :

I. Whether Noticee 1 has violated the provisions of Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015), Regulations 31(1), 4(1)(c) and 4(1)(h) of LODR Regulations, 2015? And whether Noticee 2 has violated the provisions of Regulations 4(2)(f)(iii)(6) and 26(3) of LODR Regulations, 2015 read with Regulation 17(5)(a) of LODR Regulations, 2015 read with para 3 and para 8 of the Company's Code of Conduct for Directors and Senior Management?

II. Do the violations, if established, attract monetary penalty under Section 23E of SC(R)A, 1956 read with Clause 2(i) of the Listing Agreement dated

February 12, 2016 entered into between Company and BSE and Section 15HB of SEBI Act, 1992?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in Section 23J of SC(R)A, 1956 and Section 15J of the SEBI Act, 1992?

10. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees and the same is reproduced below:

LODR Regulations, 2015

Regulation 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:

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

(h)The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

Regulation 4(2)(f)(iii)(6)

4(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:*

(iii) Other responsibilities:

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

Regulation 26(3): *All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.*

Regulation 17(5)(a): *The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.*

Regulation 31(1): *The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –*

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

(b)on a quarterly basis, within twenty one days from the end of each quarter; and, (c)within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:

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

Regulation 32(1)*: The listed entity shall submit to the stock exchange the following statement(s)on a quarterly basis for public issue, rights issue, preferential issue etc.,-*

(a)indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b)indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

Code of Conduct of Noticee 1 for Directors and Senior Management

Para 3: Honest and Ethical Conduct

The Directors/ Senior management shall act in accordance with the highest standards of personal and professional integrity, honest and ethical conduct not only on Company's premises and offsite but also at Company sponsored business , social events as well as any places. They shall act and conduct free from fraud and deception. Their conduct shall conform to the best- accepted professional standards of conduct.

Para 8:- Fair Dealing

In carrying out their duties and responsibilities, Directors/Senior Management should endeavor to deal fairly, and should promote fair dealing by the Company, its employees and agents, with customers, suppliers and employees. They should act in good faith, with due care, competence and diligence, in the best interests of the Company and fulfill their fiduciary obligations. Directors/ Senior Management should not seek to take unfair advantage of the Company through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing.

Clause 35 of the Erstwhile Listing Agreement:-

"The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-

a. One day prior to listing of its securities on the stock exchanges.

b. On a quarterly basis, within 21 days from the end of each quarter.

c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital"

…………..

Issue I) **Whether Noticee 1 has violated the provisions of Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015), Regulations 31(1), 4(1)(c) and 4(1)(h) of LODR Regulations, 2015? And whether Noticee 2 has violated the provisions of Regulations 4(2)(f)(iii)(6) and 26(3) of LODR Regulations, 2015 read with Regulation 17(5)(a) of LODR Regulations, 2015 read with para 3 and para 8 of the Company's Code of Conduct for Directors and Senior Management?**

A. Non- classification of certain persons as promoters:

11. The allegation against Noticee 1 is that it had not disclosed in the quarterly shareholding patterns to BSE from the date of its listing till date of SCN, the names of Mr. Brijendra Gupta, Mr. Rajendra Kumar Gupta, and Mr. Narendra Kumar Gupta (deceased) in the Promoter and Promoter Group Category of the Shareholding Pattern filed with BSE although these entities were immediate Relatives i.e. brothers of Mr. Krishna Gopal Gupta (Promoter and Managing Director of the Company) ("**brothers of KGG**") and should have formed part of the Promoter and Promoter Group. Noticee1 is thus alleged to have violated Clause 35 of the erstwhile Equity Listing Agreement

(effective till November 30, 2015) and Regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015).

12. I note that prior to listing of its shares on BSE, Noticee 1's equity shares were listed on regional stock exchanges. As per the shareholding patterns for December 31, 2009 and March 31, 2010 submitted by Noticee at the time of listing on BSE, Mr. Brijendra Kumar Gupta and Mr. Rajendra Kumar Gupta were categorized as "Public" and were holding more that 1% of total number of shares. I note that Noticee 1 had not disclosed the names of Mr. Brijendra Gupta, Mr. Rajendra Kumar Gupta, and Mr. Narendra Kumar Gupta (deceased) in the Promoter and Promoter Group Category of the Shareholding Pattern filed with BSE although these entities were immediate Relatives i.e. brothers of Mr. Krishna Gopal Gupta (Promoter and Managing Director of the Company) and should have formed part of the Promoter and Promoter Group.

13. As per Regulation 2(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, "promoter group" includes immediate relative i.e. brother of the promoter. The applicability of the aforesaid clause has not been disputed by Noticee 1. Accordingly, I find that Noticee 1 was required to include the names of the brothers of KGG under the Promoter/Promoter Group category in the shareholding patterns filed by the Company to exchange.

14. Noticee 1 in its submissions to the SCN has contended that the alleged violation in this regard has been raised by the BSE for the first time in 2020 although events pertain to the year 2009-10 and which has been accepted by the BSE at the time of listing. In this regard, I note that the fact regarding brothers of KGG not being included in the promoter/ promoter group category and being classified in the public category has come to light only post filing of complaint dated February 18, 2020 by Mr. Rajiv Jhunjhunwala (Complainant) with SEBI. Further, I note that the legal obligation to file the correct shareholding pattern has been cast on the listed entity by the Listing Agreement and the LODR Regulations, 2015 which Noticee 1 has failed to do so, hence I find no merits in the above contentions of the Noticee1.

15. Further, Noticee 1 has contended that the shareholding of the brothers of KGG were categorically classified as public, as they did not exercise any control directly or indirectly over the Noticee 1, and they had ceased to be directors of Noticee 1 in the year 2009 itself. In this regard, it has been contended that the brothers of KGG had accordingly requested Noticee 1 not to categorise them under the Promoter/ Promoter Group. It has been contended that the classification of the Brothers of KGG as public was in accordance with the understanding of the Noticee 1 of the then applicable law and was not undertaken with the mala fide intent of avoiding compliance with minimum public shareholding requirements. In this regard, I note that a person may be a promoter of the company without being a director. Further, as discussed above, brothers of KGG were clearly required to be classified under the promoter group in accordance with Regulation 2(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, and as such could not have been classified as public shareholders in the shareholding patterns filed by Noticee 1. Thus, the aforesaid contentions of Noticee 1 is devoid of merits.

16. It has also been contended that when BSE called upon Noticee 1 on February 12, 2021 to reclassify the brothers of KGG, the Board of Directors of the Noticee 1 had considered and deliberated upon this issue at its meeting held on March 24, 2021, and resolved that considering there was no involvement of the brothers of KGG and Late Mr. Narendra Kumar Gupta in the business affairs of Noticee 1, and the factual position that these individuals were classified as public shareholders right at the time of listing of the Noticee's securities with the BSE, after obtaining necessary approvals, the Board deemed it fit to continue to classify them as the public shareholders. Further, it has been contended that Noticee 1 had also addressed an email dated March 16, 2021 to the BSE, and the matter is now pending with the BSE. In this regard, I note that for the reasons discussed in the previous paragraph, Noticee 1 was statutorily required to classify the bothers of KGG under the promoter group and it was not open to Noticee

1's discretion to classify the said members as public shareholders. Therefore, the above contentions of Noticee 1 are untenable.

17. I note that as per clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015), a listed entity was required to submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities in the format specified by SEBI from time to time within the specified timelines.

18. Therefore, by not including the names of brothers of KGG under 'Prompter / Promoter Group' category in the quarterly shareholding patterns filed by Noticee 1 since the time of listing on BSE till date, I hold that Noticee 1 has violated Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulation 31(1) of LODR Regulations, 2015 (w.e.f. December 01, 2015).

B. Wrong re-classification of certain persons from Promoter to Public category

19. It has been alleged that the re-classification of Mr. Krishna Murari Gupta, Ms. Usha Gupta, Mr. Aditya Gupta and Mr. Vivek Gupta ("**KMG & Others**") from Promoter/ Promoter Group of the Noticee to Public category, was allegedly effected, without getting approval of the BSE as required under erstwhile Regulation 31A(2) of the LODR, 2015. Thus, it has been alleged that the shareholding patterns of the Noticee 1 therefore, filed from quarter ending March 31, 2018, till date is in violation of Regulation 31(1) of the LODR Regulations, 2015.

20. I note that SEBI observed certain discrepancies in the re-classification application of Mr. Krishna Murari Gupta, Ms. Usha Gupta, Mr. Aditya Gupta and Mr. Vivek Gupta ("**KMG & Others**") for reclassification from Promoter to Public category. The shareholding of the aforesaid entities aggregated to 17.177 percent of the share-capital at that time. It was observed that Noticee 1 failed to meet the criteria mentioned in the erstwhile Exchange Checklist for Reclassification which stated that Outgoing

Promoters and/ or Promoter Group entities along with persons acting in concert shall not hold more than ten percent of the paid-up equity capital of the company and the Company had not submitted the consent letter from the aforesaid promoters who wanted themselves to reclassify. It is further noted that no approval was obtained by Noticee 1 for reclassification of KMG & Others from from Promoter/ Promoter Group of the Noticee to Public category.

21. With regard to the above allegation, Noticee 1 has contended that in the year 2017, KMG & Others requested the Noticee 1 to be reclassified from the Promoter Group to the Public category, as over the last few years, KMG & Others had not been actively involved in the business of the Noticee 1. Thereafter Noticee 1 sought approval of its Board of Directors vide a resolution dated August 10, 2017. Further, it has been submitted that Noticee 1 intimated BSE and SEBI about the said reclassification request, vide a letter dated August 18, 2017, requesting for an exemption from seeking approval of the shareholders. Noticee 1. Further it has been submitted by Noticee 1 that it made an application to BSE on September 12, 2017, requesting for reclassification of shares of KMG & Others to Public Category and thereafter BSE, vide an email dated September 22, 2017, directed Noticee 1 to provide certain documents, including approval of the shareholders of Noticee 1. Further, it has been submitted that Noticee 1 took approval of its shareholders, vide a special resolution through postal ballot, on January 29, 2018 which it intimated to BSE on January 29, 2018 and thereafter it classified KMG & Others as public shareholders. It has been submitted that vide an email dated February 26, 2018, BSE informed Noticee 1 that the outgoing promoters were holding more than 10% of the shareholding of Noticee 1, to which Noticee 1 responded on February 28, 2018 seeking clarification on the same. It has been contended that thereafter, there was no further communication from BSE and BSE accepted the shareholding patterns filed by Noticee 1, disclosing KMG & Others as Public category, with effect from the quarter ended March 31, 2018. The

communication between Noticee 1 and BSE in this regard has been submitted by Noticee 1 in its reply to the SCN.

22. From the chain of events as narrated above by Noticee 1, I note that no exemption was granted to Noticee 1 by SEBI and BSE with regard to its request dated August 18, 2017 for exemption from seeking shareholders' approval for the reclassification of KMG & Others. I further note that during the course of examination, BSE vide its email dated December 03, 2020 to SEBI had stated that Noticee 1 had failed to meet the criteria mentioned in the erstwhile Exchange Checklist for Reclassification which stated that Outgoing Promoters and/ or Promoter Group entities along with persons acting in concert shall not hold more than ten percent of the paid-up equity capital of the company, and Noticee 1 had not submitted the consent letter from the aforesaid promoters who wanted themselves to reclassify. I note that BSE vide its email dated February 26, 2018 to Noticee 1 had *inter alia* communicated that as per the precondition stated in the Exchange Checklist, Outgoing Promoters and/ or Promoter Group entities along with persons acting in concert shall not hold more than ten percent the paid-up equity capital of the company, to which Noticee 1 submitted its reply to BSE vide email dated February 28, 2018. It is not in dispute that BSE had not allowed the reclassification of KMG & Others from Promoter /Promoter group to Public category by Noticee 1. However, I note that KMG & Others were mentioned in the Promoter and Promoter Group category of the shareholding pattern filed by Noticee 1 with BSE from the date of listing till December 31, 2017 and thereafter these entities were mentioned in the public category pattern filed by Noticee 1 with BSE from quarter ended March 2018 onwards. Thus, I note that the company (Noticee 1) had unilaterally, without obtaining approval for reclassification, had classified KMG & Others in public category of the shareholding patterns.

23. Noticee 1 has also contended that the BSE should have pointed out this anomaly/ non-compliance in March 2018, i.e., when Noticee 1 intimated BSE of the said reclassification. It has been further contended that Noticee 1 has thereafter shown

KMG & Others as public shareholders, and it is noteworthy that neither the BSE nor the Registrar & Share Transfer Agent ever objected to the same. In this regard, I note that the approval of BSE for the reclassification was mandatorily required to be obtained by the company under Regulation 31A(2) of LODR Regulations, 2015, as applicable at the relevant time, and Noticee 1 could not have gone ahead with the reclassification merely by intimating BSE. The aforesaid action by Noticee 1 amounts to a clear disregard of the law.Thus, I find no merits in the aforesaid contentions of Noticee 1. Further, it has been submitted that Noticee 1 after seeking legal and financial advice, and in accordance with the decision of the Board, vide the resolution passed on March 24, 2021, has reclassified back KMG & Others as part of the Promoter/ Promoter Group. In this regard, I note the classification of KMG & Others in the shareholding patterns for the quarter ending March 31, 2018 till December 31, 2020 was without approval of BSE.

24. In view of the above, I hold that Noticee 1 by not including the names of KMG & Others under 'Prompter / Promoter Group' category in the shareholding patterns filed from quarter ending March 2018 till December 2020, has violated Regulation 31(1) of LODR Regulations.

C. False/deceptive statement:

25. It has been alleged that Noticee 1 had provided false/ deceptive statements in the explanatory statement to the Extraordinary General Meeting of Noticee 1 regarding the objective of the preferential issue undertaken by the Noticee 1. It was alleged that although Noticee 1 had stated the objects of the preferential issue included funding of future growth plans, specifically stating "in order to fund this new joint venture" in the disclosure of board meeting outcome dated May 10, 2018, was misleading to the existing shareholders (for seeking approval of the preferential issue) and the prospective investors (for seeking investment in the preferential issue). Accordingly, Noticee 1 has been alleged to have violated Regulation 4(1)(c) and 4(1)(h) of the LODR Regulations.

26. I note that Noticee 1 had stated the following as the objects of the Preferential Issue in the Explanatory Statement to the Notice dated May 10, 2018 of the EGM, wherein the consent of the shareholders was being sought for the preferential allotment –

> "*Object of the Preferential Issue:*
>
> *Funds raised through the present issue are proposed to be utilized:*
> *(i)* *to scale up the operations in the present business;*
> *(ii)* *to fund the future growth plans of the Company both organically or inorganically;*
> (iii) *also to meet long term capital requirements of the Company and other general corporate purpose.*"

27. On the same day i.e. May 10, 2018, Noticee 1 disclosed the outcome of its board meeting as follows –

"*In order to fund this new joint venture (between SOMO vision Co. Ltd., South Korea and the Company) and to support future growth of its business and in order to further augment the financial resources of the Company and, the Board of Directors have approved the following proposed preferential issues…."*

28. I note that Noticee 1 has contended that that the Explanatory Statement states the object to utilize the proceeds of the Preferential Issue to fund growth plans of the Noticee 1, "*inorganically*", which includes investment in the JV Project. It has been contended that subsequent to the approval from its shareholders, Noticee 1 had vide an email dated July 14, 2018, circulated the Offer Letter and the Information Memorandum to the investors who had consented to subscribe to the Preferential Issue. It has been submitted that the Offer Letter disclosed the objects of the offer as under:

> "*To meet the future Capital expenditure of the Company and 50.01% Subsidiary which is in association with M/S Somo Vision Co. Ltd. for the manufacture and sale of Hi-Index lenses.*

<u>This should be read with Information Memorandum (IM) attached.</u>"
(Emphasis supplied)

Further, it has been submitted that the objects of the Preferential Issue, as per the Information Memorandum, were as under:

"*The funds raised through this Issue shall be utilized to maintain the capital expenditure as well as the long term working capital as may be required for funding the operations of the Company and that of its subsidiaries.*"

29. I further note that Noticee 1 has contended that the proceeds of the Preferential Issue are being used to fund the JV Project, as had been disclosed to the shareholders at the time of the issue and it has consistently kept the shareholders well informed of the status and progress of the JV Project, vide its Board Meeting agendas, and shareholders meetings. Noticee 1 has further submitted that the Offer Document and Information Memorandum have to be read in consonance with each other, and cannot be read independently of each other. Noticee 1 has further contended that it is not the case that it has mis-utilised the proceeds of the Preferential Issue or made a false/ deceptive statement in relation to the Preferential Issue. Further, it has been contended that Noticee 1 has utilised the proceeds in accordance with the representations made to the shareholders and there exists no question of any misrepresentations and/ or misleading statements advanced to the shareholders. It has also been contended that in any event, the utilisation has been towards expansion of business and the theme of the proposal for which shareholders' approval was obtained has never been changed or diluted in any manner. In view of the above, I find that Noticee 1 had on May 10, 2018 stated that one of the objects of the preferential allotment was to fund the future growth plans of the Company both organically or inorganically, and in this regard, I note that the same would cover the funding of its new JV and which I find is in consonance with the information disclosed in the outcome of its board meeting dated May 10, 2018. I also note that both i.e. outcome of board meeting dated May 10, 2018

as well as the notice dated May 10, 2018 to the EGM were disseminated on the BSE website. As such the existing shareholders were aware that one of the purpose of the preferential issue was to fund the new JV with Somo Vision Co Ltd. Likewise, by virtue of the announcement of the outcome of the board meetings, offer document and Information memorandum for the preferential issue, the prospective investors to the preferential issue were also aware that one of the purpose of the preferential issue was to fund the new JV with Somo Vision Co Ltd. Therefore, in view of the above and considering the above submissions of Noticee 1, I find that the allegation of misleading the existing shareholders (for seeking approval of the preferential issue) and the prospective investors (for seeking investment in the preferential issue) does not stand established. Accordingly, the alleged violation of Regulation 4(1)(c) and 4(1)(h) of the LODR Regulations, 2015 by Noticee 1 does not stand established.

D. Disqualification of Director:

30. It has been observed that Noticee 2 had been disqualified as a director by the Registrar of Companies, Goa, Daman and Diu, under Section 164(2) of the Companies Act, 2013, for a period of 5 years, from November 2016 to October 2021. It has been alleged that despite the same, Noticee 2 continued to be a director of the Noticee 1 for the period November 1, 2016, to April 19, 2019, even after being disqualified, and thus Noticee 2 has violated the provisions of Regulation 4(2)(f)(iii)(6) read with Regulation 26(3) and 17(5)(a) of LODR, read with paragraphs 3 and 8 of the Noticee 1's Code of Conduct for Directors and Senior Management.

31. With regard to the above allegation, Noticee 2 has mainly contended that he was unaware of his disqualification. In this regard, I note that all companies are required to file their financials and annual return with the Ministry of Corporate Affairs (MCA) and the same is prescribed under Sections 137 and Section 92 of the Companies Act, 2013, as well as corresponding sections under the Companies Act, 1956. I note the above is a statutory requirement. Further, it is specified that in Section 164(2) of the Companies Act, 2013, that if a person is director of a company which "*has not filed*

financial statements or annual returns for any continuous period of three financial years" then such director shall be disqualified as a director. Since ACPL had not filed its financials and annual returns for continuous period of 3 years, the consequence was that Noticee 2 was disqualified by the Registrar of Companies, Goa, Daman and Diu, under Section 164(2) of the Companies Act, 2013, for a period of 5 years, from November 2016 to October 2021. It may be noted that Regulation 134 of the Companies Act, 2013 *inter alia* mandates that the financial statements shall be approved by the Board of Directors of the company. Thus, as a director of ACPL, Noticee 2 would be well aware of the fact that financial statements of ACPL were not being filed with the MCA, which are a statutory requirement under the Companies Act, 2013 and also under the erstwhile Companies Act, 1956. Further, as a director he would be aware of various compliance status of regulatory norms. I note that directors cannot shirk their responsibilities from the non-compliances of statutory requirements and the consequences arising thereof. Thus, the contentions of Noticee 2 that he was not aware of his disqualification cannot be accepted. In this regard, I also find it relevant to rely on the judgement of the Hon'ble Securities Appellate Tribunal (**SAT**) in the case of ***N. Narayanan v. The Adjudicating Officer, SEBI*** (Appeal No. 29 of 2012 decided on October 05, 2012), wherein with regard to the role of directors, had held that:

> *"With the changing scenario in the corporate world, the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company, but, taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company, but, also the failings thereto."*

32. I note that Noticee 2 has also contended that his disqualification by the ROC was bad in law and his disqualification was illegal. Further, Noticee 2 has contended on

becoming aware of his illegal disqualification, he immediately challenged the disqualification before the Goa Bench of the Hon'ble Bombay High Court vide Writ Petition No. 42 of 2019. In this regard, I note that Noticee 2 has not produced any Court Order in this regard, including any stay order in his favour. In view of the same, I find that the disqualification of Noticee 2 as a director by the ROC stands and I find no merits in the above contentions of Noticee 2.

33. As per regulation 4(2) (f) (iii) (6) of LODR Regulations, 2015, the Board of directors of a listed entity are required to maintain high ethical standards. Further, Regulation 26(3) of LODR Regulations, 2015 requires all members of board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis, and Regulation 17(5)(a) of LODR Regulations, 2015 states that the board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity. On perusal of the Code of Conduct submitted by Noticee 1 to SEBI, I note that the same inter alia states as under –

> *"2. GUIDELINES FOR CONDUCT*
>
> *This code is applicable to all the Board of Directors of the Company and the Senior Management which would comprise all members of management reporting directly to the Managing Director, including all functional heads.*
>
> *The Directors/Senior Management should seek to use due care in the performance of their duties, be loyal to the Company, act in good faith and in a manner they reasonably believe to be not opposed to the best interests of the Company.*
>
> *3. HONEST AND ETHICAL CONDUCT*
>
> *<u>The Directors/Senior Management shall act in accordance with the highest standards of personal and professional integrity, honest and ethical conduct</u> not*

only on Company's premises and offsite but also at Company sponsored business, social events as well as any places. <u>They shall act and conduct free from fraud and deception</u>. Their conduct shall conform to the best-accepted professional standards of conduct.

8. FAIR DEALING

In carrying out their duties and responsibilities, Directors/Senior Management should endeavor to deal fairly, and should promote fair dealing by the Company, its employees and agents, with customers, suppliers and employees. They should act in good faith, with due care, competence and diligence, in the best interests of the Company and fulfill their fiduciary obligations. <u>Directors/Senior Management should not seek to take unfair advantage of the Company through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing</u>.

(Emphasis Supplied)

34. I note that Noticee 2 has contended that he has, at all times maintained a high ethical standard and worked in favour of the interest of GKB and its shareholders. Further, Noticee 2 has contended that the board of GKB had formulated the Code of Conduct, which has, at all times, been strictly adhered to by Noticee 2. In this regard, I note that on perusal of Form DIR-8 dated April 01, 2017 submitted by Noticee 2 to the Company, it is observed that Noticee 2 had disclosed his directorship in ACPL, however, Noticee 2 had not disclosed his disqualification under Section 164(2) of Companies Act, 2013. Further, I also note that even though Noticee 2 was disqualified from being a director in any other company for the duration from November 2016 to October 2021, he continued to be a director of Noticee 1 for the period from November 01, 2016 to April 19, 2019, thereby he has violated the law and the provisions of Section 164(2) of the Companies Act, 2013. On account of this, I note that Noticee 1 has failed to maintain high ethical standards and failed to affirm to the code of conduct of board of directors

and senior management, as laid down by the company and specifically to paras 3 and 8 of the said code of conduct. In view of the above, I find that Noticee 2 has violated the provisions of Regulation 4(2)(f)(iii)(6) of LODR Regulations, 2015, and Regulation 26(3) read with 17(5)(a) of LODR Regulations, 2015 read with paras 3 and 8 of the Company's Code of Conduct for Directors and Senior Management for his period of directorship in the Company from November 01, 2016 to April 19, 2019.

Issue II) ***Do the violations, if established, attract monetary penalty under Section 23E of SC(R)A, 1956 read with Clause 2(i) of the Listing Agreement dated February 12, 2016 entered into between Company and BSE and Section 15HB of SEBI Act, 1992?***

35. In this regard, I note that the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

36. In view of the foregoing and placing reliance on the aforesaid judgement, I note that the violation of Section Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulations 31(1) of LODR Regulations, 2015 by Noticee 1 makes it liable for penalty under Section 23E of SC(R)A, 1956 read with Clause 2(i) of the Listing Agreement dated February 12, 2016 entered into between Company and BSE. Further, the violation of Regulation 4(2)(f)(iii)(6) of LODR Regulations, 2015 and Regulations 26(3) of LODR Regulations, 2015, read with Regulation 17(5)(a) of LODR Regulations, 2015 read with para 3 and para 8 of the Company's Code of Conduct for Directors and Senior Management by Noticee 2 makes it liable it liable for penalty under Section 15HB of SEBI Act, 1992. The provisions of Section 15HB of SEBI Act, 1992, Section 23E of SC(R)A, 1956, and Clause 2(i) of the Listing Agreement dated February 12, 2016 entered into between Company and BSE read as under –

Section 15HB of SEBI Act, 1992 *– "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."*

Section 23E of SC(R) A, 1956*:- "If a company or any person managing collective investment scheme or mutual fund [or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees."*

Clause 2(i) of Listing Agreement dated February 12, 2016 entered into between Noticee and BSE

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

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

37. In this regard, the Hon'ble SAT in the matter of ***Suzlon Energy Ltd. and Anr. vs. SEBI*** (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

"<u>Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement</u>. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 <u>whereas Section 23E refers to the conditions which are imposed upon a Company when</u>

it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E....." (emphasis supplied)

38. I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order and an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order vide civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. I note that vide orders in the matter of M/s NDTV vs. SEBI (Appeal no. 358 of 2015) dated August 07, 2019, and Oasis Securities Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of these proceedings qua Noticee 1 is to determine if Noticee 1 has violated Section Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulations 31(1) of LODR Regulations, 2015 and if so, determine whether penalty should be imposed and assess the quantum of such penalty. However, the enforcement of this order qua Noticee 1, shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

<u>Issue III)</u> If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 and Section 23J of SC(R)A, 1956?

39. In this regard, the provisions of Section 23J of the SCR Act, 1956 and Rule 5 of SC(R) Adjudication Rules and Section 15J of the SEBI Act, 1992 and Rule 5 of SEBI Adjudication Rules, require that while adjudging the quantum of penalty, 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.

40. From the material available on record, it is difficult to quantify the exact disproportionate gains or unfair advantage enjoyed by the Noticees 1 to 2 and the consequent losses suffered to the investors. With respect to the repetitive nature of the default, I find that no prior default by the Noticees is available on record. I note that securities market is based on free and open access to information and the integrity of market is predicated on the quality and the manner in which information regarding the company is made available to the market. Hence, it is important that investors and shareholders are well informed about the accurate picture regarding the listed company. Noticee 1 by its defaults has deprived the investors of important information at the relevant point of time. In the present case, Noticee 1 has been wrongly classifying promoter /promoter group entities in the public category in total disregard to the provisions of Listing Agreement and LODR Regulations, 2015. I note that Noticee 1 has wrongly classified certain entities viz. brothers of KGG as public shareholders when in fact the said persons were required to be classified in the promoter / promoter group category. Similarly, Noticee 1 has unilaterally reclassified certain entities viz. KMG & Others from the promoter / promoter group category into the public shareholders category without

even obtaining the approval of BSE. Thus, Noticee 1 was filing wrong information in the quarterly shareholding patterns for the period as discussed in the earlier parts of this order and has thus violated Section Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulations 31(1) of LODR Regulations, 2015. Further, it is also noted that Noticee 2 had been disqualified as a director by the Registrar of Companies, Goa, Daman and Diu, under Section 164(2) of the Companies Act, 2013, for a period of 5 years, from November 2016 to October 2021, however he continued to be a director of Noticee 1 for the period November 1, 2016, to April 19, 2019, even after being disqualified, in violation of Regulation 4(2)(f)(iii)(6) and Regulations 26(3) read with 17(5)(a) of LODR Regulations, 2015 read with paragraphs 3 and 8 of the Noticee 1's Code of Conduct for Directors and Senior Management.

ORDER

41. Accordingly, taking into account the aforesaid findings and in exercise of power conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, and under Section 23I of the SCR Act, 1956 read with Rule 5 of the SCR Adjudication Rules, I hereby impose the following penalties on the Noticees :–

Noticee	**Violation**	**Penal Provisions**	**Penalty (Rs.)**
Noticee 1 (GKB Opthalmics Ltd)	Section Clause 35 of the erstwhile Equity Listing Agreement (effective till November 30, 2015) and Regulations 31(1) of LODR Regulations, 2015	Section 23E of SC(R)A, 1956 read with Clause 2(i) of the Listing Agreement dated February 12, 2016 entered into between Company and BSE	Rs. 10,00,000/- (Rupees Ten Lakh Only)

Noticee 2 (Mr. Gaurav Gupta)	Regulation 4(2)(f)(iii)(6) and Regulations 26(3) read with 17(5)(a) of LODR Regulations, 2015 read with paragraphs 3 and 8 of the Noticee 1's Code of Conduct for Directors and Senior Management	Section 15HB of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh Only)

42. As mentioned earlier in the paragraph 38 of the order, the enforcement of this order qua Noticee 1 shall be subject to the outcome of Civil Appeal No. 4741 of 2021 titled SEBI vs. Suzlon Energy Ltd & Anr pending before the Hon'ble Supreme Court.

43. The Noticee 2 shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

44. The Noticee 2 shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticees shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number

e) Transaction Number

45. In the event of failure to pay the said amount of penalty by Noticee 2 within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

46. In terms of Rule 6 of the SC(R) Adjudication Rules and Rule 6 of the SEBI Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: July 29, 2022 **Soma Majumder**

Place: Mumbai **Adjudicating Officer**