<u>BEFORE THE ADJUDICATING OFFICER</u>

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

[ADJUDICATION ORDER NO. ORDER/SM/AD/2021-22/14762]

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

In respect of

Jagruti Sugar & Allied Industries Limited
[PAN: AACCJ2421P]

In the matter of Jagruti Sugar & Allied Industries Limited

<u>FACTS OF THE CASE IN BRIEF</u>

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**), on receipt of a complaint dated August 30, 2016 conducted an investigation into the scrip of Jagruti Sugar & Allied Industries Limited (hereinafter referred to as "**Noticee/Company/JSAL").** Pursuant to the aforementioned investigation, it was observed by SEBI that Noticee had raised money from public by issuing Non-Convertible Redeemable Preference Shares (hereinafter referred to as **"NCRPS"**) without complying with Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9,13,15,16, 16B(1), 22 of SEBI (Issue and Listing of Non-Convertible

Redeemable Preference Shares) Regulations, 2013 (hereinafter referred to as "**NCRPS Regulations**").

2. Therefore, SEBI initiated adjudication proceedings against Noticee under Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) for alleged violations of provisions of NCRPS Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated December 29, 2020, SEBI appointed the undersigned as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15I(1) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15HB of SEBI Act, the aforesaid alleged violations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. SEBI/EAD/SM/AD/26695/1/2021 dated October 01, 2021 (hereinafter being referred to as the "**SCN**") was issued to Noticee in terms of Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and penalty, if any, should not be imposed upon Noticee under the provisions of Section 15HB of SEBI Act, for violation of Regulations 4(2)(a), 4(2)(b), 4(2)(c),4(2)(d),5,6,7,8,9,13,15,16,16B(1) and 22 of NCRPS Regulations, alleged to have been committed by Noticee. The SCN, *inter-alia*, alleged the following :-

a *SEBI was in receipt of a complaint dated August 30, 2016 wherein it was alleged that Noticee had raised money from multiple investors by issuing NCRPS without complying with applicable laws. Pursuant to investigation initiated by SEBI on the basis of the complaint, details were sought from RoC, Mumbai vide letter dated September 07, 2016 regarding the issuance of equity shares and/or convertible securities during the last 7 years by Noticee.*

b *The RoC, Mumbai vide letter No. RoC/JTA(C) /193824/2754, inter-alia, submitted that Noticee had issued NCRPS to multiple investors on numerous occasions in the Financial Year 2013 -2014. Accordingly, information was sought from Noticee regarding its NCRPS issuance vide letter dated November 04, 2016. Thereafter, Noticee vide letters dated November 24, 2016, March 01, 2017, inter alia, submitted details regarding issuance of NRCP.*

c *Based on information received, it was observed that Noticee has issued NCRPS to at least 1034 investors amounting to Rs. 2.58 Crores during FY 2013-14 and such offers would qualify as a public issue under the first proviso to Section 67(3) of the Companies Act.*

d *In view of the finding that Noticee has made a public issue of NCRPS*, *provisions of Regulations 4 (2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1), 22 of NCRPS Regulations, were required to be complied with by Noticee.*

e *However it was observed that Noticee failed to comply with aforesaid provisions of NCRPS Regulations in respect of aforementioned public issue of NCRPS during Financial Year 2013-2014. <u>In view of the aforementioned observations, it is alleged that Noticee has violated Regulations 4 (2)(a),</u>*

<u>4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1), 22 of NCRPS Regulations.</u>

5. The SCN was sent via Speed Post Acknowledgement Due ('**SPAD**') to the last known address of Noticee as well as through email dated October 01, 2021 and was duly served upon it. Noticee was granted time of fifteen (15) days to file their reply to the SCN. Thereafter, Noticee filed reply to the SCN vide letter dated October 13, 2021 which is summarized as below:

    i *Noticee admitted it in its reply that it had not complied with provisions of NCRPS Regulations as alleged in the SCN.*

    ii *With respect to discrepancies pointed out in the SCN between data provided by RoC, Mumbai and the data provided by Noticee, Noticee has stated that it had not made any allotments of NCRPS on March 29, 2014 as mentioned by RoC, Mumbai in its data provided to SEBI. Additionally, Noticee submitted that it had not made any allotments in the FY 2010-2011 and the discrepancy which arose due to this fact was because of clerical error committed by Noticee while submitting information to SEBI.*

    iii *Noticee has also submitted that it had tried to follow all the directions of SEBI given to it. Noticee has also submitted that in its reply that it had refunded money to its investors. Noticee also submitted that it had filed a petition before National Company Law Tribunal, Mumbai Bench but the same was later withdrawn by Noticee due to lack of jurisdiction by NCLT. Additionally, Noticee also submitted that it had filed a request letter with RoC, Mumbai for initiation of adjudication proceedings in the instant* *matter. Thus, Noticee stated that it had tried to make good its default by complying with all directions given by SEBI from time to time.*

6. Further, in the interest of natural justice, Noticee was granted an opportunity of personal hearing in the matter before the undersigned on December 29, 2021, vide hearing notice dated December 06, 2021 served on Noticee through digitally signed email dated December 06, 2021 as well as through SPAD. On scheduled date of hearing, the authorized representative of Noticee, Dyaneshree Umesh Nagarkar (hereinafter referred to as "**AR**"), attended the hearing and reiterated contents of Noticee's earlier letter dated October 13, 2021.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

7. I have carefully perused the charges levelled against Noticee in the SCN and the material available on record. The issues that arise for consideration in the present case are:
   - II Whether Noticee has violated Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1) and 22 of NCRPS Regulations?
   - III Do the violations, if any, attract monetary penalty under Section 15 HB of the SEBI Act?
   - IV If so, what should be the quantum of penalty?

8. Before moving forward, it is pertinent to refer to the relevant provisions of the NCRPS Regulations, which are reproduced as under:

   <u>NCRPS Regulations</u>

4(2): No issuer shall make a public issue of non-convertible redeemable preference shares unless the following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,-

a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

Provided *that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange:*

Provided *further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;*

Explanation: For any subsequent public issue, the issuer may choose a different *stock exchange as a designated stock exchange subject to the requirements of this regulation;*

b) it has obtained in - principle approval for listing of its non - convertible redeem able preference shares on the recognized stock exchanges where the application for listing has been made;

c) it has obtained a credit rating from at least one credit rating agency registered with the Board and is disclosed in the offer document:

Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the non - convertible redeemable preference shares that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder;

Disclosures in the offer document.

***5**. (1) The offer document shall contain all material disclosures which are necessary for the subscribers of the non-convertible redeemable preference shares to take an informed investment decision.*

(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:

(a) the disclosures specified in Schedule II of the Companies Act, 1956;

(b) disclosure specified in Schedule I of these regulations; and

(c) additional disclosures as may be specified by the Board.

Explanation: For the purpose of this regulation, "material" means anything which is likely to impact an investor's investment decision.

Filing of draft offer document.

6. *(1) No issuer shall make a public issue of' non-convertible redeemable preference shares unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.*

(2) The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.

(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the non-convertible redeemable preference shares are proposed to be listed.

(4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

(5) The lead merchant banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, 4[along with fees as specified in Schedule III] simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.

Mode of Disclosure of Offer Document.

7. *(1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF /HTML formats.*

(2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.

(3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues.

8. *(1) The issuer shall make an advertisement in one English national daily newspaper and one Hindi national daily newspaper with wide circulation at the place where the registered office of the issuer is situated, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule I.*

(2) No issuer shall issue an advertisement which is misleading in material particulars or which contains any information in a distorted manner or which is manipulative or deceptive.

(3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.

(4) The credit rating shall be prominently displayed in the advertisement.

(5) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.

(6) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.

(7) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of non-convertible redeemable preference shares or be used for solicitation.

Abridged Prospectus and application forms.

9. *(1) The issuer and lead merchant banker shall ensure that:*

(a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus;

(b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;

(c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

(2) The issuer may provide the facility for subscription of application in electronic mode

Minimum subscription.

13. *(1) The issuer may decide the amount of minimum subscription which it seeks to raise by public issue of non-convertible redeemable preference shares in accordance with the provisions of Companies Act, 1956 and disclose the same in the offer document.*

(2) In the event of non-receipt of minimum subscription, all application moneys received in the public issue shall be refunded forthwith to the applicants. In the event the application monies are refunded beyond eight days from the last day of the offer, then such amounts shall be refunded together with interest at such rate as may be set out in the offer document which shall not be less than fifteen per cent per annum

Prohibitions of mis-statements in the offer document.

15. *(1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading*

(2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of non-convertible redeemable preference shares shall not contain any false or misleading statement.

Mandatory listing.

16. *(1) An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956.*

(2) The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

(3) Where the issuer has disclosed the intention to seek listing of non-convertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such non-convertible redeemable preference shares.

Security Deposit.

16B. *(1) The issuer shall deposit, before the opening of subscription list, and keep deposited with the stock exchange(s) an amount calculated at the rate of one per cent. of the amount of securities offered for subscription to the public.*

Obligations of the Issuer, Lead Merchant Banker, etc.

22. *(1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document* *are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.*

(2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.

(3) The issuer shall treat the applicants in a public issue of non-convertible redeemable preference shares in a fair and equitable manner as per the procedures as may be specified by the Board.

(4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

(5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of non-convertible redeemable preference shares which are listed or proposed to be listed on a recognized stock exchange.

Issue I: Whether Noticee has violated Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1) and 22 of NCRPS Regulations?

9. I now proceed to deal with the aforementioned allegations levelled against Noticee in the SCN, and record my observations/ findings in the subsequent paragraphs.

10. I note from Noticee's submissions that the facts as alleged in the SCN have not been disputed by the Noticee. I note that Noticee is a public unlisted company

registered with Registrar of Companies, Mumbai (hereinafter referred to as **"ROC, Mumbai/RoC")**.

11. I note that Roc, Mumbai vide its letter No. RoC/JTA(C)/193824/2754 has submitted to SEBI that Noticee had issued NCRPS amounting to Rs 4.14 crore to 1042 investors. The details regarding the said issuance of NCRPS by Noticee as provided by Roc, Mumbai are as given below:

Table-1

Financial Year (FY)	**Date of Issuance**	**No. of investors to whom NCRPS issued**	**Amount raised (In lakh)**
2013-14	6.12.2013	47	11.75
	10.12.2013	48	12.00
	14.12.2013	48	12.00
	19.12.2013	48	12.00
	24.12.2013	48	12.00
	28.12.2013	19	4.75
	04.01.2014	40	10.00
	09.01.2014	48	12.00
	13.01.2014	49	12.25
	18.01.2014	49	12.25
	23.01.2014	21	5.25
	31.01.2014	77	19.25
	06.02.2014	49	12.25
	11.02.2014	49	12.25

	17.02.2014	49	12.25
	22.02.2014	42	10.50
	28.02.2014	46	11.75
	04.03.2014	49	12.25
	07.03.2014	34	8.50
	11.03.2014	27	6.75
	15.03.2014	53	13.25
	24.03.2014	49	12.25
	28.03.2014	45	11.25
	29.03.2014	8	154.85
	Total	**1042**	**413.60**

12. However, I note that Noticee in its submissions to SEBI vide letters dated November 24, 2016 and March 01, 2017 stated that in the FY 2013-2014, it had issued NCRPS to 1034 investors and raised an amount of Rs. 2.59 crore. The details regarding the issuance of said NCRPS as provided by Noticee are as given below:

Table-2

Financial Year (FY)	**Date of Issuance**	**No. of investors to whom NCRPS issued**	**Amount raised (In lakh)**
	6.12.2013	47	11.75
	10.12.2013	48	12.00

2013-14	14.12.2013	48	12.00
	19.12.2013	48	12.00
	24.12.2013	48	12.00
	28.12.2013	19	4.75
	04.01.2014	40	10.00
	09.01.2014	48	12.00
	13.01.2014	49	12.25
	18.01.2014	49	12.25
	23.01.2014	21	5.25
	31.01.2014	77	19.25
	06.02.2014	49	12.25
	11.02.2014	49	12.25
	17.02.2014	49	12.25
	22.02.2014	42	10.50
	28.02.2014	46	11.75
	04.03.2014	49	12.25
	07.03.2014	34	8.50
	11.03.2014	27	6.75
	15.03.2014	53	13.25
	24.03.2014	49	12.25
	28.03.2014	45	11.25
	Total	**1034**	**258.75**

13. I observe from the submission of Noticee and Roc, Mumbai that there seems to be a slight discrepancy between the data provided by the company and the data received from RoC. For instance, I note that as per JSAL, the total no. of allottees and total amount raised in the FY 2013-14 were 1034 and Rs.2.59 crore, respectively, whereas as per RoC data, JSAL had issued NCRPS to 1042 investors and raised Rs.4.14 crore for the same FY. I note that said discrepancy arose because RoC in its data had stated that Noticee has issued NCRPS to 8 investors totalling to amount of Rs 154.85 Cr on March 29, 2014 which was not disclosed in the data provided by Noticee.

14. In this regard, I note that Noticee in its reply to the SCN has stated that it had not made any allotments on March 29, 2014 and the last allotment it made in the FY 2013-2014 was made on March 28, 2014. I note that for determining the issues involved in the present matter, it is not necessary to deep dive into the reason for this slight discrepancy when it can be clearly seen from the communications from RoC, Mumbai and Noticee that Noticee had issued NCRPS to at least 1034 investors in the FY 2013-2014. I also note that Noticee in its reply to the SCN dated October 13, 2021 has also reiterated that it had issued NCRPS to 1034 investors in the FY 2013-2014. In the light of above observations, I find that Noticee had issued NCRPS to at least 1034 investors in the FY 2013-2014 and that the issue of NCRPS was to more than 49 investors in the FY 2013-2014.

15. In order to determine whether the aforementioned issuance of NCRPS amounts to public issue, I refer to the provisions of Section 67(3) of Companies Act, 1956. I note that section 67(3) of Companies Act, 1956 states the following:

“ 67(3) No offer or invitation shall be treated as made to the public by virtue of sub- section (1) or subsection (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

***Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty perons or more:*

***Provided** further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”*

16. From the perusal of section 67(3) of Companies Act, 1956, I note that as per first proviso to Section 67(3) Companies Act, 1956, a company making offer of shares/debentures to fifty or more persons would become automatically bound to follow the obligations laid down in the Act for making public issue and listing of securities. In this context, I place reliance on the decision of the Hon’ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI [*(2013) 1 SCC 1], wherein it was held that

“...*The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000,which clearly indicates, nothing contained in Subsection (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons* *or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation..."*

17. Thus*,* considering the fact that Noticee has issued NCRPS to 1034 investors, i.e. to more than 49 people, in the FY 2013-2014, I find that Noticee had made a deemed public issue within the meaning of first proviso of Regulation 67(3) of Companies Act 1956.

18. Further, I note that with effect from June 12, 2013, NCRPS Regulations are applicable to the public issue and listing of NCRPS. In view of the finding that Noticee had made a public issue of NCRPS in the FY 2013-2014, the Regulations 4 (2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1) and 22 of NCRPS Regulations were required to be complied with by Noticee.

19. However, I note from records pertaining to SEBI's examination in the matter that Noticee had failed to comply with aforesaid provisions of NCRPS Regulations in respect of aforementioned public issue of NCRPS during FY 2013-2014. In this regard, I note that in its reply to the SCN as well in its submissions to SEBI during the aforesaid examination, Noticee had admitted to the said default, stating " *We have already accepted the fact that Company had made the default while complying with the stated provisions for the allotments made*". In light of the above observations, I find that the allegation that Noticee has violated Regulations

4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1) and 22 of NCRPS Regulations stands established

Issue No. II: If yes, whether the failure on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

20. It has been established in the preceding paragraphs that Noticee has violated 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1) and 22 of NCRPS Regulations.

21. Further, I note that Noticee in its reply to the SCN has stated that as per the direction given by SEBI vide email dated December 31, 2015 during the examination in the present matter, Noticee had refunded the money with interest to its investors. Noticee in its reply also stated that in accordance with directions, given to it by SEBI, vide email dated November 04, 2016 it had also filed a petition for compounding with the Hon'ble National Company Law Tribunal, Mumbai Bench (NCLT). Additionally, Noticee in its contentions has stated that it requested RoC, Mumbai for initiation of adjudication process in this matter as it had to withdraw the aforementioned petition filed before Hon'ble NCLT due to lack of jurisdiction. Thus, Noticee stated that it has tried to make good the default by complying with all directions given by SEBI during examination in the present matter. In regard to the aforementioned contentions of the Noticee, though the same may be considered as a mitigating factor in the instant matter, I note that Noticee cannot avoid penal action in the instant matter just because it had attempted to make good its default.

22. Therefore, the above violation of Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 5, 6, 7,8,9 ,13,15,16, 16B(1) and 22 of NCRPS Regulations by Noticee would attract

monetary penalty under Section 15HB of the SEBI Act .The text of Section 15HB of SEBI Act is reproduced below:

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue No. III: What would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

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

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

(c) the repetitive nature of the default.

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

24. In view of the charges established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, I find that, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in the instant matter. Further, I note that material available on the record also does not indicate the amount of specific loss caused to an investor or investor group. I also note that there is no evidence on record to indicate that violations of Noticee are repetitive in nature. Additionally, I note from materials available on record that Noticee had cooperated with the examination conducted by the SEBI. I also note that Noticee had tried to make good the default by taking steps to refund to the investors, filing compounding application with NCLT and sending request letter to RoC Mumbai for initiation of adjudication proceedings. I am of the view that these can be considered as mitigating factors in the present proceedings.

<u>ORDER</u>

25. Having considered all the facts and circumstances of the case, the material available on record, and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under

Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 7,00,000/- (Rupees Seven Lakh Only) on Noticee i.e. Jagruti Sugar & Allied Industries Limited.

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

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

28. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Jagruti Sugar & Allied Industries Ltd. and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: January 24, 2022 **ADJUDICATING OFFICER**