BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/ 23 – 26 /2018-19]

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

In respect of:

Noticee	**PAN**
Suzlon Energy Limited	AADCS0472N
Tulsi R Tanti	AARPT6363J
Girish R Tanti	ABFPT3310E
Hemal A Kanuga	AGIPK3230C

In the matter of Suzlon Energy Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted an investigation in the scrip of Suzlon Energy Limited and observed that:
    a. Suzlon Energy Limited (hereinafter referred to as "Noticee 1/SEL/company"), Tulsi R Tanti , Chairman and Managing Director of SEL(hereinafter referred to as "Noticee 2") and Girish R Tanti, Executive Director of SEL (hereinafter referred to as "Noticee 3") had violated section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA") read with clause 36 of Listing Agreement and clause 2.1 of Schedule II – code of corporate disclosure practices for prevention of insider trading read with regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT, 1992") and read with regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT, 2015") and

b. Hemal A Kanuga, Compliance officer of SEL (hereinafter referred to as "Noticee 4") had violated clause 3.2 of Schedule II read with regulation 12(2) of PIT, 1992 and read with regulation 12 of PIT, 2015 for the period from April 1, 2006 to March 31, 2009 (hereinafter referred to as "investigation period").

2. Investigation was initiated to find out veracity of the corporate announcements made by SEL and its impact on its share price during the investigation period, to ascertain if there was any violation of the provisions of the SEBI Act, 1992, SCRA and the Regulations made thereunder. It was alleged that around 18.8% of the order received by Noticee 1 and informed by way of various corporate announcements were either not opted for by the clients or were not executed. It was also alleged that no specific corporate announcement was made by the Noticees to inform stakeholders about the same.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide an order of the Competent Authority, SEBI, dated August 19, 2015, Mr. D Sura Reddy was appointed as the Adjudicating Officer under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") and section 23I of SCRA and Rule 3 of Securities Contracts and Regulation (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as ' SCRA Rules') to inquire and adjudge under section 15HB of SEBI Act and sections 23A(a) and 23E of SCRA on Noticees 1, 2 and 3 and section 15HB of SEBI Act on Noticee 4. Pursuant to the transfer of the case, the undersigned has been appointed as the Adjudicating Officer in the matter.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings by SEBI, Show Cause Notice/s dated October 12, 2015 (hereinafter referred to as 'SCN') were issued to the Noticees under Rule 4(1) of Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them for the alleged violations.

5. The charges in the SCN broadly are as follows:

a. *In one of the corporate announcements made by Noticee 1 in respect of the order received by it, SEL did not inform about the option with the buyer to cancel one or more phases of the project.*
b. *Further, the company did not give any information by way of corporate announcements regarding cancelled/ short closure of a few orders.*
c. *Aforesaid orders which range from 8.36% to 38.18% of the total value of orders received by Noticee 1 during 2006-09 and announced on the stock exchanges via various corporate announcements had bearing on the operational performance as well as on the price of the scrip of the company.*
d. *Since Noticee 1 made corporate announcements regarding receipt of orders, any deviation from corporate announcements should also have been specifically informed by way of corporate announcement which was not done by Noticee 1.*
e. *During the period 2006-09, SEL made around 250 corporate announcements. Out of all corporate announcements made by SEL during the investigation period around thirty corporate announcements were regarding orders , worth around \ 30,662 Cr, received by it and its subsidiaries from clients both in India and abroad and five corporate announcements related to acquisitions.*
f. *It has been observed that orders worth around \ 5764 Cr i.e. around 18.80% of the order received and informed by way of various corporate announcements were either not opted for by the clients or were not executed . No specific corporate announcement was made by SEL to inform stakeholders about the same. However, they were subsequently reduced from order book position which was disclosed by way of corporate announcements from time to time. The detail of such orders are given hereunder.*
g. *SEL, vide corporate announcement made on 06/03/2007 at 13:53 hrs., informed BSE that the Company has secured its maiden contract from the wind energy arm of Reliance Energy Ltd for setting up of a wind farm of 150 MW wind turbine capacity in Sangli District in the State of Maharashtra. The said contract was to be executed in two phases and was expected to be completed by March 2008 .*
    - *The price of the scrip in BSE & NSE moved from Rs. 1007.45 to Rs.1039.20 and from Rs.1008.90 to Rs. 1038.35 registering an increase of Rs. 31.75 (3.15%) and Rs. 29.95 (2.97%) respectively.*
    - *BSE Sensex moved from 12697.09 to 12579.75 registering an decrease of 117.34 points (0.92%) and NSE Nifty moved from 3655.65 to 3626.85 registering an decrease of 28.80 points (0.79%).*
h. *It was observed that out of total order of 150MW, phase 1 order of 45 MW (Rs.248 Cr.) was executed and customer elected not to opt for second phase of 105 MW (\'. 577 Cr.) . SEL informed that the said closure was immediately excluded from order book position announced as of 30/01/2009. However, no separate corporate announcement was made*

to the stakeholders.

i. *SEL announced on 06/06/2007 at 1648 hrs that: "Suzlon Wind Energy Corporation, the USA, the step-down subsidiary of the Company has signed a contract for a total of 300 units of SBB-2. 1 MW turbines i.e. 630 MW of wind turbine capacity with Edison Mission Group (EME) of Irvine, California, the USA. The two phase contract calls for delivery of 315 MW of turbine capacity in 2008 and another 315 MW of qapacity in 2009 ".*
   - *The price of the scrip in BSE & NSE moved from Rs.1310.20 to Rs. 1374.20 and from Rs. 1310.90 toRs. 1373.25 registering an increase of Rs. 64.00(4.88%) and Rs. 62.35 (4.76%) respectively.*
   - *BSE Sensex moved from 14255.93 to 14186.18 registering an decrease of 69.75 points (0.49%) and NSE Nifty moved from 4198.25 to 4179.50 registering an decrease of 18.75 points (0.45%).*

j. *EME opted to purchase 128 units consisting of 268 MW and the balance 22 units were removed from order book due to delay in getting the order in 2008. SEL announced on 09/06/2008 that: "With reference to the earlier announcement dated June 06, 2007, Suzlon Energy Ltd has informed BSE that the Suzlon Wind Energy Corporation, the USA, a step-down wholly owned subsidiary of the Company had signed a contract for an aggregate of 300 units of S88-2. 1 MW turbines with Edison Mission Energy of Irvine, California ("EME'). The two phase contract called for delivery of 150 units of the turbines in calendar year 2008 and 150 units of the turbines in calendar year 2009, with an option to EME to elect not to purchase the 150 units due for delivery in calendar year 2009. EME has elected not to purchase the 150 units for delivery in calendar year 2009. Pursuant to the exercise of the aforesaid option by EME, the order backlog of the Company stands reduced by 315 MW SEL disclosed by way of notes to accounts in its financial statements of FY 12-13 about the details regarding outstanding of US$206 Mn receivable from Edison Mission Energy." No information was given regarding short supply of order in 2008.*

k. *It was observed that SEL did not inform the stakeholders in its corporate announcement on 06/06/2007 that EME has an option not to purchase the 150 units due for delivery in calendar year 2009. Hence, the corporate announcement was incomplete.*

l. *Suzlon Energy Ltd. informed BSE on 02/04/2008 at 1306 hrs that "Suzlon Wind Energy Corporation, the USA, the step-down subsidiary of Suzlon Energy Limited has signed a repeat order with Horizon Wind for 200 MW of wind turbine capacity. 2) The original contract calls for delivery of 400 MW of turbine capacity in 2008 and 2009, and now has been expanded to include an additional 200 MW in 2009. The capacity will be supplied in Suzlon's S88-2. 1 MW wind turbine and will be delivered to various ready-to-build sites across the United States. The turbine agreement includes the supply of 95 units of the S88-2.1 MW in 2008 and 190 units in 2009. "*

- *The price of the scrip in BSE & NSE moved from Rs. 285.45 to Rs. 272.10 and from Rs. 285 .15 to Rs. 272 .05 registering an decrease of Rs.13.35 (4.68%)and Rs.13.10 (4.59%) respectively.*
- *BSE Sensex moved from 15750.40 to 15832.55 registering an increase of 82.15 points (0.52%) and NSE Nifty moved from 4754.20 to 4771.60 registering an increase of 17.40 points (0.37%).*

m. *It was observed that till March 31, 2013 the customer did not exercise the option to purchase and the same was not informed to the stakeholders by way of any corporate announcement. The Company , as a precautionary measure, excluded this order from the order book due to non-movement of this order and which has been reported to stock exchanges as part of press release on 02/08/2013.*

n. *Suzlon Energy Ltd informed BSE on 18/04/2008 at 1140 hrs that "Suz/on Energy (Tianjin) Limited, a wholly owned subsidiary of the Company has secured orders totalling nearly 200 MW of capacity for wind farm projects in the P.R. China. "*
   - *The price of the scrip in BSE & NSE moved from Rs. 299.50 to Rs. 305.75 and from Rs. 299.65 to Rs. 305.55 registering an increase of Rs. 6.25 (2.09%) and Rs. 5.90 (1.97%) respectively.*
   - *BSE Sensex moved from 16481.20 to 16739.33 registering an increase of 258.13 points (1.57%) and NSE Nifty moved from 4958.40 to 5037.00 registering an increase of 78.60 points (1.59%).*

o. *The project was to be executed in three phases, however, it has been observed that the customer did not opt for 2 out of three phases Out of total order value of Rs.1,132 Cr (equivalent to RMB 1,296 million), order worth Rs.288 Cr was executed and customer has not opted for purchase of remaining phase for order worth Rs.844 Cr and hence on prudent basis and applying conservation approach the Company had short closed the order . The same was not informed to the stakeholders by way of any corporate announcement.*

p. *Suzlon Energy Ltd informed BSE on 31/07/2008 at 0843 hrs that the Company has, as on date, an order book position of Rs 16,491 Crores comprising of Rs 1,449 Crores of domestic orders and Rs 15,042 Crores of export orders. The aforesaid domestic order book position included 55 numbers of 1500 kW Wind Turbine Generators aggregating to 82.5 MW capacity which was yet to be supplied to DLF Home Developers as on date of corporate announcement.*
   - *The price of the scrip in BSE & NSE moved from Rs. 218.80 to Rs. 222.80 and from Rs. 218.65 to Rs. 223.10 registering an increase of Rs. 4.00 (1.83%) and Rs. 4.45 (2.04%) respectively.*
   - *BSE Sensex moved from 14287.21 to 14355.75 registering an increase of 68.54 points (0.48%) and NSE Nifty moved from 4313 .55 to 4332 .95 registering an increase*

of 19.40 points (0.45%).

q. *SEL has informed that out of total order of 55 Turbine the order has been executed for 45" Turbine and customer has not opted for balance 10 Turbine and the said short closure of 10 Turbine was immediately excluded from order book announced as of October 31, 2008. However, it has been observed that the above was not informed to the stake holders by way of any corporate announcement.*

r. *The details of the order is as under:*

S. No.	Date of Announcement	Announcement	Original Order Value	Value of Unfulfilled Portion	Remarks
1	06/03/2007	Announcement (i) (Pertaining to RIL)	829	580	Non fulfilment of order not announced
2	06/06/2007	Announcement (ii) (Pertaining to EME)	3519	3051	Non fulfilment of order not announced
3	02/04/2008	Announcement (iii) (Pertaining to Horizon Wing Energy USA)	1207	1207	Non fulfilment of order not announced
4	18/04/2008	Announcement (iv) (Pertaining to P R China)	1132	844	Non fulfilment of order not announced
5	31/07/2008	Announcement (v) (Pertaining to DLF)	452	82	Non fulfilment of order not announced
		Total	7139	5764	

6. The Noticees, vide letter dated October 23, 2015 sought inspection of documents. The Noticees inspected documents on December 18, 2015. The Noticees, vide letter dated December 24, 2015 requested for copies of further documents. Vide letter dated March 1, 2016, the Noticees sought legible copies of annexures. Vide letter dated April 12, 2016, relevant documents were forwarded to the Noticees. The Noticees sought copies of the annexures to the complaint by Mr. Rajagopalan Sridhar vide their letter dated April 19, 2016. The Noticees were informed, vide letter dated April 29, 2016 that all the relevant documents relied upon while issuing the SCN have already been forwarded to them and they were directed to file their reply on or before May 13, 2016. The Noticees, vide letter dated May 10,

2016 sought four weeks' time to submit reply to the SCN. The Noticee, vide letter dated June 7, 2016 replied to the SCN, stating, inter alia, the following:

- *The SCN alleges that during the Relevant Period, the Company made around 250 corporate announcements. Of these. 30 announcements concerned orders placed by customers with the Company and its subsidiaries, which were worth around Rs. 30,662 crores. The SCN wrongly alleges that orders worth Rs. 5,764 crores, representing 18.80% of the total orders received and announced by way of corporate announcements, were either not opted for by clients, or were cancelled. That is a factually incorrect statement.*

- *It is submitted that value of orders not executed is Rs. 4.650 crores of which, the Company has in fact specifically disclosed that orders worth Rs 3,144 crores were cancelled. The value of orders not specifically disclosed was just Rs 1,506 crores, which works out to approximately just 4.9% of the value of the total orders received and not 18.80% as wrongly alleged. Even in the case of these orders, it is incorrect to allege that the market was not informed about their cancellation or non-execution. The Company provided a periodic update of its 'order book position', which comprised information about the value orders that were received, reduced by the value of orders which were either cancelled or un-executed.*

- ***Facts relating to the allegation in the** SCN: The first charge in the SCN relates to an order placed by the wind energy arm of Reliance Energy Ltd. **("Reliance")** with the Company for wind turbines for Rs.829crores, parts of which did not eventually fructify. The Company disclosed the bagging of the original order to the stock exchanges on March 6. 2007.*

- *At the outset, it should be noted that a blanket comparison of price movement in individual scrips with movements in stock indices is fundamentally flawed. The movement of individual stocks, even of those that comprise the index, would always be more than the index, which indicates the average movement of a bunch of stocks. Therefore, the very reliance of a comparison between an individual stock with an entire index is foundationally flawed.*

- *Subsequently, the first phase of the contract worth Rs.249crores was executed and Reliance cancelled the second phase of the contract worth Rs.580crores. The SCN alleges that the cancellation of the second phase of the contract was price sensitive in nature, but was not specifically disclosed to the stock exchanges by way of a specific corporate announcement when the cancellation occurred. As will be seen later in this reply, as and when the market got to know about the order being pruned, it did not react adversely, which itself demonstrates the argument that the order was not price-sensitive in nature.*

- *However, against the teeth of this position in law, the SCN proceeds on a fundamental misunderstanding and misreading of the facts. It ignores the nature of commercial contracts in the infrastructure sector and the context of the scale and size of the Company. It is customary for companies in this sector to place orders with vendors in phases, and to vary them depending on the progress of the project .The Company had in fact, specifically disclosed in the corporate announcement that the order placed by Reliance was to be executed in two phases. Termination clauses are also standard in*

such contracts. Implicit in disclosure of the order being bagged was the risk that one of the two phases of the order may not fructify.

- *Investors and markets are well aware that in turnkey contracts, there is always a possibility of cancellation or reduction of the order and therefore it must be presumed that this information had already been factored in the price of the scrip.*

- ***Effect of cancellation was in fact disclosed:*** *Moreover, it would also be incorrect to allege that the fact of the cancellation of the second phase of the contract by Reliance was not made known to the market. The Investigation Report expressly states that while no "specific corporate announcement" was made by the Company, the reduced order book position was indeed disclosed from time to time.*

- *When this information actually got published, the impact of the cancellation on price was minuscule. On January 30. 2009. the price of the scrip of the Company increased by Rs. 2.65 on the BSE and by Rs. 2.5 on the NSE. from the previous prices on close of trading on January 29. 2009. Therefore, contrary to the allegedly adverse character of the information about the truncation of the contract, facts clearly show that the market did not regard the information as material. It is also noteworthy that the value of the component of the Reliance order that was cancelled was just 5.5% of the total projects with the Company which were worth Rs. 10.387 crores. Clearly, this can in no event be considered material.*

- *The aforesaid factual position underlines the fact that the Reliance order and its truncation was not at all price sensitive information and did not attract the obligation to make disclosures under Regulation 12 of the PIT Regulations or Clause 36 of the Listing Agreement.*

- *If the news about the Reliance order was at all "price sensitive" and "material", it would be logical to expect interest in the scrip of the Company to shoot up. On the contrary, it is evident from the record that there was a significant decline in trading volume after the disclosure that the order had been bagged. This would demonstrate that the market did not think of this order as some material and important order, in the manner that the SCN seeks to read it. Investor interest in the scrip had in fact fallen upon the announcement of March 6, 2007. When the announcement of the order itself was not material and did not influence investor interest in the scrip, it would be incorrect to state that any cancellation of the same would be material, and therefore liable to be disclosed to the market. The Noticees therefore submit that there was no requirement to disclose the factum of cancellation to the market by way of a specific corporate announcement.*

- *Edison Mission Group **("Edison")** placed an order for delivery of 300 units of turbines for a value of Rs. 3.791 crores with a subsidiary of the Company, Suzlon Wind Energy Corporation, USA **("Suzlon USA").** This order was to be executed in a phased manner with the understanding that 150 units were to be delivered in 2008 and the remaining in 2009. Information about the Edison order being bagged had been announced by the Company on June 6. 2007.*

- *While 128 units of the first tranche were supplied, there was a delay in supplying the remaining 22 units due in 2008.*

- *The SCN alleges that the disclosure of June 6, 2007 was deficient in that the Company did not disclose that Edison had an option not to purchase all 300 units of turbines. The SCN further alleges that the fact that of the 150 units scheduled to be delivered in 2008. only 128 were supplied, which also ought to have been disclosed by the Company, but was not. The SCN also alleges that the announcement of June 6. 2007 had an impact on the market, and the price of the shares of the Company increased as a result of the announcement - the inference being that the Edison contract was a material one and the right to truncate it should therefore be regarded as material.*

- *The SCN wrongly takes into account the value of the orders which were admittedly executed, as allegedly forming part of the unexecuted orders. Of the USD 698million order from Edison, orders of the value of USD 291 million was fully executed and all payments were indeed eventually received.*

- *The alleges that orders worth Rs. 5.764 crores were allegedly not executed. This sum is counted by the SCN by including an amount of USD 206 million receivable from Edison as being the value of allegedly unexecuted orders. This is fundamentally erroneous. The said amount was actually a receivable towards orders actually executed under the Edison order. SEBI appears to have taken an outstanding receivable as value of unexecuted orders, by mis-reading and wrongly collating data from the disclosed order book and the financial statements.*

- *In any case, unlike with the Reliance order, the SCN alleges in this case that the failure to disclose related to the right to truncate the order and not a failure of disclosing the truncation. The truncation of the Edison order was in fact disclosed on June 9, 2008.*

- *Therefore, any analysis of price movement on date of the announcement of bagging the Edison order on June 6, 2007 or on the date of the announcement of the truncation on June 9, 2009, is irrelevant. Both the receipt of the order from Edison as well as the truncation of the order was specifically disclosed. The first announcement of the order being bagged also made an explicit disclosure of the order being broken into two phases. Therefore, the SCN makes a wrong allegation that the option to truncate the order ought to have been disclosed and was not disclosed.*

- *For the reasons discussed in our reply in relation to the contract with Reliance, the allegation that the Company was required to disclose that the law of contract gives a party a general right to terminate a contract is wholly unreasonable and untenable. Edison, in fact, did not have an "option" to truncate the order. Therefore, there was no question of there being in existence a termination clause for it to be disclosed. In fact, the advance amount received by the Company from Edison also covered the supply of 150 units due in 2009.*

- *There was no option to cancel the order, but under normal contract law. a party would have inherent rights to seek truncation and termination when there are differences of opinion. It is a fundamental commercial and legal reality that a contract may be terminated as a matter of law even if the contract does not have an explicit provision. Arguing that this should be disclosed would mean that every listed company would need to state that every single contract that it is party to may be terminated as a matter of law.*

- *As regards the alleged short supply of 22 units of wind turbine generators in the first tranche of the Edison order, it is submitted that such minuscule discrepancies, short supply or cancellation of orders in the infrastructure sector is routine and cannot by any stretch be regarded as "price sensitive" or "material" warranting public disclosure. The allegation about short supply in Paragraph I0(ii) at Page 13 of the SCN is therefore, entirely untenable.*

- *Horizon Wind Energy LLC* ***("Horizon ")*** *placed a repeat order for wind turbines for a value of Rs. 1,207 crores with Suzlon USA. This was announced by the Company on April 2. 2008.As of March 31. 2013. Horizon had not exercised the option to purchase the units. The SCN wrongly alleges that this was not informed to the stakeholders. However, this is baseless since the Investigation Report explicitly records the fact that the Horizon not exercising the option to purchase the units had indeed been disclosed by the Company.*

- *Since the Company on August 2, 2013, excluded the value of this contract from its order book owing to the failure to Horizon to exercise the option, and the Investigation Report itself records that a press release to this effect was indeed published, the entire allegation in this regard stands disproved.*

- *The Company disclosed on April 18, 2008, that it had secured orders for wind farm projects in China. The value of the orders was Rs. 1,132 crores. Orders worth Rs. 288 crores were executed before the customer opted not to go ahead with the remaining portion of the contract. The SCN states that the non-disclosure of the partial fulfilment of the orders by the Company was wrongful.*

- *Adopting SEBI's own analysis of comparing an individual scrip's movement against the index (without prejudice to the argument made in the case of the Reliance order that this very approach is unscientific), it is noteworthy here that the price movement and the index movement were in sync.*

- *Therefore, even ignoring the fact that the price movement was in sync with the index movement, it is evident that the trading volumes in fact were lower after the announcement of the order made on April 18, 2008. thereby belying any reasonable conclusion that the China order was at all "material" or "price sensitive". The decline in trading volume would point to the conclusion that investor interest was not fuelled in any material manner in the scrip due to the announcement, and the announcement clearly had no bearing let alone any positive bearing on the investor interest in the scrip.*

- *DLF Home Developers Limited* ***("DLF")*** *had placed an order for 71 units of wind turbine generators.The order book position disclosed on July 31, 2008, took into account 55 units that remained to be supplied to DLF. Out of 55 units, 45 units had already been delivered to DLF. DLF did not purchase the remaining 10 units. This was immediately reflected in the order book announced on October 31, 2008.The SCN alleges that since no specific announcement of the truncation by DLF was made, there*

was an alleged failure to disclose material information.

- *The increase in price cannot be attributed to the announcement of the DLF order, which itself was not a material order. In fact, the DLF order was so non-material that it was not specifically disclosed. . The market price movement is attributable to the announcement of these results. In any case, in the absence of a specific disclosure of the order being bagged from DLF, it would be unsustainable to argue that the order was the cause of an upward price movement. On the contrary, the DLF order was non-material and so was the minuscule truncation of the order by a mere 10 units.*

- *To summarize, it can be submitted with all humility and respect for SEBI at the Noticees' command, that with mathematical and clinical accuracy, the alleged and purported case made out in the SCN against the Noticee stands disproved. It cannot be reasonably said with any leeway and margin of error that the Noticees are guilty of making misleading, incomplete or partial disclosures. The Investigation Report itself records in every instance, that the cancellation of orders was "immediately" reflected in the order book position. The SCN, therefore, it is respectfully submitted, has lost sight of the objective of Clause 36 of the Listing Agreement.*

- *The test that SEBI ought to apply is to examine whether an ordinary and prudent investor has at all times been provided with material information which is true, fair and adequate, to enable him to make an informed investment decision. The disclosures made by the Company therefore cannot be faulted on that count.*

- *The form in which the disclosure is made is irrelevant where the substantive information has been disclosed to the investor. Moreover, there is nothing in the listing agreement which requires information to be disclosed by way of specific "corporate announcement". What is essential is the information is disseminated to the public. Unlike disclosures for example under Regulation 13 of the 1992 PIT Regulations or under the Takeover Regulations, the listing agreement does not specify any format in which the information ought to be disclosed. The test is to check if the substance of material information has been disclosed. The form is not relevant. The Noticees have pointed out above that in no case has there been a material development warranting disclosure, for an allegation of non-disclosure to be sustained.*

- *Without prejudice to the argument that no material development that required disclosure was left undisclosed, it is noteworthy that no specific timeframe has been provided for disclosure of information referred to under Clause 36 of the Listing Agreement. Therefore, the question of invoking Section 23A(a) of the SCRA does not arise at all.*

- *The SCN has wrongly charged the directors and compliance officer of the Company without any discussion on their specific role in relation to the Subject Announcements. It is settled law that when vicarious liability for defaults of a company is sought to be attributed to its officers, the SCN ought to set the role of the noticees in relation to the alleged default. The SCN is singularly silent about whether Noticees Nos. 2 to 4 were charged with the obligation to deal with technical questions of interpreting law and regulations and taking action on behalf of the Company.*

- *It is unprecedented for SEBI to charge directors of a company with violations in relation to the listing agreement especially absent any finding of fraud. In this regard, reference may be made to the order of the Adjudicating Officer in the matter of New Delhi Television Limited dated June 4. 2015. None of the officers of the company were charged by SEBI for alleged violation of Clause 36 of the Listing Agreement. There are numerous other instances which the Noticees crave leave to refer to and rely on, during the course of the hearing.*

7. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticees on July 5, 2016 vide notice dated June 10, 2016. As the counsel was not available on the said date, the Noticees requested for another date of personal hearing. Acceding to the request of the Noticees, another opportunity of personal hearing was given to them on July 26, 2016. The Authorised Representatives (AR) of the Noticees appeared on the scheduled date and reiterated the submission made vide letter dated June 7, 2016. They also sought one week's time to file additional submissions. The Noticees, vide letter dated August 8, 2016 made, inter alia, the following submissions:

   - *The core question to be decided in these proceedings is whether the specific identification of the names of the counterparties whose orders placed with the Company had been partially cancelled, constituted "unpublished price sensitive information", and whether disclosure of such information was necessary in the facts of the case since information about the partial cancellation was indeed disclosed lo the public from time to time by way of updates to the Company's order book position.*

   - *Of the 250 corporate announcements made by the Company during the Investigation Period spanning three years, live announcements are alleged to have fallen short of the standard of disclosure, and that too only the alleged failure to make a specific disclosure of the identities of the clients whose orders got truncated. The Show Cause Notice indeed acknowledges explicitly that the truncation of the order book was indeed periodically disclosed.* (See paragraph 9b of the Investigation Report, at page H of the same). *In the five instances, two instances of partial cancellation of the clients[1] orders were also explicitly disclosed along with the identity of the client. In three cases alone, it was felt, as a matter or professional judgment that disclosure of the identity was not necessary.*

   - *The SCN has factual errors that cut to the foundation of the charge. The SCN incorrectly alleges that orders worth Rs, 5,764 crores, representing 100% of the orders received by the Company during the Investigation Period were cancelled without specific corporate announcements of the identities of the clients being made. Throughout the SCN. the alleged materiality is sought to be emphasised on the basis of the cumulative and aggregate size of orders received during the Investigation Period. This very foundation is erroneous.*

   - *The materiality of a development, at any point of time, has to be judged on the basis of the facts and circumstances existing at that point of time. In the case at hand, whether the truncation of orders by clients is material, could only be determined by the factors that*

influence price discovery at the time of the respective cancellations and not on the basis of orders received in a block of three years. For example, a cancellation in 2009 will have had no influence on price-discovery in 2008, and vice versa. *At any point in time, one would not know what the size of the order book would be two years later and therefore, aggregating the orders received over three years cannot be the denominator or the basis of computing materiality. On the other hand, the size of the order book at the time of the truncation, the percentage component of the order book that the size of truncation represents, and whether it would impact price upon publication, is what would determine if the truncation was "price sensitive" in nature.*

- *It is evident from the very definition of "price sensitive information" set out in Regulation 2(ha) of the PIT Regulations that "materiality" ought to be guided by the price sensitivity of the information. Accordingly, the relevant comparison would need to be the value of the order book as last known to the market at the time the cancellation took place. On the basis of such comparison, a reasonable man must make a reasonable decision on whether such cancellation could have a material bearing on the price of securities. In the instant case, every single cancellation was brought into the public domain by updating the order book. The sole question to be determined is whether despite such public disclosure and dissemination, it would be necessary to publicly identify the client whose order was truncated.*

- *It is an admitted position that the order book of the Company was updated from time to time to reflect the actual value of orders placed with the Company. It is therefore important to note that there was no cancellation of any orders with the Company of any magnitude that was not disclosed to the market. The market indeed factored in the development and priced the securities accordingly.*

- *Of the five announcements impugned by the SCN. specific announcements of the cancellation of two orders were made (viz.., Fdison and Horizon). In the other three cases, the Company in its professional judgment felt that lhe identity of the client would not have mattered at all for price discovery and accordingly no specific disclosures in relation to these three cases was made.*

- *What becomes necessary to determine then is the materiality of the specific name of the client who had placed a particular order for price discovery. Whether the truncation in the order had been placed by Reliance or DLF or clients in China, when the impact of these cancellations was always made known to the market, and which size of cancellation was also not material in scale to the then prevailing order book size, is what is in issue in these proceedings.*

- *In order to sustain the charge that the Company failed to disclose material information, SEBI would have to establish that the failure to disclose the specific identity of the counterparties, would have had a material bearing on the price of the securities of the Company. In our respectful submission, the disclosure of the names of the counterparties when the value of the cancellation was admittedly disclosed is immaterial and can by no*

stretch, be said to have a bearing on the price of the securities of the Company.

- *In the present case, it is submitted that by not specifically naming the three clients who had truncated orders, it cannot be said that a false market in the securities has been created or that it has impacted the investment decision of a reasonable and prudent investor, especially when the order book position captured the effect of the cancellation.*

- *SEBI has in fact acknowledged that need for greater guidance on events which a listed company may regard as material under Clause 36 of the listing agreement and this led to the stock exchanges issuing a guidance note on September 30,2014, to provide clarity on the disclosures that a listed company is expected to make. It is noteworthy that even the guidance note, issued after the events which arc the subject of these proceedings, does not require identities of counterparties to contracts to be specifically disclosed. The guidance note underscores the need for disclosing the essence of the information and not the form in which it is disclosed, which the Company had admittedly done.*

- *The truncation of the three orders concerning Reliance, DLF, and wind farms in China were in any event not material. This position is also corroborated by the price movement in the scrip when the impact of the truncation was disclosed by way of updated order book values.*

- *In the case of Edison, where the cancellation was specifically disclosed given the size of the cancellation, the allegation has shifted to the disclosure made when the contract was originally signed. The SCN alleges that (the Company, ought to have disclosed that Edison had an option to truncate the same. Such an allegation is manifestly flawed. It must be noted that the decision to disclose or not to disclose a particular event is an exercise of professional judgment by an officer of the Company. While professional judgments can always be faulted with the benefit of hindsight, absent any allegation of intentional or* malafide *default, it would be improper to penalize officers of a company when the discretion was exercised* bona-fide*, based on the circumstances prevailing at the relevant point of time.*

- *The approach of SEBI in the matter of New w* Delhi Television Limited *is instructive* {Order dated June 4. 2015). *Despite the listed company there being found guilty of disclosure- related violations of the listing Agreement on the ground that a liability far in excess of networth was not disclosed, no officer of the company was even issued a notice, let alone be held liable. In the facts of that case, a lax demand worth Rs 450 crores was not disclosed when the networth of the company at the relevant time was Rs 365 crores.*

- *Section 23A(a) only applies in cases of failure to disclose information for which a specific time period has been prescribed. In the present case, no specific timeframe has been prescribed for the disclosure of any of the information in question. The invocation of Section 23A(a) of the SCRA is therefore inapposite and cannot be sustained.*

8. Subsequent to this, a supplementary Show Cause Notice dated September 28, 2016 was issued to Noticee 1, 2 and 3, wherein in addition to the pervious charges they were informed that they are liable to penalty under section 23E of SCRA. The Noticees, vide letter dated October 13, 2016, once again sought inspection of all relevant documents and records including file noting in order to understand the fresh charge. The Noticees were given an opportunity of inspection vide letter dated November 22, 2016. The Noticees, vide letter dated December 13, 2016 wanted a copy of findings of further investigation conducted by SEBI. The Noticees were given an opportunity of inspection of documents on December 26, 2016. The Noticees, vide letter dated March 15, 2017 made, inter alia, the following submissions:

9. Another opportunity of personal hearing was given to the Noticees on December 4, 2017. The Noticees, vide letter dated November 22, 2017 sought another date of hearing. Acceding to their request, an opportunity of hearing was given to them on January 10, 2018.

10. The Noticees, vide letter dated January 4, 2018 made, inter alia, the following submissions:

- *At the outset and without prejudice to anything stated hereinafter or in our clients' replies dated June 7, 2016 and August 8, 2016, our clients repeat and reiterate denial of all the allegations made against them in the said Show Cause Notice dated October 12, 2015 and Supplementary Show Cause Notice dated September 28, 2016. In the interest of brevity, the contents of the earlier replies are not being repeated herein.*
- *In this regard, it is pertinent to note that the Supplementary Show Cause Notice has ignored and failed to consider our clients' submissions vide their letters dated June 7, 2016 and August 8, 2016. Therefore, it is assumed that the Supplementary Show Cause Notice is merely an exercise of adding one more provision to the provisions alleged to have been violated.*
- *A bare perusal of the Investigation Report will make it clear that there is not even a whisper of a reference to Section 23E or violation thereof. Furthermore, in the Investigation Report, it has been recommended that action be taken against our clients under Section 23A(a) of the SCRA.*
- *A bare perusal of the aforesaid clearly shows that the Supplementary Show Cause notice dated September 28, 2016 is not in compliance with the above provisions. In the absence of any explanation/narration in the said Supplementary Show Cause Notice regarding the purported offence/violation of the said provision and in the absence of any explanation about the nature of offence allegedly committed by our clients, it is impossible for our clients to understand how and in what manner section 23E of the SCRA is attracted and therefore, our clients are not in a position to answer the said charge.*

- *Further, our clients, the Director Noticees and Compliance Officer also submit that in addition to what is stated above and strictly without prejudice to these submissions, the provisions of Section 23E of the SCRA are at the threshold not applicable to them. Section 23E of the SCRA applies only to a "company or any person managing collective investment scheme or mutual fund" that has failed to comply with the listing conditions or delisting conditions. Unlike other penal provisions of SCRA including the sections immediately preceding Section 23E such as Sections 23A, 238 and 230 which are made applicable to "persons", Parliament has taken care to ensure that provisions of Section 23E are applicable only to a company or a person managing a collective investment scheme or a mutual fund. Indeed, Parliament has taken care to ensure that even where "person" is used in Section 23E, it is only in the context of a person managing a collective investment scheme or a mutual fund.*

11. Final opportunity of hearing was given to the Noticees on January 10, 2018. The Noticees appeared on the scheduled date of hearing and undertook to provide additional information to the undersigned. The Noticees, vide letter dated January 31, 2018 made, inter alia, the following submissions:
    - *During the investigation period i.e. April 1, 2006 to March 31, 2009, there were 5 instances where customers opted for partial completion of the order placed with our client, Suzlon Energy Limited or opted not to place a repeat order with our client. In 3 out of the said 5 instances, our client Suzlon Energy Limited brought the same to the notice of investor through various means including disclosures made on the stock exchanges, in the course of the quarterly financial results.*
    - *In all the above instances, our client Suzlon Energy Limited indicated the consequent changes to its order book. It may be noted that the order book is updated and published by our client Suzlon Energy Limited along with the quarterly results and not on a real time basis. These are available to view under the head Corporate Disclosures on the websites of BSE Limited and national Stock Exchanges Limited.*

12. The Noticees, vide letter dated February 14, 2018 further submitted the details of the opening, high, low and closing price of the scrip of SEL for five days preceding the cancellation/ truncation and change in order book and corporate announcement thereof.

CONSIDERATION OF ISSUES AND EVIDENCE

13. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

(a) Whether Noticees 1, 2 and 3 have violated section 21 of SCRA read with clause 36 of Listing Agreement, clause 2.1 of Schedule II Code of corporate disclosure practices for prevention of insider trading, read with regulation 12(2) of PIT, 1992 read with regulation 12 of PIT, 2015?

(b) Do the violations, if any, on the part of the Noticees 1, 2 and 3 attract monetary penalty under sections 23A(a) and 23E of SCRA and section 15HB of SEBI Act

(c) Whether Noticee 4 have violated clause 3.2 of Schedule II read with regulation 12(2) of PIT, 1992 read with regulation 12 of PIT, 2015?

(d) Do the violations, if any, on the part of the Noticee 4 attract monetary penalty under section 15HB of SEBI Act?

(e) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act and 23J of SCRA?

14. Before proceeding further, I would like to refer to the relevant provisions of the SCRA, PIT, 1992 and PIT 2015:

Relevant provisions of PIT 1992:

12. Code of internal procedures and conduct for listed companies and other entities.

2. The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

***2.1** Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

***3.2** This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive*

information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

Relevant provisions of PIT 2015:

12. Repeal and Savings*:*

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

Relevant provisions of SCRA:

21. Conditions for listing.—

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

Relevant provisions of Listing Agreement:

36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as

(1) Change in the general character or nature of business: Without prejudice to the generality of Clause 29 of the Listing Agreement, the Company will promptly notify the Exchange of any material change in the general character or nature of its business where such change is brought about by the Company entering into or proposing to enter into any arrangement for technical, manufacturing, marketing or financial tie-up or by reason of the Company, selling or disposing of or agreeing to sell or dispose of any unit or division or by the Company, enlarging, restricting or closing the operations of any unit or division or proposing to enlarge, restrict or close the operations of any unit or division or otherwise.

(2) Disruption of operations due to natural calamity. The Company will soon after the occurrence of any natural calamity like earthquake, flood or fire disruptive of the operation of any one or more units of the Company keep the Exchange informed of the details of the damage caused to the unit thereby and whether the loss/damage has been covered by insurance, and without delay furnish to the Exchange an estimate of the loss in revenue or production arising therefrom, and the steps taken to restore normalcy, in order to enable the security holders and the public to appraise the position of the issue and to avoid the establishment of a false market in its securities.

(3) Commencement of Commercial Production/Commercial Operations The Company will promptly notify the Exchange the commencement of commercial/production or the commencement of commercial operations of any unit/division where revenue from the unit/division for a full year of production or operations is estimated to be not less than ten per cent of the revenues of the Company for the year.

(4) Developments with respect to pricing/realization arising out of change in the regulatory framework. The Company will promptly inform the Exchange of the developments with respect to pricing of or in realisation on its goods or services (which are subject to price or distribution control/restriction by the Government or other statutory authorities, whether by way of quota, fixed rate of return, or otherwise) arising out of modification or change in Government's or other authority's policies provided the change can reasonable be expected to have a material impact on its present or future operations or its profitability.

(5) Litigation/dispute with a material impact The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

(6) Revision in Ratings The Company will promptly notify the Exchange, the details of any rating or revision in rating assigned to any debt or equity instrument of the Company or to any fixed deposit programme or to any scheme or proposal of the Company involving

mobilisation of funds whether in India or abroad provided the rating so assigned has been quoted, referred to, reported, relied upon or otherwise used by or on behalf of the Company.

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to; i) Issue of any class of securities. ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc. iii) Change in market lot of the company's shares, sub-division of equity shares of company. iv) Voluntary delisting by the company from the stock exchange(s). v) Forfeiture of shares. vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company. vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad. viii) Cancellation of dividend/rights/bonus, etc.

15. From the above mentioned, I note the following two facts emerged from SCN and duly admitted by the Noticees as well :
    a. Invariably on receipt on all orders, Noticees have made corporate announcement.
    b. Noticees had disclosed information about truncation/cancellation of order worth ₹ 1506 crore through its quarterly updated order book available on Stock Exchange Website. Details of 2 truncated orders was made public through corporate announcement.
16. I note the following with regard to reply given by the Noticees for not making Corporate announcements on three instances

    Reliance

17. I do not agree with the contention of the Noticees that as and when market got to know the order being pruned, it did not react adversely, which itself demonstrates the argument that the order was not price sensitive. Since Noticees have regarded the receipt of order as price sensitive information and it had informed the stock exchange on every such event and hence it cannot say that cancellation of a substantial part of an order is not a price sensitive information. Had cancellation being marginal, Noticee could have argued so, however in the instance matter where half of the order received was cancelled and therefore Noticee ought to have reported to the stock exchanges and investors at large about it.

18. Noticees have argued that investors were well aware that in turnkey contracts, there is always a possibility of cancellation or reduction of the order and therefore it must be presumed that this information has already been factored in the price of the scrip. I could have accepted the

said argument provided Noticees would have disclosed such details about the characteristics of turnkey projects in its corporate announcement made in this regard. Since it had not informed investors about it, therefore it is erroneous on its part to assume that investors are well versed with the turnkey projects and they would have discounted likely cancellation in the price of the scrip themselves without any corporate announcement from the Company.

19. I don't agree with the contention of the Noticees that market reacted negatively after the corporate announcement of bagging the order, therefore even receipt of the order cannot be termed as price sensitive or material. I note that if in the wisdom of Noticee, even bagging of order also was not price sensitive and material, then why it went ahead and made corporate announcement in this regard.

20. Based on adverse reaction of investors, one cannot ascertain whether any information was actually price sensitive or not.

Edison

21. I note that Noticees have itself admitted that truncation of Edison order was disclosed by it on June 9, 2008. With this activity of Noticee, it can be concluded that it would have felt that news of truncation of an order is price sensitive and material therefore it had made disclosure. Cancellation of a portion of an order and truncation of an order both leads to reduced order book and I am surprised that Noticees had made disclosure on truncation of order, however it didn't in case of cancellation of order (Reliance).

Horizon.

22. Noticee has attempted to link the volume of the scrip post corporate announcement with corporate announcement being price sensitive and material. It had illustrated few instances where actually the volume of the scrip had gone down post corporate announcement of bagging of orders. It had further stated that bagging of orders had not fuelled in any material manner. This argument is not tenable. If that be the case, why it had made announcements then and as mentioned supra that adverse reaction of market per se cannot decide whether Information was price sensitive or not.

DLF Home Developers Limited

23. I note that Noticee had made disclosure with regard to truncation of Edison's order, however it opted not to do so in this case. Noticee has admitted that receipt of an order from DLF Home Developers was not a material order and I note that despite this fact it had made corporate announcement in this regard.

24. I note that Noticee had no standard yardstick with regard to corporate announcements. I further note that it had made disclosure in all cases on receipt of order (whether material or not) and it had made corporate announcement on truncation on some instances and not on some instances.

25. I am not inclined to accept the argument of Noticees that there is no timeline mentioned in clause 36 of listing agreement therefore invoking Section 23A(a) of SCRA does not arise at all. I note that it is clearly mentioned in the Clause 36 that information mentioned therein should be disclosed immediately.

26. Noticees have admitted that out of five alleged non-disclosure of truncation, actually it had disclosed two. It has not mentioned what was the criteria adopted by it to make disclosure in two and not on other three instances. It had not mentioned whether the disclosed truncated orders were material in terms of quantity vis a vis its total order book or where those orders were from reputed corporate houses.

27. Bare reading of Clause 36 of Listing Agreement stipulates that any information/Event which is price sensitive should be reported to the stock exchange immediately by a listed company. I note that every time SEL had received any order and hence considering order receiving a price sensitive information has timely disclosed the same to the stock exchange. Drawing a parallel to this, I note truncation/ cancellation /right of entity to cancel order, should have also been treated as Price Sensitive Information (PSI) and timely disclosure of the same should have been done. The stand taken by SEL that news of receipt of an order was PSI and material and not considering truncation/cancel of orders as PSI or material is erroneous and hence it is held that SEL being a listed company had failed to comply with Clause 36 of the Listing Agreement.

28. Noticee has contended that it did not made disclosure as after applying materiality parameter and it find that those truncations/cancellation not material.

29. Before going to examine the case, it may be noted that since the materiality has not been defined categorically, it has to be determined on a case to case basis depending upon the various facts specific to the case and circumstances relating to the case. This has been held in the matter of IPO of Onelife Capital Advisors Ltd – Order of the Hon'ble Whole Time Member of SEBI dated August 30, 2013. "*The words "material" and "materiality' have not been defined in the ICDR Regulations. However, as understood in the market parlance and also defined in Explanation to regulation 5 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the same context, "material" means anything which is likely to impact an investors' investment decision. In my view, the test to determine whether a fact is 'material' depends upon facts and circumstances of each case*".

30. Materiality can be determined either based on quantitative parameters or based on qualitative parameters. The quantitative parameters are linked to the financials of the entity whereas qualitative parameters are to be linked to the likely impact of the nondisclosure on the market as also the decision making process of the investors.

31. Clause 36 of the Listing Agreement clearly sets out the objectives of the clause:
    a. to enable the shareholders and the public to appraise the position of the Company and
    b. to avoid the establishment of a false market in its securities.

32. I note that from bare and combined perusal of aforesaid Clause 36 of the Listing Agreement, it is very much clear that truncation/ cancellation of orders with a material impact, the disclosure was warranted on a prompt and immediate basis which may also include not only the details of the event but also the impact of the event as envisaged by the investors of the of the company pursuant to the corporate announcement with regard to bagging of the order. The said disclosure is aimed at enabling the shareholders and the public to appraise the position of the company.

33. If I buy the logic put forth by the Noticees that all cancellations and annulment of orders were duly updated in the Order book (available on the Stock Exchange website-Quarterly) and hence information available in public domain and world at large is aware of the update, then what was the need for the Noticees to make corporate announcement on receipt of orders. Noticee cannot resort to different set of rules for its convenience. Generally receiving an order by a listed company is considered positive news so it would have corporate announcement on it and since cancellation/annulment of orders is not considered positive news, hence no specific corporate announcement made.

34. In view of the above, I find that Noticee 1 have violated section 21 of SCRA read with clause 36 of listing agreement.

35. As per clause 36 of listing agreement, the responsibility to disclose has been cast on the company. No specific liability has been put on the managing director or the executive director of the company.

36. I note that Noticees 2 & 3 were the Chairman & Managing Director of SEL and Executive Director respectively. As no specific duty of making the relevant information is given to Noticee 2 and 3 and the requirement of complying the the clauses of Listing Agreement lies only on the company, I conclude that Noticees 2 and 3 have not violated section 21 of SCRA read with clause 36 of listing agreement.

37. With regard to the query of Noticees that there was no mention of Section 23 E in the investigation Report, I note from the documents available before me that the concerned department of SEBI has taken specific approval of the Competent Authority for including the provision of Section 23E against the Noticees. Hence I reject the objection of the Noticees in this regard.

38. I accept the contention of the Noticee 2-4 that violation of Section 23E is only applicable to the listed companies and not the directors /compliance officer of the listed company.

39. I note from the documents on record that the Noticees were charged of non-disclosing the truncation/ non-fulfillment of orders on 5 occasions. The Noticees admittedly stated that of the five announcements, specific announcements of the cancellation of two orders were made. In

the other three cases, the Company in its professional judgment felt that the identity of the client would not have mattered at all for price discovery and accordingly no specific disclosures in relation to these three cases were made. The clients in regard to whom the cancellation of orders were not disclosed were Reliance Energy Limited, P.R China and DLF Home Developers. All the three clients are big names in their own rights. Timely disclosure of the cancellation may have had an impact on the price of the scrip.

40. Clause 2.1 of Schedule II – Code of corporate disclosure practices for prevention of insider trading clearly states that all price sensitive information should be disclosed on a continuous basis by the listed company. The Noticees did not elucidate as to why they considered orders cancelled/ truncated by Edison and Horizon are price sensitive and the orders truncated/ cancelled by Reliance Energy Limited, P.R China and DLF Home Developers are not price sensitive in nature.

41. The submission made by the Noticees that the price movement in the scrip subsequent to the announcements of bagging the contracts cannot be considered. It is the right of the investors to be aware of the business of the company. All shareholders have the right of informed decision. Whether they make use of the information to invest in the shares of the company is totally on them.

42. In view of the above, Noticee 1 is liable to be penalized under section 23A(a) of SCRA and section 15HB of SEBI Act.

43. Further, Clause 36 of the Listing Agreement casts the liability on the company to keep the exchange informed of any information which have a bearing on the performance/ Operations of the company as well as price sensitive. As Noticee 1 admittedly failed to disclose the truncation of orders on 3 occasions, it is concluded that it has violated section 21 of SCRA read with clause 36 of Listing Agreement and hence, makes it liable for penalty under sections 23E of SCRA which reads as:

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

23E. If a company or any person managing collective investment scheme or mutual fund, 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.

Penalty for failure to furnish information, return, etc.

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

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure.

44. In regard to violation of code of conduct under PIT, 1992, I find that clause 2.1 directs the company to give price sensitive information to stock exchanges on a continuous and immediate basis. In this case too, I find that the charge in respect of Noticee1 stands established and the charges in respect of Noticees 2 and 3 does not stand established.

45. I observe that being the compliance officer of Noticee 1, it was the duty of Noticee 4 under clause 3.2 of code of conduct to ensure that Noticee 1 complies with all the legal obligations. Noticee 4 failed to do its duty on 3 occasions.

46. In view of the above, I find that Noticees 1 and 4 are liable for penalty under section 15HB of SEBI Act which reads as:

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

"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

47. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant*…".

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

Section 15J *-* ***Factors to be taken into account by the adjudicating officer*** *While adjudging quantum of penalty under section 15, 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.

49. While determining the quantum of penalty under sections 23A(a) and 23E of SCRA, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which read as under:-

23J. Factors to be taken into account by adjudicating officer.
While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

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

50. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticees and loss caused to investors as a result of non-disclosure of truncation of order. They failed to make the disclosure on more than one occasion, hence it can be said, it is repetitive in nature.

ORDER

51. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticees 1 and 4 stand established in terms of the provisions of the SEBI Act. Hence, in view of the charges

established under the provisions of the SEBI Act, I, hereby impose monetary penalty on the Noticees as under:

Under section	Noticee	Amount
23A(a) of SCRA	Suzlon Energy Limited	₹ 5,00,000/- (Rupees Five Lakh only)
23E of SCRA	Suzlon Energy Limited	₹ 1,00,00,000/- (Rupees One Crore only)
15HB of SEBI Act	Suzlon Energy Limited	₹ 5,00,000/- (Rupees Five Lakh only)
	Hemal A Kanuga	

52. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - II [**EFD-DRA-2**] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) levied by Adjudication Officer :-

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

53. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

54. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually	
Bank Name and Account Number from which payment is remitted	
UTR No	

55. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : April 20, 2018 **SAHIL MALIK**
Place: Mumbai **ADJUDICATING OFFICER**