

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: ORDER/BM/RK/2024-25/30315)**

UNDER SECTION 15 - I OF THE 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:

Name of the Entity	PAN
AGI Greenpac Limited	AAACH7564H

in the matter of AGI Greenpac Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (“**SEBI**”) conducted an examination in the matter of AGI Greenpac Limited (hereinafter referred to as the “**AGI/Noticee/Company**”), a company listed on Bombay Stock Exchange Limited (“**BSE**”) and National Stock Exchange (“**NSE**”) based on the complaints received from Soneko Marketing (P) Ltd and HNG Industries Thozhilalar Nala Sangam (hereinafter together both of them referred to as the “**Complainants**”).
2. The examination was to ascertain whether there was any violation of the provisions of SEBI ((Listing Obligations And Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) by the Noticee. During the examination, it was observed that the Noticee allegedly failed to provide accurate, adequate and explicit disclosures thereby resulting in misrepresentation in the disclosures made to the exchanges and also failed to disclose material developments with respect to disclosures made by it to the exchanges dated October 31, 2022 and March 16, 2023.

3. The aforesaid alleged conduct of the Noticee were in violation of the followings:

Sr No.	Alleged Violation	Provisions Violated
1.	Failure to provide accurate, adequate and explicit disclosure resulting in misrepresentation to the stock exchanges.	Regulation 4(1)(c), (d), (e) and (h) of the LODR Regulations.
2.	Failure to disclose material developments with respect to disclosures made by the company dated October 31, 2022 and March 16, 2023.	Regulation 30(7) of LODR Regulations read with Regulation 4(1), (e) and (h) of the LODR Regulations.

4. In view of the above, Adjudication proceedings was initiated against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer (“**AO**”) by SEBI, vide order December 06, 2023, communicated vide communique dated January 03, 2024 under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) to inquire into and adjudge under Section 15A(b) and 15HB of the SEBI Act for the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Accordingly, a Show Cause Notice No SEBI/HO/EAD/EAD3/P/OW/2024/0000000921/1 dated January 05, 2024 (hereinafter referred to as ‘**SCN**’) and a Supplementary Show Cause Notice (SSCN) dated April 01, 2024 were issued to the Noticee in terms of the provisions of the SEBI Adjudication Rules, to show cause as to why an inquiry should not be held and penalty be not imposed upon it under Section 15A(b) and 15HB of the SEBI Act for the aforesaid alleged violations.

7. The said SCN and SSCN were duly served on the Noticee via SPAD and respectively, vide digitally signed emails dated January 08, 2024 and April 02, 2024. The proof of service is on record. In response, Noticee submitted its reply to the SCN & SSCN respectively, vide email dated January 27, 2024 and April 08, 2024. Vide its reply dated January 27, 2024, Noticee sought inspection of documents relied upon in the matter. Accordingly, vide email dated February 16, 2024, the Noticee was granted an opportunity to inspect copies of the documents on February 21, 2024, which was duly availed by the Noticee. Further, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, vide email dated February 22, 2024, which was duly delivered, a hearing opportunity was granted to appear on March 05, 2024. However, the said hearing was rescheduled to March 18, 2024 as per the request of the Noticee. The Authorized Representative (AR) of the Noticee again sought adjournment of the hearing vide email dated March 18, 2024, which was accordingly, granted and the hearing was concluded on March 20, 2024 and March 21, 2024. The said hearing was attended to by the AR wherein he reiterated the submissions made earlier by the Noticee vide its letter dated January 27, 2024 and additional submissions dated February 29, 2024, March 14, 2024, made pursuant to conclusion of aforesaid inspection of documents. Further, a final hearing in the matter vide hearing Notice dated April 10, 2024 was granted to the Noticee on April 24, 2024, subsequent to filing of reply of the SSCN by the Noticee. The said hearing was also attended to by the AR of the Noticee wherein he reiterated the submissions made vide its letter dated January 27, 2024, February 29, 2024, March 14, 2024, March 28, 2024 and April 08, 2024. Further, Noticee vide email dated April 26, 2024 made additional submissions in the matter. Accordingly, submissions made by the Noticee vide its reply dated January 27, 2024, February 29, 2024, March 14, 2024 and additional reply dated March 28, 2024, April 08, 2024 and April 26, 2024 are summarized hereunder:

a) Noticee submitted that the Section 6(2) of the Competition Act imposes a legal obligation on any person or enterprise contemplating a combination,

including mergers, amalgamations, or acquisitions, to formally submit a notice to the Competition Commission of India (CCI) and that Regulation 5(2) of the Combination Regulations stipulates that the notice under Section 6(2) of the Competition Act shall ordinarily be submitted in Form I, as specified in Schedule II to the Combination Regulations. This submission, duly completed, is to be accompanied by evidence of the payment of the requisite fee by the parties involved in the combination.

- b) That in accordance with these legal provisions, it had duly fulfilled its obligations by submitting Form I to the CCI vide letter dated 27.09.2022 and that pursuant to the submission of the said Form I to the CCI, the CCI directed it to resubmit the Notice in Form II providing certain additional information required by CCI and that CCI had directed both the Noticee and HNGIL to resubmit the application as stipulated by Regulation 5(3) of Combination Regulations instead of Form 1 above.*
- c) It further submitted that CCI letter confirmed the information supplied in Form I might not be adequate for conducting a thorough analysis, indicating a potential necessity for additional information which highlighted that the absence of such supplementary information could result in an inaccurate assessment. Consequently, the CCI, through its letter, directed the Noticee to submit a fresh notice in Form II.*
- d) Noticee further submitted filing of Form II was merely in continuation of the information already provided by it under the notice filed in Form I before the CCI, and did not constitute anything materially different that would have been required to be disclosed under the LODR Regulations.*
- e) Noticee added that adhering to the directives, the CCI deemed Form I to be "invalid" and that the designation of "not valid" did not entail a negative outcome for it. Rather, it simply denoted a procedural observation and did not constitute a rejection or adverse judgment and has to be read with detailed CCI order, wherein CCI has asked for additional and detailed information in Form II. Noticee further submitted that the distinction was essential to dispel any unwarranted exaggeration and to accurately portray the nature of the CCI's assessment in this matter.*
- f) Noticee submitted that the CCI approval order containing voluntary modifications proposed by it - is a condition subsequent of the Resolution Plan getting approved by the Hon'ble NCLT, which is yet to be approved and that the said voluntary modification would only kick in after the Hon'ble NCLT's approval has been received for the Resolution Plan; and at this juncture, is not a "major development that is likely to affect business".*
- g) That the the Ld. CCI will appoint an independent agency to conduct the divestiture of the Rishikesh Plant of HNGIL, at no minimum price, in case*

the Noticee is unable to sell the Rishikesh Plant. The same is also a condition subsequent to the approval by the Hon'ble NCLT. Therefore, even this modification has no material bearing at this juncture, being premature.

- h) The receipt of a Show Cause Notice by the Ld. CCI, which only discloses a prima facie opinion; filing of forms or modification application only form part of the Ld. CCI's routine procedure. In fact, the issuance of the said Show Cause Notice did not even culminate into an investigation by the Ld. CCI against the Noticee, since the Ld. CCI agreed that there were no competition law issues involved in the said transaction and approved the same, and this approval has also been upheld by the Hon'ble National Company Law Appellate Tribunal ("NCLAT"); and thus, the same do not amount to major development likely to affect business, and consequently do not fall within the ambit of these Regulations.*
- i) It had promptly informed the stock exchanges on 16.03.2023 of the receipt of approval from CCI and also intimated that the detailed order is awaited (which was uploaded on the CCI website much later on 19.04.2023 and was made publicly available). Therefore, there cannot be any question of attempt of concealment or misrepresentation of a publicly available document.*
- j) It further submitted that the disclosure explicitly stated, "The implementation plan of the resolution plan is subject to obtaining necessary regulatory approvals from the concerned statutory authorities." and that this disclosure adequately communicated that the resolution's execution was contingent upon securing approvals from regulatory authorities, including the final sanction from the Hon'ble NCLT.*
- k) It submitted that the approval given by the CoC to the Noticee's resolution plan as well as the approval given by the Ld. CCI to the Noticee's resolution plan are being taken up and considered together by the Hon'ble Apex Court and thus, the said approvals have not yet become binding upon the Noticee and are therefore, not materially affecting the Noticee's business and that the onus of disclosing the details of the litigation regarding the CCI approval, and the CoC approval, which are being heard together, falls squarely upon the Resolution Professional who is in charge of the management of HNGIL and has been entrusted with the HNGIL's management and governance functions.*
- l) Noticee submitted that it is merely the Successful Resolution Applicant ("SRA") in the Corporate Insolvency Resolution Process ("CIRP") of HNGIL and that the allegations of non-disclosure are premature at this juncture, as the event of acquisition has not been resolved/closed and is lis pendens before the Hon'ble Supreme Court and the Hon'ble National*

Company Law Tribunal (“NCLT”/ “Adjudicating Authority”) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (“IBC”); and Hon’ble NCLT is yet to approve the Resolution Plan and give effect to the Ld. CCI’s approval and the same ought to be rejected. Thus, it has not yet acquired any control/ ownership/management control over and thus, the “acquisition” is not yet complete, and no rights have been crystallized in its favour qua HNGIL.

- m) SEBI introduced clauses 19 and 20 in Para A Part A of Schedule III of the LODR Regulations, effective from 14.07.2023, explicitly addressing regulatory and analogous actions necessitating disclosure without being contingent on materiality thresholds. Prior to this amendment, the disclosure of such regulatory actions fell under clause 8 of Para B Part A of Schedule III of the LODR Regulations which is applicable to the instant case, wherein reporting was subject to considerations of materiality.*
- n) The disclosures of these kind of routine steps in the procedure would also lead to uncertainty and instability in the market among investors. Incomplete disclosures with no information on the Resolution Plan may lead to misinterpretations and speculations in the market, potentially causing undue volatility and adversely affecting stakeholders without any justifiable reason.*
- o) Noticee has also submitted two legal opinions from a retired Judge of a Supreme Court wherein it has been opined that there was no requirement to disclose the CCI’s SCN under Regulation 30 of LODR Regulations and a separate disclosure of the information related to the modification was not necessitated as it was publically accessible on the CCI’s website.*
- p) The Noticee has no binding obligations or rights to disclose assets of HNGIL at this stage as the Resolution Professional is overlooking the management of HNGIL, and the Noticee has no right or control over HNGIL and that HNGIL is not a subsidiary of the Noticee.*
- q) As regards litigation before NCLAT, Noticee submitted that the core focus of the appeal primarily pertained to the actions of the CCI and not the Noticee in any manner which showed the harassing and audacious nature of Complainants to even question the decisions of an ardent regulator like CCI by their various frivolous, groundless, bogus litigations and complaints, specifically concerning the procedural framework laid out and adopted by CCI for granting approval to it regarding the proposed combination.*
- r) NCLAT had set aside all objections to and upheld the CCI order dated 15.03.2023. There was no change in the status quo of the CCI approval to*

AGI's proposed combination of HNGIL. And even if the said information came to light at a later date, the same would not have resulted in any market reaction.

- s) *Noticee submitted that it disclosed to the NSE vide its letter dated August 04, 2023, ensuring transparency regarding the challenges to the CCI order and that such challenges were deemed immaterial. The said disclosure reads as mentioned below:*

"In addition to the above, there have been challenges to the CCI order, including on the procedure followed in passing of the CCI order. However, these were not considered to be material, as they appeared to be meritless objections. It may be noted that Hon'ble NCLAT has dismissed these appeals challenging the CCI order, by way of its order dated 28.07.2023."

- t) *Noticee further submitted that even NSE did not raise any objections to its assertion that these events were not material and that no such requirement was asserted to by the NSE that these were to be disclosed by a disclosure to the public.*
- u) *That not a single investor or shareholder had come forth to lodge a complaint against it except the interlopers/complainants in the instant case.*

CONSIDERATION OF ISSUES AND FINDINGS: -

8. I have carefully perused the charges levelled against the Noticee, reply of the Noticee and the documents / material available on record. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee has violated the provisions of LODR Regulations as mentioned at para 3 above?

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act, as applicable?

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

9. Before proceeding further, I would like to refer to the relevant provisions of law as under:

SEBI (LODR) Regulations, 2015

Principles governing disclosures and obligations

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

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

(d) *The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.*

(e) *The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*

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

Disclosure of events or information.

30(7) *The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.*

Issue No. I: Whether Noticee has violated the aforesaid provisions of LODR Regulations as mentioned at para 3 above?

10. It is observed that the Noticee made a disclosure to the exchanges dated October 31, 2022, which mentioned that the Resolution Professional viz. Mr Sriram Juneja had issued a letter of intent to it confirming that the committee of creditors of HNGIL had approved resolution plan submitted by the Noticee and declared it as the successful resolution applicant. Subsequently, the Board of Directors of the Noticee had communicated its acceptance to the letter of intent.
11. From the chronology of events submitted by the Noticee to NSE, it was observed that Noticee had filed certain forms with Competition Commission of India (CCI) as per the Regulations of CCI on September 27, 2022. Subsequently, CCI directed the Noticee to file fresh form on October 13, 2022.
12. In this regard, the Noticee filed Form II as per aforementioned direction of CCI. However, no disclosure was made by the Noticee to the exchanges.
13. It is further observed from the CCI order dated March 15, 2023 that CCI had issued Show Cause Notice(SCN) on February 10, 2023 to the Noticee asking as to why investigation should not be conducted in respect of the proposed transaction. With regard to this, it is observed that the Noticee had not filed any disclosure.
14. From the CCI order it was also observed that the Noticee on March 10, 2023 and March 14, 2023 had submitted proposed modifications to application submitted to CCI which included voluntary divestiture of Rishikesh Plant by the Noticee. However, no disclosure was made in this regard to the stock exchange by the Noticee.
15. Noticee in its response to NSE submitted that it had received a communication from CCI w.r.t approval of combination proposed by it on March 15, 2023 and it

had accordingly, made a disclosure to the Stock Exchanges on March 16, 2023, which is mentioned as below:

“we would like to inform you that the Hon’ble CCI has accorded its approval to the proposed combination under sub-section (1) of Section 31 of the Competition Act, 2002 vide its letter dated 15th March, 2023. The detailed order of CCI is awaited.”

16. With regard to the aforesaid, it is observed that the CCI order mentioned that the Noticee on March 10, 2023 and March 14, 2023 had submitted proposed modifications to application submitted to CCI which included voluntary divestiture of Rishikesh Plant offered by the Noticee and that CCI had also mentioned in its approval that the commission had approved the proposed combination of the Noticee and HNGIL subject to compliance of modifications offered voluntarily by the acquirer i.e. Noticee. However, no disclosure in this regard was made by the Noticee to the exchanges.

17. Noticee was therefore alleged to have violated Regulation 4(1)(c), (d), (e) and (h) of the LODR Regulations by having failed to provide accurate, adequate and explicit disclosure by not disclosing the information regarding subjective approval of the CCI in its disclosure dated March 16, 2023 wherein the said disclosure was alleged to be misleading as the Noticee also misrepresented the approval of CCI without mentioning the subjective criteria for the approval which was on a condition to sell the Rishikesh Plant.

18. Further, it has been alleged that the above events as listed below were material developments, however Noticee failed to make disclosures as required under Regulation 30(7) of LODR Regulations:

- Filing of Form/ Application with CCI
- SCN issued by CCI to the Noticee and submission of response by it to the CCI.
- Submission of modifications to Application filed with CCI
- Detailed Order of CCI dated March 15, 2023 received on April 19, 2023.

- Litigation related to the aforementioned CCI Order approving the proposed combination of AGI and HNGIL.

19. In view of the above, it was alleged that the Noticee has violated Regulation 30(7) of LODR Regulations read with Regulation 4(1)(e) and (h) of the LODR Regulations.

Filing of form/application with CCI

20. With regard to filing of forms, Noticee submitted that Section 6(2) of the Competition Act imposes a legal obligation on any person or enterprise contemplating a combination, including mergers, amalgamations, or acquisitions, to formally submit a notice to the Competition Commission of India (CCI) and that Regulation 5(2) of the Combination Regulations stipulates that the notice under Section 6(2) of the Competition Act shall ordinarily be submitted in Form I, as specified in Schedule II to the Combination Regulations and the submission, duly completed, is to be accompanied by evidence of the payment of the requisite fee by the parties involved in the combination. In accordance with these legal provisions, it had duly fulfilled its obligations by submitting Form I to the CCI vide letter dated 27.09.2022 and that pursuant to the submission of the said Form I to the CCI, the CCI directed both the Noticee and HNGIL to resubmit the Notice in Form II providing certain additional information required by CCI as stipulated by Regulation 5(3) of Combination Regulations instead of Form 1 above. It further submitted that CCI letter confirmed the information supplied in Form I might not be adequate for conducting a thorough analysis, indicating a potential necessity for additional information which highlighted that the absence of such supplementary information could result in an inaccurate assessment and therefore, the CCI directed the Noticee to submit a fresh notice in Form II.

21. Noticee additionally submitted that filing of Form II was merely in continuation of the information already provided by it under the notice filed in Form I before the CCI, and did not constitute anything materially different that would have been required to be disclosed under the LODR Regulations.

22. I note from the material available on record that the filing of form II by the Noticee was as per the direction of the CCI wherein the CCI directed to file additional information as the information submitted in form I by the Noticee was not sufficient to gauge the Appreciable Adverse Effect on Competition (AAEC) resulting from the proposed combination of the Noticee and the HNGIL. In this regard, it is pertinent to refer the relevant provision of Regulation 5 of Combination Regulation which stipulates as mentioned below:

5. Form of notice for the proposed combination.-

(1)

(2)

(3)

(4) Where in the course of inquiry, it is found by the Commission that it requires additional information, the Commission may direct the parties to the combination to file such additional information:

(5) Having due regard to the provisions of sub-regulations (2) and (4), in cases where the parties to the combination have filed notice in Form I and the Commission requires information in Form II to form its prima facie opinion whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market, it shall direct the parties to the combination to file notice in Form II as specified in schedule II to these regulations:

23. From the above, it is construed that the filing of form II by the Noticee was as per the direction of the CCI and was a routine filing of form by the Noticee, which did not lead to any material development. Thus, the submissions of the Noticee is acceptable.

Non-disclosure of SCN from CCI

24. It has been alleged that the Noticee did not disclose the receipt of SCN from CCI which was a material development thus, violating Regulation 30(7) of LODR Regulations read with Regulation 4(1)(e) and (h) of the LODR Regulations. In this

regard, the provisions of Regulation 4(1)(e) and (h) of LODR Regulations and Regulation 30(7) of LODR Regulations are mentioned below:

Principles governing disclosures and obligations

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

(e) *The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*

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

Disclosure of events or information.

30(7) *The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.*

25. With regard to the non-disclosure of the receipt of show cause notice from CCI, Noticee submitted that the receipt of a Show Cause Notice from the Ld. CCI disclosed a prima facie opinion and the issuance of the said Show Cause Notice did not even culminate into an investigation by the Ld. CCI against it wherein CCI agreed that there were no competition law issues involved in the said transaction and approved the same, and the approval has also been upheld by the Hon'ble National Company Law Appellate Tribunal ("NCLAT"); Thus, the same did not amount to major development likely to affect business.

26. I note that CCI in its order dated March 15, 2023 has stated as follows:

The Commission in its meeting held on February 9, 2023, considered the information on record, details provided in the Notice and the responses filed by the Acquirer, and formed a prima facie opinion that the Proposed Transaction is likely to cause an appreciable adverse effect on competition(AAEC) in relevant market(s) in India. Accordingly, in terms of Section 29(1) of the Act, a show-cause notice dated 10 February 2023 (SCN) was issued to the Acquirer, wherein the Acquirer was directed to respond in writing, within 30 days of the receipt of the SCN, as to why investigation in respect of the Proposed Transaction should not be conducted.

27. From the foregoing, it is observed that CCI issued the SCN after forming an opinion that the proposed transaction was likely to cause an adverse effect. Thus, the Noticee should have disclosed the issuance of the SCN as it could have led to material impact. Further, the Noticee should have disclosed the same as a material development.
28. In view of the above, Noticee has violated Regulation 4(1)(e) and (h) and being material development violated Regulation 30(7) of LODR Regulation.

Modification application with CCI

29. It has been alleged that the Noticee on March 10, 2023 and March 14, 2023 had submitted proposed modifications to application submitted to CCI which included voluntary divestiture of Rishikesh Plant by the Noticee. This was a development on the application made by the Noticee to the CCI vide its application. Thus, it was alleged that the Noticee has violated Regulation 30(7) read with Regulation 4(1)(e) and (h) of the LODR Regulations by having failed to disclose the material development. Further, it was observed that the CCI accorded approval to the proposed combination of the Noticee and HNGIL subject to the compliance of modifications offered by the Noticee. It has been alleged that no disclosure was made regarding the subjective approval of CCI. It was thus, alleged that the Noticee has violated Regulation 4(1)(c),(d),(e) and (h) of the LODR Regulations.
30. With regard to the non-disclosure of the proposed modifications to application submitted to CCI which included voluntary divestiture of Rishikesh Plant, Noticee submitted that the CCI approval order containing voluntary modifications proposed by it - is a condition subsequent of the Resolution Plan getting approved by the Hon'ble NCLT, which is yet to be approved and that the said voluntary modification would only kick in after the Hon'ble NCLT's approval would be received for the Resolution Plan; and at this juncture, is not a "*major development that is likely to affect business*". It further submitted that the Ld. CCI will appoint an independent agency to conduct the divestiture of the Rishikesh Plant of HNGIL, at no minimum price, in case the Noticee is unable to sell the Rishikesh Plant. The same is also a condition subsequent to the approval by the

Hon'ble NCLT. Therefore, this modification has no material bearing at this juncture, being premature.

31. In the above context, I would refer to the relevant provision of Regulation 25 of Combination Regulations which reads as mentioned below:

“25. Modification to the proposed combination.-

(1) Where the Commission is of the opinion that combination has or is likely to have appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination to the parties to such combination.

(1A) Along with their response to the notice issued under sub-section (1) of Section 29 of the Act, the parties to the combination may offer modification to address the prima facie concerns in the said notice and on that basis, the Commission may approve the proposed combination under sub-section (1) of section 31 of the Act:

Provided that in such a case, the additional time, not exceeding fifteen days, needed for evaluation of the modification offered, shall be excluded from the period provided in sub-section (2A) of section 6 of the Act, sub-section (2) of section 29 of the Act and subsection (11) of section 31 of the Act....”

32. From the bare reading of the aforesaid provision, it is evident that the modification offered by Noticee to the CCI was to dispel AAEC on competition and was done to address the concerns w.r.t the competition in the relevant business segment. Further, I observe that the modification as stated above was done with the objective of eliminating any adverse effect thus, it is a material development which if not done could have an impact on the proposed plan. Further, I note that subsequent to the aforesaid voluntary modification offered by Noticee, CCI approved the proposed combination of the Noticee and HNGIL vide its order dated March 15, 2023. Hence, Noticee should have disclosed to Stock Exchange the modifications to the application submitted with CCI.

33. In view of the above, it stands established that the Noticee has violated Regulation 30(7) read with Regulation 4(1)(e) and (h) of the LODR Regulations by having failed to disclose the material development w.r.t the disclosure dated October 31, 2022.

34. It is noted that CCI in its order dated March 15, 2023 mentioned that in case the plant at Rishikesh was not divested by AGI as per the order of CCI, it would have caused Appreciable Adverse Effect on Competition (AAEC). Thus, the approval of the combination of the Noticee and HNGIL was on a subjective condition to sell the Rishikesh plant, which was voluntarily offered by the Noticee vide its modification application to the CCI. However, the same was not disclosed by the Noticee vide its disclosure dated March 16, 2023 and the said non-disclosure of the subjective approval was misrepresentation to the investors wherein Noticee only disclosed regarding the approval of the proposed combination but deprived the investors at large of the said subjective criteria on which approval was accorded to by the CCI.

35. In view of the above, it is established that Noticee has violated Regulation 4(1)(c),(d),(e) and (h) of the LODR Regulations.

Non-disclosure of detailed order of CCI

36. It has been alleged that the Noticee did not disclose the detailed order of CCI which was a material development with respect to the disclosure made on March 16, 2023 to NSE and thus, it was alleged that the Noticee has violated Regulation 30(7) of LODR Regulations read with Regulation 4(1)(e) and (h) of the LODR Regulations.

37. It was observed that CCI approved the combination proposed by Noticee vide its order dated March 15, 2023. Noticee disclosed to NSE on March 16, 2023 about the approval received from CCI inter-alia stating as follows:

“we would like to inform you that the Hon’ble CCI has accorded its approval to the proposed combination under sub-section (1) of Section 31 of the Competition Act, 2002 vide its letter dated 15th March, 2023. The detailed order of CCI is awaited.”

38.As per the submissions made by the Noticee the detailed order of CCI was received by it on April 19, 2023. While the Noticee made the disclosure on March 16, 2023 about according approval by CCI, the detailed order received by it on April 19, 2023 was not disclosed to the exchange. Noticee submitted that it had promptly informed the stock exchanges on 16.03.2023 of the receipt of approval from CCI and also intimated that the detailed order is awaited (which was uploaded on the CCI website much later on 19.04.2023 and was made publicly available). Therefore, there cannot be any question of attempt of concealment or misrepresentation of a publicly available document.

39.From the submission made by the Noticee, I observe that the Noticee seems to have provided the context of material development in disclosure dated March 16, 2023 itself, the detailed order was anyway available in public domain on April 19, 2024 though not posted by the Noticee to the exchange, it cannot be said to have not complied with the provisions of the law in the matter, and thus, the charges in this respect do not stand.

Litigation related to the CCI order.

40.From the submissions of the Noticee it has been observed that the CCI order dated March 15, 2023 was challenged before Hon. NCLAT which dismissed the appeals by its order dated July 28, 2023. However, no disclosure was made regarding the above material development by the Noticee and thus, the Noticee was alleged to have violated Regulation 30(7) of LODR Regulations read with Regulation 4(1)(e) and (h) of the LODR Regulations.

41.In this regard, Noticee submitted that the disclosure explicitly stated, “The implementation plan of the resolution plan is subject to obtaining necessary regulatory approvals from the concerned statutory authorities.” and that this disclosure adequately communicated that the resolution’s execution was contingent upon securing approvals from regulatory authorities, including the final sanction from the Hon’ble NCLT.

42.It submitted that the approval given by the CoC to the Noticee’s resolution plan as well as the approval given by the Ld. CCI to the Noticee’s resolution plan are

being taken up and considered together by the Hon'ble Apex Court and thus, the said approvals have not yet become binding upon the Noticee and are therefore, not materially affecting the Noticee's business and that the onus of disclosing the details of the litigation regarding the CCI approval, and the CoC approval, which are being heard together, falls squarely upon the Resolution Professional who is in charge of the management of HNGIL and has been entrusted with the HNGIL's management and governance functions.

43. As regards litigation before NCLAT, Noticee submitted that it disclosed to the NSE vide its letter dated August 04, 2023, regarding the challenges to the CCI order and that such challenges were deemed immaterial. The said disclosure reads as mentioned below:

"In addition to the above, there have been challenges to the CCI order, including on the procedure followed in passing of the CCI order. However, these were not considered to be material, as they appeared to be meritless objections. It may be noted that Hon'ble NCLAT has dismissed these appeals challenging the CCI order, by way of its order dated 28.07.2023."

44. Noticee further submitted that no such requirement was asserted to by the NSE that these were to be disclosed by a disclosure to the public.

45. With respect to the aforementioned submissions of the Noticee that it had disclosed to NSE regarding the challenge to the CCI order before NCLAT, I note that the said disclosure was made to the exchanges much after the appeal w.r.t to the CCI order was dismissed by NCLAT. Further, I note from the material available on record that the Noticee had not upfront made any disclosure to the exchange vide its letter dated August 04, 2023 as claimed hereinabove. Rather, it was a clarification sought by exchange vide its letter dated August 03, 2023 in respect of complaint made by HNG Industries Thozhilalar Nala Sangam, in response to which Noticee vide its letter dated August 04, 2023 submitted Chronology of events wherein footnotes mentioned w.r.t the challenge to the CCI order and dismissal of the same by NCLAT. Thus, the same could not be construed as a disclosure to public at large.

46. From the submission of the Noticee, it is noted that the Noticee appears to have misconstrued the provisions of LODR Regulations by interpreting that the exchange would direct it to make the disclosure public whereas the provisions of extant LODR Regulations place the responsibility on the listed entities to do so.
47. Further, it is observed that once the disclosure of the CCI order has been deemed material, any challenge, litigation with respect to the order had the effect of changing the outcome of the CCI order which thus would be material. It cannot be argued that while the approval information was material, however litigation which could have had the effect of nullifying the approval cannot be material. It is incidental that the challenge was dismissed.
48. Thus, it is clear that the litigations related to impugned CCI order are material development. At this juncture, I find pertinent to refer Regulation 30(7) of LODR Regulations, which states as follows:

Disclosure of events or information.

30(7) *The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.*

49. From Regulation 30(7) of LODR Regulation as stated above, I note that the Noticee was required to disclose the material developments on a regular basis till the time the event was resolved/closed and therefore, submission of the Noticee is bereft of merits. Noticee has thus, violated Regulation 30(7) of LODR Regulation read with Regulation 4(1)(e) and (h) of the LODR Regulations.
50. In view of the above, as summarized below, I note that the Noticee has violated:
- a) Regulation 4(1)(c), (d), (e) and (h) of the LODR Regulations by having failed to provide accurate, adequate and explicit disclosure resulting in misrepresentation to the stock exchanges by not disclosing the information regarding subjective approval of the CCI in its disclosure dated March 16, 2023.

b) Regulation 30(7) of LODR Regulations read with Regulation 4(1)(e) and (h) of the LODR Regulations by having failed to disclose the following material developments with respect to disclosures made by it dated October 31, 2022 and March 16, 2023.

- Submission of modifications to Application filed with CCI.
- SCN issued by CCI to the Noticee.
- Litigation related to the aforementioned CCI Order approving the proposed combination of AGI and HNGIL.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act, as applicable?

51. As it has been established that the Noticee has violated following provisions of SEBI LODR Regulations.

- a) Regulation 4(1)(c), (d), (e) and (h) of the LODR Regulations.
- b) Regulation 30(7) of LODR Regulations read with Regulation 4(1), (e) and (h) of the LODR Regulations.

52. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, **SEBI vs. Shriram Mutual Fund** {[2006] 5 SCC 361} wherein the Hon'ble Court had 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....."*

53. Further, I would like to place reliance on the order of the Hon'ble SAT in the matter of **Virendrakumar Jayantilal Patel vs. SEBI** (Appeal No. 299 of 2014 order dated October 14, 2014), wherein Hon'ble SAT held that: *"..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation."*

54. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court as well as the SAT, I am of the view that the Noticee is liable for imposition of monetary penalty Section 15A(b) and 15HB of the SEBI Act, which are reproduced hereunder:

Relevant provisions of SEBI Act, 1992

Penalty for failure to furnish information, return, etc..

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he 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.*

Penalty for contravention where no separate penalty has been provided.

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

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

55. While determining the quantum of penalty under Section 15A(b) and 15HB of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:

SEBI Act, 1992

15J Factors to be taken into account by the adjudicating officer

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.

56. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee nor it has been alleged by SEBI. From the document available on record, I also note that the Noticee has not been penalized by SEBI in the past. However, I note that if any person who is to make such disclosures doesn't make it and are depriving the investing public of the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Timely, accurate and proper disclosure is cornerstone of good corporate governance. Hence, the non-disclosure by the Noticee as brought out in the preceding paragraphs clearly shows the violation committed by it and calls for appropriate penalty.

ORDER

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

- a) Regulation 4(1)(c), (d), (e) and (h) of the LODR Regulations.
- b) Regulation 30(7) of LODR Regulations read with Regulation 4(1)(e) and (h) of the LODR Regulations.

Name of the Noticee	Penal provisions	Penalty
AGI Greenpac Limited	Section 15 A(b) of the SEBI Act.	Rs.2,00,000/- (Rupees Two Lakhs Only)
	Section 15HB of the SEBI Act.	Rs. 3,00,000/- (Rupees Three Lakhs only)
TOTAL		Rs 5,00,000/- (Rupees Five Lakhs Only)

58. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: **ENFORCEMENT → Orders → Orders of AO → PAY NOW**

59. The forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
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 etc.)	

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

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

Date: April 30, 2024

Place: Mumbai

BARNALI MUKHERJEE

ADJUDICATING OFFICER