

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTION 11, 11B (1), 11 (4A) and 11B(2) READ WITH SECTIONS 15C, 15HA AND 15HB OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 23 OF THE SEBI (VENTURE CAPITAL FUNDS) REGULATIONS, 1996 READ WITH REGULATION 39 OF THE SEBI (ALTERNATE INVESTMENT FUNDS) REGULATIONS, 2012.

In respect of:

Noticee No.	Noticee Name	PAN
1	Cinema Capital Venture Fund	AAATC9998D
2	Cinema Capital Advisory Private Limited	AADCC5601M
3	Cinema Capital Contributory Company Private Limited	AAECC3609A
4	Samir Gupta	AAJPG8641C
5	Shashanka Ghosh	ACWPG5915E
6	Binay Mandal	AMFPM2093Q
7	Urmila Gupta	AAEPG9149A
8	Amrit Lal Suri	ABIPS3117K

The abovementioned Noticees are hereinafter individually referred to by their respective names or Noticee number and collectively as the Noticees”)

In the matter of Cinema Capital Venture Limited

1. Cinema Capital Venture Fund (*hereinafter* referred to as “**Noticee 1**” or **alternatively as “ the Fund”**) is registered with the Securities and Exchange Board of India (“SEBI”) as a Venture Capital Fund having registration No. IN/VCF/08-09/117 from May 22, 2008. The Fund is managed by the Investment Manager i.e. Cinema Capital Advisory Private Limited (“**Noticee 2**”). Samir Gupta (“**Noticee 4**”), Shashanka Ghosh (“**Noticee 5**”) and Binay Mandal (“**Noticee 6**”) were the directors of Noticee 2 at the relevant point of time. Cinema Capital Contributory Company Private Limited (“**Noticee 3**”) is the Trustee of the Fund

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and Urmila Gupta (“**Noticee 7**”) and Amrit Lal Suri (“**Noticee 8**”) and Binay Mandal (**Noticee 6**) are the directors in the Noticee No.3, at the relevant point of time. The Fund had launched one scheme having following details as on February 23, 2024: -

Table 1: Details of Scheme launched by the Fund

Corpus (Rs.Cr.)	Investment made (Rs.Cr)	No.of Investors	Date of Initial closing	Date of Final closing	Tenure of the scheme as per PPM	End Date as per PPM (without extension)	End Date after including extension
172.005	143.83	1259	15/11/2008	14/11/2009	5 years +1+1 at discretion of Trustee	15/11/2013	14/11/2015

2. During the year 2016-2017, SEBI had conducted an inspection (2017 inspection) of the books of accounts and other records of the Fund pertaining to its operations during the period from April 01, 2015 till October 21, 2016 which resulted in passing of an Adjudication Order No. EAD-2/SS/SK/2018-19/2550-2556 dated March 29, 2019 for the following violations:-

a) The Fund failed to wind up the operations of the scheme when the period of the scheme as per the PPM was over.

b) The Fund failed to liquidate the assets of the scheme and distribute the proceeds accruing to the investors.

3. However, even after lapse of more than 4 years of the passing of the said order, SEBI received a large number of investor complaints alleging non-liquidation of scheme by the Fund upon completion of tenure and non-receipt of their investment amount. In view of such investor complaints, SEBI carried out another inspection of Noticee 1 for the period October 22, 2016 till October 31, 2023 (hereinafter referred to as “Inspection Period/2024 inspection”). Pursuant to this inspection, apart from above alleged failure even after order dated March 29, 2019, certain other violations of the *then* SEBI (Venture Capital Funds)

Regulations (VCF) and SEBI's circulars were also observed on the part of Fund. A copy of the inspection report was forwarded to the Fund on February 23, 2024 seeking comments from the Fund. The Fund responded to the observations of the said inspection report vide its letters dated March 11, March 16 and March 22, 2024.

4. Based on the findings of the inspection and analysis of the above reply of the Fund, SEBI issued the instant Show Cause Notice (hereinafter referred to as "the SCN") dated August 20, 2024 to the Noticees herein. The allegations as narrated in the SCN, *inter alia*, are as under :-

A. Non-winding up of the scheme / fund:

- 4.1 As per the Private Placement Memorandum/ Information Memorandum (PPM/IM) of the Fund, the term of the scheme was for a period of 5 years extendable by 2 years (two periods of 1 year each) at the discretion of the Trustee. The term of the Scheme was extended by 2 years i.e. first extension from November 16, 2013 to November 14, 2014 and the second extension from November 15, 2014 to November 14, 2015. Details of the extensions are as follows: -

Table 2: Details of Extensions

Type of Extension	Extension Duration	Extension Period
First Extension	1 year	November 16, 2013 to November 14, 2014
Second Extension	1 year	November 15, 2014 to November 14, 2015
Total	2 years	

- 4.2 Vide aforesaid Adjudication Order monetary penalty of Rs. 50,000/- each was levied on the manager, trustee and their directors and no directions such a winding up and liquidating the scheme and distributing the proceeds to the investors were passed then. However, the Fund had the following outstanding investments even as on October 31, 2023: -

Table 3: Details of Investments (Amount in Rs.Crores)

Name of investee company	Date of investment	Type of security	Amount invested (Rs.)	Date of Divestment	Realised Amount	Provision for diminution in value or loss	Out standing investment
Sunshine Films Pvt. Ltd. (Sunshine)	F.Y. 2009-10	Equity	40.76	F.Y. 2018-19	2.84	37.92	-
Kinesis Films Pvt. Ltd. (Kinesis)	F.Y. 2010-11	ORCD *	43.00	F.Y.2016-17 to F.Y.2018-19	16.24	26.76	-
		Equity	0.043	-	-	-	0.043
Stellar Films Pvt. Ltd. (Stellar)	F.Y. 2011-12	ORCD *	30.00	F.Y.2014-16	0.80	29.20	-
		Equity	0.010	-	-	0.010	-
Waterfront Films Pvt. Ltd. (Waterfront)	F.Y. 2011-12	ORCD *	30.00	F.Y. 2014-19	2.38	25.20	2.420
		Equity	0.010	-	-	-	0.010
Total			143.83		22.26	119.09	2.47

*Optionally Redeemable Convertible Debentures (ORCD).

4.3 Thus, it has been alleged that the Fund did not wind up the scheme and distribute the proceeds accruing to its investors even after the expiry of its tenure on November 14, 2015 and even after the passing of the Adjudication Order the scheme is still to be wound up. Hence, the Noticees have violated the provisions of Regulations 23(1)(a), 23(1)(b) and 24(2) of the VCF Regulations, read with Regulation 39 of the SEBI (Alternative Investment Funds) Regulations, 2012 (the AIF Regulations) from October 22, 2016 till date.

B. Investment in Associate Companies:

4.4 As per regulation 12(c) of the VCF Regulations, a VCF cannot invest in associate companies. Regulation 2(aa) defines “*associate company*” as a company in which a director or trustee or sponsor or settlor of a VCF or asset management company holds, either individually or collectively, equity shares in excess of 15% of paid up equity share capital of venture capital undertaking (VCU).

4.5 The Noticee 3 i.e. Trustee of the Fund and directors of the Investment Manager i.e Noticees 4, 5 and 6 collectively held more than 15% shareholding in each of Kinesis Films Pvt. Ltd, Stellar Films Pvt. Ltd. and Waterfront Films Pvt. Ltd. making them associates of the Fund which has invested Rs. 103.06 crore as investment in equity and ORCD and Rs.28.77 crore as loans and advances in the said investee companies. The details of the shareholding of the Fund is as follows:-

Table 4: Shareholding details of Associates

Shareholder	Kinesis Films Pvt. Ltd.	Stellar Films Pvt. Ltd.	Waterfront Films Pvt. Ltd.
Cinema Contributory Co.Pvt. Ltd. (Noticee 3)	86%	90%	90%
Samir Gupta (Noticee 4) (Nominee of Noticee 3 and director of Noticee 2)	7%	5%	1%
Amit Vadehra (Nominee of Noticee 3 and director of Noticee 2)	7%	-	-
Shashanka Ghosh (Noticee No.5) (Nominee of Noticee 3 and director of Noticee 2)	-	-	9%
Asad Sultan (Nominee of Noticee 3)	-	5%	-
Total	100%	100%	100%

4.6 As per Regulations 16(1) (a) and 17(1)(k) of the VCF Regulations, a VCF shall issue a placement memorandum which shall contain terms and conditions subject to which monies

are proposed to be raised from investors and it shall also contain investment strategy of the Fund.

4.7 The Information Memorandum (investment objective on Page 22), *inter alia*, states that:
“It is not the objective of the Trust Fund to invest in associate companies or to further the business cause of the Trustees or the investment advisory firm through means of funds available to CCVF”.

4.8 Hence, it has been alleged that by investing in the investee companies that are its associates, the Fund neither conformed to its disclosed investment objective nor did it comply with the investment restrictions prescribed in the VCF Regulations and is in violation of the provisions of Regulations 12(c), 16(1)(a) and 17(1)(k) of the VCF Regulations, read with Regulation 39 of the AIF Regulations.

C Extending Loans and Advances at no interest cost:

4.9 The Fund had given Rs.94.07 crore as loans and advances (primarily interest free) to investee companies, Noticee 2 and its directors i.e. Noticees 4, 5 and 6 and Noticee 3 and its directors i.e. Noticees 7 and 8, etc. Further, Rs.1.63 crore was written off as bad debts since they are not recoverable.

4.10 Further, Rs.31.31 crore was given as loan and advance to associate companies viz; Kinesis Films Pvt. Ltd. (additional loan of Rs.43 crore was converted to investment in ORCD), Stellar Films Pvt. Ltd., Waterfront Films Pvt. Ltd. at no interest cost and also to Salsette Films Pvt. Ltd., of which Rs.29.45 crore was recovered, Rs.1.55 crore was transferred to bad debts and Rs.0.31 crore was still outstanding as on October 31, 2023. Details of such interest free loans and advances are as following: -

Table 5: Details of Loans and Advances

Order in respect of Cinema Capital Venture Fund

Loans, Advances and Deposits	Given	Recovered	Transferred to Bad Debt	Outstanding as on 31/10/2023	Terms
Advance to Staff	34,97,570	34,97,570	-	-	Advance to office staff without interest
Cinema Capital Advisory Pvt. Ltd.	4,35,19,200	4,35,19,200	-	-	The Fund formation expenses were reimbursed by the Fund.
Big Bang Media Pvt. Ltd.	42,000	42,000	-	-	Direct Expense for proposed investment of fund in Big Bang Media Pvt. Ltd. Later, it was written off in F.Y.2011-12
Kinesis Films Pvt.Ltd.	43,00,00,000	43,00,00,000	-	-	Being amount paid as loan and later on converted to ORCD.
Kinesis Films Pvt.Ltd.	21,95,34,413	21,95,34,413	-	-	Loan and Advance without interest
Kinesis Films Pvt.Ltd. (Big Screen Entertainer)	4,50,00,000	4,40,00,000	-	10,00,000	Actual Amount paid to Big Screen Entertainer is Rs.4.50 crore.
Kinesis Films Pvt.Ltd.	71,29,600	61,02,162	10,27,437.72	-	Loan and Advance without interest Rs.10,27,437.72 transferred to bad debts
Stellar Films Pvt. Ltd.	1,32,81,150	-	1,31,66,100	1,15,050	Loan and Advance without interest Rs.1,31,66,100.00 transferred to bad debts.

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Loans, Advances and Deposits	Given	Recovered	Transferred to Bad Debt	Outstanding as on 31/10/2023	Terms
Waterfront Films Pvt. Ltd.	27,78,772	7,59,972	-	20,18,800	Loan and advance without interest
Salsette Films Pvt. Ltd.	2,54,41,800	2,41,24,743	13,17,057	-	Loans and advance without interest Rs,13,17,057 transferred to bad debts.
Cinema Capital Contributory Co. Pvt.Ltd.	25,66,463	17,71,479	7,94,984	-	Loans and advance without interest Rs.7,94,984 transferred to bad debts.
Samir Gupta	16,14,111	16,14,111	-	-	These were on account of expense incurred and same was reimbursed.
Deposit	22,52,150	12,32,500	-	10,19,650	Refundable security deposit from Mumbai office land lord Rs.10,00,000 and Delhi Office Rs.18,000. Security Deposit for gas cylinder and regulator Rs.1650/-.
Interest Receivable	10,66,28,862	10,65,29,075	-	99,787	From FDR accrued interest
Mohit Jain	50,00,000	30,00,000	-	20,00,000	
Bluefrog Media Pvt. Ltd.	3,25,00,000	3,25,00,000	-	-	Interest received Rs.19,62,055.
Total	94,07,86,091	91,82,27,225	1,63,05,578.72	62,53,287	

4.11 Regulation 12 (d) of VCF Regulations, *inter alia*, provides for a list of securities wherein a venture capital fund shall make investments. The said regulation does not envisage any

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other investment option for a venture capital fund and does not permit a venture capital fund to extend loans to investee companies. Further, Regulations 16(1)(a) and 17(1)(k) of the VCF Regulations, *inter alia* states that the VCF shall issue a placement memorandum which shall contain terms and conditions subject to which monies are proposed to be raised from the investors and such placement memorandum shall also *inter alia* contain the investment strategy of the fund. Section III of the information memorandum of the Fund has stated investment objective of the Fund which was to make investments in various media and entertainment sector related companies to deliver medium and long term capital appreciation. Further, the investment strategy mentioned in pages 22-24 of the information memorandum of the Fund *inter alia* stated that Fund's focus was to invest in portfolio companies to derive attractive returns to its investors. Providing loans and advances to investee companies at no interest cost is against the said investment strategy and not in the interest of Fund's investors.

4.12 Considering that the VCF is a privately pooled investment vehicle for investments in securities and is not a lending / banking entity to extend loans to companies, the investors subscribing to the information memorandum did not subscribe to additional risks of loans advanced to the investee companies. Thus, it has been alleged that the Fund deviated from the investment objective/ strategy provided in its PPM and investment conditions provided in VCF Regulations.

4.13 Therefore, it has been alleged that the Noticees have violated the provisions of Regulations 12(d) 16(1)(a) and 17(1)(k) of the VCF Regulations read with Regulation 39 of the AIF Regulations.

D. Extending Loans and Advance to Trustee and Staff at no interest cost :

4.14 Section III of the IM of the Fund has stated investment objective of the Fund which was to make investments in various media and entertainment sector related companies to

deliver medium and long term capital appreciation. Further, as per Section VII of the IM, trustee is entitled to an annual fee of Rs. 5 lakhs.

4.15 Further, the investment objective on page 22 of the IM, *inter alia*, stated that: - “*It is not the objective of Trust Fund to invest in associate companies or to further the business cause of the Trustees or the investment advisory firm through means of funds available to CCVF.*”

4.16 In addition to the trusteeship fees, Noticee 3 i.e. the Trustee was also given loan and advances of Rs.25.66 lakhs out of the investors’ funds at no interest cost. Of the said amount, Rs.7.95 lakh was transferred to bad debt and Rs.17.71 lakh is observed to be still outstanding as on 31.10.2023. Further, Rs.34.97 lakhs was given as loan and advance to Fund’s staff out of the investors’ funds at no interest cost.

4.17 Thus, the Fund did not conform to its investment objective and did not invest / utilize investors’ funds. Such loan and advances are observed to be not in line with the investment objective/strategy and also as mis-management of investor’s funds and not in the interest of investors.

4.18 Mr.Binay Mandal (Noticee 6) is a common director both in the investment manager (Noticee 2 -w.e.f. December 12, 2016) and trustee company (Noticee 3-w.e.f. October 03, 2017). The trustee company being a separate legal entity should have taken care of all the expenses out of the trustee fees paid to it by the Fund. Granting an interest free loan to the trustee company for meeting the statutory liabilities or for any purpose over and above the trusteeship fee, from the pooled money of investors from VCF does not benefit investors but only the trustee/ trustee company.

4.19 Therefore, it has been alleged that the Fund did not conform to its investment objective and did not invest / utilize investors’ funds in the interest of the investors. Thus, the

Noticees have violated the provisions of Regulations 16(1)(a) and 17(1)(k) of the VCF Regulations read with Regulation 39 of the AIF Regulations.

E. Fees and Expenses:

4.20 An overview of sources and utilization of funds by the Noticee 1 was noted as following:

Table 6: Summary of Financials of CCVF

Source of funds	Amount (in Rs. Cr)	Utilization of funds	Amount (in Rs. Cr)
Contribution*	175.41	Investments	143.83
Redemptions & Loss on Equity Investment	22.26	Loans & Advances Given	94.08
Interest and Dividend Income	21.87	Fees & Expenses	63.14
Loans & Advances recovered	91.82	Loss on Mutual Funds	0.44
		Refund of Contributions to Investors	7.93
		Fixed Deposits with HDFC Bank	1.81
		Cash & Bank Balance (Net)	0.20
		Fixed Assets	0.01
		Other Assets (Net of advances and Liabilities)	-0.08
Total	311.36	Total	311.36

*includes amount of Rs.3.407 crore forfeited from defaulting contributors

4.21 As per Regulation 17(1)(i) read with regulation 16(1)(a) of the VCF Regulations, the placement memorandum shall contain details of fund manager and fees to be paid to such manager. In terms of Section VII of the information memorandum which stated the manner of charging fees and expenses pertaining to Fund's operations, an annual fee of Rs.5 lakh per Trustee was payable. It was noted from the audited financial statements from F.Y.2008-09 to F.Y.2010-11 that individual trustees (viz Ms. Urmila Gupta and Mr. Gopi K Arora / Mr. A.L.Suri) were paid upto Rs.5 lakhs each as fees per annum. It was noted from the deed of appointment of corporate trustee dated March 11, 2011 that Noticee No.

3 replaced these individual trustees. However, from the audited financial statement for F.Y.2011-12 it was observed that even after being replaced by a corporate trustee, Ms. Urmila Gupta and Mr. Amrit Lal Suri were paid Rs.5 lakhs each.

4.22 The Fund had, vide letter dated August 22, 2023, submitted that the trusteeship fee ‘was paid to both the directors of the corporate trustee for the initial F.Y.2011-12 since there was no clarity as to whether annual trustee fee is to be paid only to the company or to both the directors. From next year onwards, when the Fund got clarity of the same, only Rs.5 lakhs per annum was paid to the corporate trustee till November 15, 2015.’”

4.23 Thus, it has been alleged that the Fund deviated from the terms and conditions related to fees mentioned in the placement memorandum and charged an excess fee of Rs. 5 lakh from investors’ funds for F.Y.2011-12 to Ms. Urmila Gupta and Mr. Amrit Lal Suri. Therefore, it is alleged that the *Noticees* have violated the provisions of Regulation 16(1)(a), 17(1)(i) of the VCF Regulations read with Regulation 39 of the AIF Regulations.

F. Non-submission of Quarterly Reports:

4.24 In terms of Regulation 22 of the VCF Regulations read with SEBI Circular SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010 venture capital funds are required to submit a report on its activity within 7 days from the end of each quarter on the SEBI portal.

4.25 It was observed that from the period of end of the tenure of the fund in November 2015, no quarterly reports were uploaded on SEBI portal by the Fund. As per the records, the Fund submitted the last quarterly report for quarter ended June 2015 and no report has been submitted since then.

4.26 Notwithstanding the Funds's tenure, in terms of Regulation 22, of the VCF Regulations, read with Circular No. SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010 the fund was required to file quarterly reports. Thus, the Fund was required to upload its quarterly report even after the expiry of its tenure in November 2015. The Fund has failed to wind up the scheme and continues to have outstanding investments of Rs. 2.47 crore. Considering that the Fund has failed to wind up the scheme even after passing of the Adjudication Order, the reporting of Fund's investments becomes more important. There was no further investment activity, does not absolve the Fund from its responsibility of filing quarterly reports. Thus, it has been alleged that the Noticees have violated the provisions of Regulation 22 of the VCF Regulations and SEBI Circular dated January 11, 2010 read with Regulation 39 of the AIF Regulations.

G. Non-redressal of investor complaints:

4.27 In terms of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 all SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate steps on receipt of complaint, for its resolution, within 30 days and that they shall update the action taken report (ATR) alongwith supporting documents. Further, action so taken will not be considered complete if the relevant details/supporting documents are not uploaded on SCORES and consequently, the complaints will be treated pending. The circular further states that a complaint shall be treated as resolved/disposed/closed only if SEBI disposes/closes the complaint in SCORES. Hence, mere filing of the ATR will not mean that the complaint is not pending with the intermediary.

4.28 It was observed that on SCORES, 104 complaints were filed by various investors against the Fund during the inspection period. Most of the complaints pertain to non-liquidation of scheme upon completion of tenure and non-receipt of invested amount from the Fund. The complaints received on SCORES were duly forwarded by SEBI to the Fund for

redressal. It is noted that in many of the complaints, the Fund has replied to the complainants about the steps taken by it for winding up the scheme and also reiterated the risk factors mentioned in the information memorandum.

4.29 As the Fund has not wound up and has not liquidated the scheme upon expiry of its tenure, its reply to the complainants on SCORES cannot be considered as redressal of their complaints since it has failed to wind up the fund and distribute the proceeds to the investors. Hence, it is alleged that the Fund has failed to redress the investor grievances and has, thus, violated the provisions of the SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014.

H. **Mismanagement of investors' funds** :

4.30 The Fund invested in the associate companies, extended interest free loans and advances to its investee companies (also associates), trustee company and staff and charged excess trustee fee out of the investors' funds.

4.31 As per Regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices in Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulation, 2003'), '*fraud*' is *inter-alia* defined as a promise made without any intention of performing it and an active concealment of a fact by a person having knowledge or belief of the fact. Further, Regulations 3(a) and 4(1) of the PFUTP Regulations, 2003 *inter-alia* state that no person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner and that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. Further Regulation 4(2)(s)(ii) of the PFUTP Regulations, 2003 states that knowingly concealing or omitting material facts shall mean mis-selling of securities or services related to securities market.

4.32 Promise that the Fund and the investment manager made through its IM namely; - "*focus to invest in portfolio companies to derive attractive returns for its investors*" and that "*the money would not be used to invest in associates*" was made without any intention of performing it. Extending interest free loans and advances to its investee companies (also

associates), trustee company and staff clearly benefitted only the investment manager, its directors, trustee and its directors and staff of the investment manager. This was against the investment objective of the Fund, based on which the funds were raised from the investors i.e. to invest in media and entertainment related business to deliver capital appreciation to its investors.

4.33 Till date, only Rs. 7.93 crore has been returned to contributors and Rs. 2.47 crore had been observed to be outstanding investments after booking losses. At the same time, Noticees 2 and 3 i.e. manager and trustee have charged the Fund and in turn its investors Rs, 63.14 crore as various expenses. Notwithstanding whether the expenses were allowed or not as per obscure, nonspecific generic disclosures made in the IM it was observed that the Fund benefitted only its manager, trustee and connected parties rather than benefitting its investors.

4.34 Essentially by giving interest free money to its investee companies, Trustee and staff and then writing them off as bad debts, the Fund had no intention of making good of its investment objective and delivering capital appreciation to its investors all the while; merely benefitting its related parties. This has resulted in gross- mismanagement of investors' funds that were entrusted by them to the Fund in fiduciary capacity. The Fund has yet to wind up the scheme and return the money to investors even after more than 8 years of completion of its stated tenure.

4.35 The activity of raising money from investors, deploying of the funds and thereafter failure to recover such money tantamount to fraudulent activity and therefore, it is alleged that the Noticees have violated the provisions of Regulation 3(a), 4(1) and 4(2)(s)(ii) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations).

5. The SCN described the role of investment manager, Trustee and their directors (*paras 63 to 67*), summarised the violations of securities laws (*paras 68, 69, 70.1 – 70.8*) by the Noticees and called upon them to show cause (*para 70*) as to why suitable directions under Section 11(1) and 11B(1) of the SEBI Act read with Regulation 23(1)(d) of the VCF

Regulations and Regulation 39 of the AIF Regulations to wind up the scheme and distribute the proceeds accruing to the investors and the said scheme and to disgorge the excess fees charged by the trustees out of investor's fund (should not be issued to them) and further, why penalty under Section 11 (4A) and 11 B(2) read with Section 15C, 15HA and 15HB of the SEBI Act should not be levied upon them.

6. While the Fund , vide its reply dated September 26, 2024 submitted a combined reply to the SCN for itself and Noticees No. 2, 4 and 5, the Noticee No. 3 vide its reply dated September 26, 2024 submitted a combined reply to the SCN for itself and Noticees No. 3, 6, 7 and 8. An opportunity for personal hearing was granted to the Noticees on November 21, 2024 when on request of the Noticees the hearing date was adjourned for December 12, 2024. In the meantime, there was change in the quasi-judicial authority pursuant to an internal transfer in SEBI on December 2, 2024. The matter was then brought before me for my consideration.
7. In the interest of justice and due to such change in quasi-judicial authority, an opportunity of personal hearing was provided to the Noticees on January 6, 2025 when Mr. Vikram Nankani, Senior Counsel the Authorised Representatives (AR) for the Noticees attended the hearing online through Webex and reiterated the submissions made vide their reply dated September 26, 2024. The AR also requested time to make additional written submissions and to file documents in support thereof, which was allowed. The Noticees have submitted their additional submissions post hearing vide letters dated January 13, 2025 and April 11, 2025.
8. All the Notices have generally denied the allegations in the SCN. It has been submitted that Noticee 5 has resigned w.e.f. March 10, 2017. While Noticees 1, 2, 4 and 5 have made technical objections and made submissions on merits Noticees 3, 6, 7 and 8 have adopted the submissions made by the Fund and have also made specific submissions as summarized hereinafter.
 - 8.1 It is noted that with respect to the merits of the allegations, the Noticees have predominantly submitted same facts and contentions in response to the SCN in the present proceedings as they had submitted in earlier adjudication proceedings. Since the order dated March 29, 2019 has dealt with those submissions in detail on merits and

have given due regard as mitigating factor or otherwise and has been upheld by Hon'ble SAT vide order dated September 14, 2021, I do not deem it appropriate to burden this order with same replies and same findings again with respect to such submissions. The relevant submissions in the replies, therefore, are noted hereunder without prejudice to taking in account those submissions if context so requires. Such submissions are summarized hereinafter.

- 8.2 The Noticees have reiterated their reply to the inspection report made vide letter dated March 22, 2024 and have contended that the SCN has been issued without considering the said reply. The Fund has always been completely transparent and acted *bona fide*. Losses due to investments cannot be attributed to malice or wrongdoing. Merely because investors have filed complaints against the Fund, SEBI ought not to lose sight of the fact that investors have voluntarily chosen to invest in sectoral investments which are known to be highly risky.
- 8.3 The SCN is hit by *res judicata* and / or *constructive res judicata*. Almost all the observations in the inspection report pertains to the period outside the review period. The data, basis which the observations are sought to be made now, was available with the SEBI throughout the tenure of the Fund and was provided to SEBI from time to time, including during the inspection in 2017. All the details of the scheme, its investments, details of utilization of funds, details of investments liquidated, and the investments which could not be liquidated were furnished to SEBI multiple times, including during the inspection in 2017 and on January 15, 2021. Throughout the tenure of the Fund and thereafter until 2024, no discrepancies or breach of any provisions of the VCF Regulations were found by SEBI nor any observations of a nature which are sought to be made now, were ever made by SEBI.
- 8.4 The Fund has already undergone a thorough scrutiny of SEBI not only at the inspection level but also at the adjudication level. The adjudicating authority did not find any deliberate defiance of any provisions of the VCF Regulations or negligence on the part of the trustees or the advisors of the fund in discharging their duties in the manner provided in the information memorandum. Further, the Adjudicating Officer has duly taken note of the efforts taken by the Fund to liquidate the assets / investments keeping

the best interests of the investors in mind. In any event, SEBI is now estopped under the provisions of law as the purported action is hit by '*res Judicata*'.

8.5 In 2017, SEBI had conducted a similar inspection of books of the fund and had issued a show cause notice. After a hearing was granted by the Adjudicating Authority, a detailed order was passed by SEBI exonerating the Fund and the other noticees from charges of misconduct. However, the Adjudicating Authority imposed fine of Rs.50,000/- on each of the trustee, fund advisor, etc which has since been paid. However, SEBI has once again proceeded to issue an Inspection Report on similar allegations which have already been addressed multiple times in the past by the fund and Adjudicating Officer has already penalized the Fund for the alleged violations. The penalty cannot be imposed twice for the same offence. Imposition of penalty once again would amount to double jeopardy which is impermissible under Article 20 of the Constitution of India.

8.6 The Fund filed its quarterly reports detailing the corpus of the Fund, the investments made through VCUs (venture capital undertakings) and nature thereof. Further the financial statements of the Fund were also made available to SEBI as also to the investor at all times. The books of accounts were inspected by SEBI, including the fees and expenses incurred by the Fund. No observation was ever made questioning the utilization thereof, since SEBI found the same to be in line with the classes of the information memorandum. Hence, all issues sought to be raised now, basis the same data, are clearly barred by the principles of *constructive res judicata*.

8.7 In this regard the Noticees have relied upon following judgements: -

Table 7: Case law relied upon in support of submission on res judicata

Sr.No.	Case Law	Citation and Reference
1	<i>Celir vs Sumati Prasad Bafna & Ors.</i>	(2024) SCC Online SC3727
2	<i>Sunil Sureshchandra Agarwal vs.State of Maharashtra & Ors</i>	2022 (4) Mh.L.J 522
3	<i>M.Nagbhushana v.State of Karnataka</i>	(2011) 3SC 408
4	<i>Aditya Birla Money Limited v. National Stock Exchange of India Limited</i>	2020 SCC OnLine Mad 1082
5	<i>COC of Essar Steel India Limited v. Satish Kumar Gupta</i>	(2020) 8 SCC 33

6	Excel Crop Care Ltd.v. Competition Commission of India	(2017) 8 SCC
7	<i>State of West Bengal v. Swapan Kumar Guha</i>	(1982) 1 SCC 561
8	<i>State of Rajasthan and Anr. v. Shamsher Singh</i>	1985 Supp SCC 416

8.8 The Fund invested in four VCU's viz Sunshine Pictures Pvt. Ltd. (Sunshine), Kinesis Films Pvt. Ltd. (Kinesis), Stellar Films Pvt. Ltd. (Stellar) and Waterfront Films Pvt. Ltd. (Waterfront) which were operating in the business of production and distribution of film and creating tie ups with reputed and well established local as well as international media and entertainment companies to make investments in the industry.

8.9 The contributors were informed about the complexities involved in the exit from the investments that would be made by the Fund. Amongst others, some options for an exit from the investments by the Fund were articulated in the offer document issued by the Fund to its proposed contributories. The Fund at all times informed SEBI and investors about efforts taken and steps initiated. It continuously sought guidance from SEBI even after March 07, 2016 when it had informed SEBI that since the time frame provided for liquidation of assets of the Fund, under Regulation 24(2) of the VCF Regulations has lapsed, it would initiate liquidation steps and in view thereof, it has appointed Ernst and Young as third party valuer to assist it with the valuation of the assets as well as identifying the best possible purchasers / buyers to acquire the assets.

- The investors were informed vide letter dated April 18, 2016;
- On September 02, 2016, the Fund informed SEBI that the discussions with Ernst and Young had failed and indicated that it was in discussions with other professional agencies and had also continued to engage with top advisory firms like KPMG to devise a strategic exit for its assets.
- On September 28, 2016, the Fund provided SEBI with an update on the liquidation process of the assets and regarding shortlisting RBSA Advisors ("RBSA") for assisting it in the liquidation process. RBSA had indicated a minimum period of four months for liquidation of the assets and undertook that if the assets were not liquidated within four months, it would update SEBI accordingly.

- On October 19, 2016, the Fund intimated SEBI that the appointment of RBSA had been completed. On the same date, the Fund also addressed a letter to the investors giving them an Interim Update of the liquidation of assets.
- When, vide email dated March 31, 2017, SEBI sought the status of liquidation of assets the Fund provided the update and vide its reply dated April 21, 2017, informed SEBI regarding the steps taken by it including public notice in newspapers Business Standard and Financial Express inviting Expression of Interest (“EOI”) for its assets.
- In response to SEBI’s email dated July 06, 2017, enquiring about the status of liquidation of assets acquired under the Scheme, the Fund informed, *inter alia*, that it had commenced its liquidation process and RBSA is assisting the Fund in identifying the best possible purchasers to acquire the assets of the Fund and advertisement/ public notice was published by it in that regard. However, RBSA did not receive any response or interest from any party or investor. It was trying to sell its 28% equity interest in Sunshine to industry leaders like Eros International and Reliance Entertainment privately.
- On September 29, 2017, the Fund intimated SEBI that their agent Karvy Computershare Pvt. Ltd. (“Karvy”) was in the process of updating the bank account details of all its 1259 investors/ contributories and upon receipt of all necessary information from the investors it would update its database and update SEBI of the same. Once the database of the contributories is updated, the Fund would undertake distribution of the proceeds of the liquidated assets. The Fund had repeatedly attempted to obtain the updated bank account details of all its investors/ contributories and had repeatedly corresponded with its agent Karvy in this regard.
- The data, basis which the observations are sought to be made now, was available with the SEBI throughout the continuance of the scheme of the Fund. All the details of the scheme, its investments, details of the utilization of the funds, details of investments liquidated and the investments which could not be liquidated were furnished to SEBI multiple times, including during inspection in 2017 and on January 15, 2021.

8.10 The second Inspection Report has been sufficiently responded to by the Fund vide its response letter dated March 22, 2024. Almost all the observations in the inspection report pertain to the period outside the review period. As mentioned above, all the updates from time to time w.r.t liquidation were sent to SEBI and contributors. The Fund was always acting with *bona fide*.

8.11 As the Fund's investments were in intangible work, the liquidation of each investment was not possible. Pertinently, the fund could not be liquidated till date, due to pending litigation as also considering the decrease in value of the shares held in Junobo. It is well known that time taken in litigation is beyond the control of the parties thereto. Therefore, prescribing mandatory periods to perform certain acts without regard to the delay caused in litigation when the litigant are not at fault for causing the delay, is excessive and unreasonable. When the Supreme Court was considered with the vires of the provisions contained in the Insolvency and Bankruptcy Code, 2016 which requires that corporate insolvency resolution process to be '*mandatorily*' completed within certain timelines, the Supreme Court, in the case of ***CoC of Essar Steel India Limited v. Satish Kumar Gupta & Ors. reported in (2020) 8 SCC 531***, struck down the word 'mandatorily' as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's rights and acknowledged the sometimes tardy process of the Courts / Tribunals which results in delays. In fact, treating the Fund as liquidated without actually attempting realizations from these investments or selling the illiquid assets of the Fund in distress would not be in the interest of investors.

8.12 Every sincere effort had been made to invest in accordance with objectives of the Fund and to exit as envisaged. When despite best efforts, the closure could not be achieved, it would follow that it would not become a matter for regulatory punishment – it is a settled law that punishment is not be inflicted merely on the ground that the power to punish exists but can only be imposed when there is a wanton wrongdoing with an intention and state of mind to violate the law. It is equally a well settled principle of law that the law cannot force the conduct of something that is incapable of being performed. The best efforts and assiduous endeavors to wind up and close the Fund and provide exits are articulated in the preceding paragraphs. Therefore, to inflict penalty on the

basis that despite efforts the fund could not be wound up, would be unfair, prejudicial and in fact in conflict with the objective of orderly development of securities market.

8.13 After the Fund submitted its reply, SEBI has proceeded to issue SCN on August 20, 2024 with similar allegations, merely mentioning that it has considered reply of the Fund submitted in March 2024 without explaining as to what all and in what manner.

8.14 Regulation 23 of the VCF Regulations distinguish between winding up and liquidation. Winding up is governed by sub regulation (1) of Regulation 23. In the present case, clause (a) of Regulation 23(1) is applicable since the information memorandum had a date by which it was to be wound up. Sub regulation (2) and (2A) of Regulation 23 deal with the mode of winding up depending upon the legal form of the fund. Once the fund is wound up, the consequences are provided in Regulation 24. The first effect of winding up is that no further investment shall be made on behalf of the Scheme so wound up. Once the fund is wound up, the consequences are provided for in Regulation 24. There is no violation of Regulation 24(1) in the present case. Regulation 24(2), thereafter, provides that within three months from the date of intimation under Regulation 23(3), the assets of the scheme shall be liquidated, and the proceeds be distributed to investors must be read with Regulation 23(2) or Regulation 23(2A). The period of three months mentioned in Regulation 24(2) on a reasonable construction means that the process of liquidation must start within the stated period. The actual liquidation occurs only upon the disposal of the assets, which is part of the liquidation process, and after all the assets are sold and/or disposed of in liquidation, the last step is dissolution. It is therefore submitted that the period of three months cannot and does not cover the actual sale and/or disposal of the assets, much less the distribution of the sale proceeds thereof to the investors.

8.15 The fund has invested in VCUs and the shares held in these VCUs need to be sold and/or disposed of and/or transferred. All the VCUs are companies incorporated under the Companies Act, 1956, or the Companies Act, 2013 as the case may be. Winding up of these companies would be governed by the Companies Act, 2013. If the assets, viz., the shares held by the Fund cannot be transferred and/or disposed of for any reason whatsoever as also the debentures held cannot be redeemed, the due process of law will

have to be followed which includes provisions contained in Part-1 and Part-III of Chapter XX of the Companies Act, 2013. The timelines provided under the Companies Act, 2013 are on best efforts basis and no penalty can be imposed when the Noticees have taken all reasonable steps for liquidation after the fund has been wound up.

8.16 The law does not expect a person to do the impossible. All possible and reasonable steps have been taken by the Noticees. The Noticees have conducted the affairs of the fund post winding up with due diligence and prudence. Penal provisions have to be strictly construed. The consequences of not being able to liquidate the assets in terms of Regulation 24 within a time bound manner despite the best efforts, does not result in contravention of Regulation 24. There are no penal provisions provided for not being able to liquidate the assets within a time bound manner. Reliance is placed on the judgments of the Hon'ble Supreme Court in ***Excel Corp Care Ltd. v. Competition Commission of India*** as well as ***State of West Bengal v. Swapan Kumar Guha*** wherein, the Hon'ble Supreme Court has held that penal provisions have been construed strictly and if more than one view is possible, no penalty should be imposed.

8.17 The alleged failure to wind up the scheme is not a case of lethargic indifference or needless procrastination by the Fund. In situations involving time imperative, allowances must be made where intricacies and factual ramifications are involved. Noticees have relied on the judgement of the Hon'ble Supreme Court in the case of ***State of Rajasthan v. Shamsher Singh reported in 1985 (Supp) SCC 416*** in this regard. SEBI itself has concluded by its order dated 29.03.2019 that the alleged failure of the Fund in this regard is not a case of deliberate defiance and the SEBI has further acknowledged the efforts taken by the Fund in this regard and how despite the said efforts, the scheme could not be wound up. These findings operate as res judicata and bar the initiation of action on the same alleged cause of action.

8.18 Post the Adjudication Order, the Fund has made several efforts and has taken actions and presently, following two of the investments remain to be liquidated: -

- (i) monies to be received from Mr. Kumar Mangat Pathak under the consent terms and

- (ii) investment in Junobo Hotels to be liquidated by sale of shares held by one of the four VCUs incorporated by the Fund.

8.19 The specific action post above Adjudication Order taken by the fund are as following:-

- (a) It has liquidated Rs.1,25,00,000/- (Redemption Kinesis Films Debenture) and Rs.4,40,00,000/- from Big Screen Entertainer (Kumar Mangat), and distributed a sum of Rs. Rs.3,56,65,774/- to the investors/ contributories from the proceeds realized therefrom amongst others.
- (b) **Double Hungama** - The Fund had entered into Film Production Agreement with Kumar Mangat Pathak. Mr.Pathak had entered into consent terms dated November 20, 2019 agreeing to make full and final settlement amount of Rs.5.25 crores (consent terms) by March 31, 2020. However, during the pending of the Execution Application, the Fund has recovered from Mr. Pathak a total sum of Rs.4.40 crore during 2019 to 2023 (i.e from December 13, 2019 to July 19, 2023). An amount of Rs. 85 lakhs remain to be liquidated from the Project Hungama made with Mr. Pathak.
- (c) **Junobo** - Waterfront (one of the VCU) focuses on international collaborations invested in Junobo the operating company of Soho House. The Fund invested Rs. 6,02,85,230/- for acquiring a stake in Junobo, which owns and operates the Mumbai Franchise of Soho House. Soho House Mumbai commenced its operations only in the year 2018 and opened its doors for members. Pursuant thereto, Waterfront called for Expression of interest from intending purchasers for sale of Waterfront's investment in Junobo. One non-binding offer was received from an investor for a consideration that was about 50% of the original investment by Waterfront. However, due to internal disputes in the management of the company, the investor withdrew his offer. In March 2023, the Fund got a buyer from whom Rs 50 lacs were received as token on 31st March 2023.
- (d) **Sher** - An agreement dated 20th October 2011, was entered into between M/s. Shree Ashtivinayak Cine Vision Ltd. ("Ashtivinayak") and Mr. Yash Tejpal Shah for numerous transactions contained thereunder. Certain disputes arose between Mr. Yash Tejpal Shah and Ashtivinayak, which were referred to Arbitration. On 29th October 2011, the Arbitral Tribunal passed a Consent Award under which Ashtivinayak and Mr. Dhillin Mehta were directed to

jointly and/or severally pay an amount of Rupees Forty-One Crores to Mr. Yash Tejpal Shah together with interest at the rate of 27% p.a. from 1st October 2011 till the date of actual realization as more particularly stated in the Award. On 22 February 2012, the Fund's VCU ie Stellar engaged Ashtivinayak as its line producer in respect of producing a Hindi cinematograph film titled "Sher" and invested an amount of Rs.17,50,00,000/- with Ashtivinayak. Under the agreement it was mutually agreed that the intellectual property rights in relation to the said Film and its underlying works shall vest with Stellar, thereby making Stellar the sole and exclusive owner of the said Film. In or around June 2012, Ashtivinayak defaulted in releasing payment towards the 4th tranche of payment under the said Award to Mr. Yash Tejpal Shah. Accordingly, Mr. Yash Tejpal Shah filed Execution Application (L) No. 1207 of 2012 seeking execution of the Award. The High Court of Bombay vide its order dated 18th September 2012 appointed a Court Receiver in respect of all the prints and negatives of the film Sher, who took charge of all the prints and negatives of the film Sher. Stellar preferred an Appeal (L) No. 687 of 2012 against the said Order before the Division Bench of the High Court of Bombay, which is pending adjudication. During pendency of the Appeal, Mr. Yash Tejpal Shah, Prime Focus and Stellar entered into a Settlement Agreement dated 22nd February 2019 and filed in the High Court, Bombay. Under the Settlement Agreement, Stellar and Mr. Yash Tejpal Shah shall be the joint owners (in the ratio of 60:40 i.e. Stellar shall hold 60% and Yash Tejpal Shah shall hold 40%) of all Intellectual property rights in the film "Sher". The Parties may sell their rights in the film and share the amounts recovered in the manner provided under the Settlement Agreement. However, Stellar's 60% Intellectual property rights in the film Sher cannot be sold alone without the consent of Yash Tejpal Shah and as such the liquidation of this asset remained.

8.20 The Fund, to achieve the object for which it was incorporated, had invested the investible funds through the VCUs into different projects. The amounts received back by the Fund on account of early redemption, loss on equity investments as also amounts received by the Fund on account of interest and dividends, were required to be reinvested during the term of the Fund. The amount realized by the Fund from the date

of initiation of its winding up till the date of the Inspection Report (minus the expenses incurred towards the operations of the Fund) have been distributed to the investors/ contributors, which amount is about Rs. 7.93 Crore, with an amount of about Rs. 2.47 Crore to be received from the remaining two investments.

8.21 Insofar as the fees and expenses incurred by the Fund during its term, i.e. 5 + 2 years is concerned, the same has been incurred in terms of the Information Memorandum. No fees have been paid or expenses incurred by the Fund which are not in terms of the Information Memorandum. The detailed bifurcation of the fees paid and expenses incurred (which have been duly audited by Deloitte) have been furnished to SEBI and all investors annually from time to time during its tenure, including during the inspection and along with the final reply submitted by the Fund on 28th December 2023.

8.22 Regarding investments in associate companies – the findings are not only fallacious but hit by the principle of *res judicata* since SEBI had made similar observations in its inspection report issued in 2017, which were clarified by the Fund in detail and accepted by SEBI. As such, SEBI is estopped from raising the same issue again. In the 2017, Inspection Report, SEBI had specifically noted that Fund had invested in four ‘Associate Companies’ i.e Sunshine, Kinesis, Stellar and Waterfront which is in violation of Regulation 12(d)(ii)(e) of the VCF Regulations. The Inspection Report also alleged that these companies were created for the sole purpose of channelizing the fund’s investments. In reply to the said Inspection Report, the Fund had vide its submissions dated April 21, 2017, *inter alia*, demonstrated that the four ‘Associate Companies’ were actually VCUs and not SPVs or associate companies and the investment in these VCUs do not violate the VCF Regulations. Being satisfied with the submission, SCN dated November 28, 2018 did not call upon the Fund to explain the alleged violations regarding the making investments in the four VCUs. Thus, the allegation of creation of ‘*associate companies*’ for purpose of channeling of fund’s investment was also dropped. Therefore, SEBI was aware about the investments made by the Fund and was satisfied with the explanation furnished by the Fund. However, in the latest inspection report (March 2024), SEBI has once again alleged the violation of Regulation 12(d)(ii)(e) and 12(c) of the VCF Regulations for the investment in the four VCUs. At the same time, the present SCN dated August 20, 2024 does not allege that

the four VCUs had been created for the sole purpose of channeling the fund's investments. It has dropped the allegation of violation of Regulation 12(d)(ii)(e) of the VCF Regulations and had alleged the violation of Regulation of 12(c) of the VCF Regulations.

8.23 Kinesis, Sunshine, Stellar and Waterfront are VCUs and not associates as wrongly understood by SEBI, which were operating *inter alia* in the business of investing in production and distribution of films and creating tie ups with reputed and well established local as well as international media and entertainment companies. In India, direct investment into films is not known. An investor or even a fund cannot invest in a particular film directly. The production houses/ producers do not accept investment/ monies for investing directly into films. They set up their own companies and any person/ fund desirous to invest in films being made/ produced by the production house/ producer is required to make investment in the companies set up by them. Given the association of these VCUs with the media and entertainment business, the Fund made investments in these VCUs, whose objectives were in conformity with that of the Fund, i.e. investments in the Media and Entertainment Industry. Thereby to allege that the Fund's investment in the VCUs was not in conformity with its objectives or investment strategy is *ex facie* incorrect and stems from a lack of understanding on how the media & entertainment industry and investments therein work. Thus, these VCUs are not associates of the Fund but were VCUs incorporated for the purpose of attracting investments in the media and entertainment industry.

8.24 VCUs are different from the SPVs. SEBI's attention is brought to a report by Ashok Lahiri committee appointed by SEBI, wherein it has stated that "*Special Purpose Vehicles (SPV) are independent, stand-alone entities specifically set up for the purposes of a single transaction/ project. Since the SPV has its own separate and distinct legal personality, it can raise capital in its name, own assets and create a charge over them. SPVs also ensure that shareholders have a limited liability, usually limited to the extent of their unpaid shares, thereby insulating the shareholders from any unknown/ unforeseen liability contracted by the business earlier*".

8.25 In contrast to the above explanation, SEBI was shown with supporting material how the above-named VCUs undertook and/or were associated with different projects in the Media and Entertainment Industry, in line with the objects of the Fund. Therefore, Fund's investment in the above VCUs cannot be considered as investments in SPVs. All these facts have not only been brought on record before SEBI, but also before the investors of the Fund at the contemporaneous time. The investors were at all times made aware about the investment decisions, the returns, if any, generated, future films in which investment is being contemplated/ made.

8.26 The observation that the Fund has invested more than 33.33% of investible funds in the VCUs is concerned, it is submitted that Fund has invested more than 66.67% of investible funds in equity shares and equity linked instruments of the above named VCUs in line with Regulation 12(d)(i) of VCF Regulations. Fund's investments in the VCUs is as under:

Name of Company	Amt Invested in Equity (Rs.)	Amt invested in Convertible Debentures (Rs.)
Kinesis Films Private Limited	4,30,000/-	43,00,00,000/-
Stellar Films Private Limited	1,00,000/-	30,00,00,000/-
Sunshine Pictures Private Limited	40,76,46,001/-	
Waterfront Films Private Limited	1,00,000/-	30,00,00,000/-
Total	40,82,76,001/-	103,00,00,000/-

8.27 Fund's entire investment in its VCU companies is a combination of equity and optionally convertible debentures which qualify as "equity linked instruments" under the VCF Regulations. In this regard, attention is drawn to Regulation 2(ee) of the VCF Regulations which provides that "equity linked instruments" inter alia includes instruments convertible into equity shares or debentures compulsorily or optionally convertible into equity. To term these VCUs as SPVs would not only be incorrect but would also defy the commercial realities of investment in the media and entertainment industry.

8.28 Film production Companies do not accept investment / monies for investing directly into film/ films. Hence, VCUs funds were invested in 'best in class ' production companies with A lister Stars, director team with track record. This is akin to what in other business sectors would be like ratings AAA+ or BB+ etc. assigned to Companies. Unlike other sectors where investment can be seen in the form of material assets, or brick and mortar acquisition, value or worth of film is not tangible but is assessed on several factors. It is not the physical film reels in cans or digital format but it's variables, i.e. box office results and other potential exploitation, sales distribution channels etc.

8.29 Accordingly, the total investment of the Fund has been in compliance with Regulation 12(d)(i) of VCF Regulations. In any event, the Fund had provided their response to such observation raised by SEBI in its Inspection Report dated 31st March 2017. SEBI accepted the explanation and did not prosecute its action against the Fund on this count.

8.30 Regarding extending loans and advances at no interest cost - The Fund invested 86% corpus into the VCUs, which aimed to advance the objectives of the Fund. Therefore, it was incumbent upon the Fund to advance certain amounts to these VCUs to ensure that they meet their statutory and third-party monetary obligations, while discharging the sole objective. All the amounts so advanced were timely disclosed by the Fund to SEBI and are reflected in its Annual Reports, which were made available to SEBI throughout its tenure and even thereafter, including with the reply to inspection report of 2017. SEBI is estopped from raking up such issues at this stage, since it has thoroughly inspected the books of accounts of the Fund in 2017 and did not find any breach or violation of VCF Regulations or of its Information Memorandum.

8.31 SEBI has acknowledged that Rs. 7.93 crores were distributed to investors. The amount of Rs. 1.75 crore remains unclaimed owing to unavailability of updated details of certain investors, viz. their address, contact number, account number in which the distribution amount to be deposited. The Fund through Karvy has been trying to find out the details of those investors, whose updated details are missing. In any event, the amounts would be transferred with accrued interest, if any, to SEBI's account upon liquidation of the remaining two investments and distribution of the final amounts. The finding of SEBI

in this regard fails to appreciate the practical realities such as absence of correct bank details etc. as a result of which Rs. 1.75 crores have not been distributed. The *bona fides* of Fund are further demonstrated from the fact that it is not the case of SEBI itself that there is misappropriation of these unclaimed funds. The list of investors to whom the said amount of Rs. 1.75 crores are payable is annexed. If SEBI has the details of these investors, we urge the SEBI to provide the same to us to enable us to make payments to them. Alternatively, these amounts can be transferred to SEBI-designated account from which SEBI itself can distribute the amounts payable to the respective investors.

8.32 Regarding extending loans and advances to Trustee and Staff at no interest costs - The advances to the staff has been done in a routine manner to enable the staff members of the Fund to meet personal exigencies. The detailed bifurcation thereof has been provided to SEBI and the same shows that the amounts so advanced is a fraction of the amount of investible fund of the Fund. Further, advances given to the staff have been fully appropriated against the salaries payable to them. Thereby, there is nothing outstanding or recoverable therefrom.

8.33 The loans and advances were made to the VCUs to ensure that they discharge their statutory and third-party monetary obligations and are not exposed to incur further liabilities. These advances could have been recovered from the profits made by the VCUs from the returns on the investments made in different projects. However, given that the VCUs investments went into complete losses, the Fund has written off the investments as also loans/ advances made to VCUs. Therefore, the number of investments in the books of the fund carried forward is nearly nil.

8.34 Regarding Excess Trusteeship fee- The Information Memorandum clearly provided that Rs. 5 lakh per annum would be paid per Trustee for their services. In 2012, when the individual Trustees were replaced by a Corporate Trustee, there was no clarity given by the auditors of the Fund as to whether the Corporate Trustee is required to be paid as one Trustee or the two Directors of the Corporate Trustee would be required to pay the fees individually. Pending resolution of this ambiguity, the Fund paid for one financial year the two Directors of Corporate Trustee, Rs. 5 lakh each as was initially done in respect of individual Trustees. This ambiguity was resolved later and as per

advice received from its auditors; the Fund from FY 2013 paid only Rs. 5 lakh to the Corporate Trustee.

8.35 Hence there was no deviation, much less any deliberate/ intentional deviation, from the provisions of the Information Memorandum. In fact, the Fund has always acted in consonance with the terms of the Information Memorandum. The payment of Rs. 5 lakh per individual trustee for one year was a bona fide mistake if the same can be termed as a mistake at all. The fact that from the second year onwards and upon receiving clarity on this aspect, the Fund has not paid this amount only shows the bona fides of the Fund and merely because the Fund has not been able to generate return for its investors cannot be a ground to term the genuine errors of the Fund as deliberate departure from the provisions of the Regulations. All the fees and expenses incurred during the tenure of the Fund were disclosed not only in the Annual Reports but also were provided to SEBI from time to time, including the inspection in 2017. Therefore, SEBI is estopped from raising any objections over the same and in any event the act is hit by constructive *res judicata*.

8.36 Non-submission of Quarterly Reports - The Fund has diligently filed its compliance report and kept apprised all its investors in timely manner. During its term the Fund not only submitted quarterly reports on the SEBI portal, about all its activities but also shared the newsletters that were being sent to the Investors/ contributors informing/ updating status of the Fund. It has always maintained complete transparency in all its investments, engagement of advisors, auditors, etc.

8.37 There have been no further investments made by the Fund after initiating the steps towards winding up of the Fund from 2016 onwards. As such, there was nothing for the fund to submit on a quarterly basis. Despite this, the Fund has been apprising its investors and SEBI from time to time of the liquidation proceeds received and the distribution thereof made to the investors. During the inspection undertaken by SEBI even in the year 2017, SEBI did not point out that the Fund was required to make quarterly filings despite initiating the process of winding up. Therefore, the Fund was under a bona fide belief that such quarterly filings were not required to be made. Merely because the Fund has not been able to generate return for its investors cannot be a

ground to term the genuine errors, if any, of the Fund as deliberate departure from the provisions of the Regulations especially when SEBI also did not point out such alleged errors in the earlier round of its inspection which points to SEBI's own understanding that such filings after initiation of liquidation/ winding up & when no active business was being conducted, were not mandatory. In any event, the Fund can start filing the quarterly reports if required by SEBI.

8.38 Despite its best efforts there are two remaining assets which are under the process of being completely liquidated, for which an amount of about Rs. 2.47 Crore is recoverable. The Fund has informed SEBI as also its investors that as and when the proceeds of liquidation of these two assets would be received the Fund will distribute the same to its contributories in the proportion of their entitlement. In the next two months, the Fund shall take the following steps towards achieving a complete liquidation of the schemes.

8.39 Even SEBI has acknowledged that some flexibility is required in matters dealing with unliquidated investments of schemes of venture capital funds. In May 2024, SEBI has proposed to introduce an 'Amendment to SEBI (Alternative Funds) Regulations, 2012 to provide flexibility to venture capital funds registered under the erstwhile VCF Regulations for optional migration into AIF Regulations and to avail the facility of dealing with unliquidated investments of their schemes under expiry of tenure. SEBI itself has recognized that one of the major issues faced by some VCFs is the inability to liquidate their investments within the tenure of the fund. In fact, from 2008 to 2023, not one scheme of VCF (out of the 94 such schemes) has been able to wind up. Therefore, it would be highly unfair and unjust to penalize the Fund for its inability to wind up.

8.40 From the date of initiation of its winding up till the date of inspection report (minus the expenses incurred towards the operation of the Fund) the Fund has distributed Rs.7.93 crore to the investors / contributors. Post issuance of SCN, further amount of Rs.55 lakhs has been recovered from Mr. Kumar Mangat Pathak in the month of October 2024 (i.e post filing reply to SCN) which shall be distributed to the investors. At present, the amount that remains to be liquidated from the investments in project Hungama made

with Mr. Pathak is Rs. 30 lakhs. As on date a sum of Rs.1.92 crores is yet to be liquidated. The amount of Rs.1.75 crore remains unclaimed owing to unavailability of updated details of certain investors. The Fund through KFin Technologies Limited (formerly known as Karvy Computershare Private Ltd.) has been trying to find out the details of these investors whose updated details are missing. In any event, the amounts would be transferred with accrued interest, if any, to SEBI's account upon liquidation of the remaining two investments and distribution of the final amounts. The bona fides of the Fund are further demonstrated from the fact that it not the case of SEBI itself that there is misappropriation of these unclaimed funds. If SEBI has the details of these investors, we urge SEBI to provide the same to us to enable us to make payments to them. Alternatively, these amounts can be transferred to SEBI-designated account from which SEBI itself can distribute the amounts payable to the respective investors.

8.41 In any event, the Fund is hopeful to receive and realise further amount from the investments in Junobo in the next couple of months or so and thereafter, the Fund should be in position to distribute the remaining amount of Rs.2.47 crores to the investors in accordance with the terms of the scheme.

8.42 Non-redressal of investor complaints - The complaints by investors who have not earned the expected return on their investment may be difficult to be redressed. Anything short of receipt of their investment with their desired return may not be regarded by these investors as redressal of their complaints.

8.43 These investments were risky and did not assure returns to the investors in any manner. The attempts on part of the Fund in responding to these grievances and transparently disclosing all facts about the functioning and present status of the schemes shows the bona fides of the Fund. Redressal of the investor complaints cannot mean that the Fund be wound up and the proceeds of the remaining two investments remain to be distributed forthwith upon receipt of the investor complaint. On the contrary, the Fund has been apprising the investors status of the remaining two investments and the fact that despite its best efforts, the same remained to be liquidated. The Fund is hopeful of complete liquidation of the remaining two investments and distribution of proceeds thereof to the investors soon. However, the present case cannot be regarded as one in which the Fund has failed to redress investor grievances. For sake of completeness of

records, it is pertinent to mention that the Fund has received approx. 100 no. of complaints which has been sufficiently responded to during the alleged Review Period i.e. 22nd October 2016 and 31st October 2023. In fact, post the Review Period also the Fund has responded to the Investors grievance. Therefore, it is erroneous to contend that the Fund has failed to address complaints of its investors as alleged.

8.44 Mismanagement of Investor's funds & Role of Investment Manager, Trustee and their Directors -The Fund has not invested in its associate companies, extended interest free loans, and advances to its investee companies (also associates), Trustee Company and staff and also charged excess trustee fee out of investor's fund. The Fund made no promise without any intention of performing it. There was also no concealment, much less active concealment, of any fact.

8.45 The VCF Regulations cover the entire field of functioning of VCFs. The VCF Regulations are specific. Hence, the PFUTP Regulations do not have any application to the facts of the present case. No mis selling was done in terms of PFUTP Regulations and put SEBI to strict proof thereof. The Fund issued its IM on July 15, 2008 which was amended on September 10, 2008 by First Supplement to the IM providing certain clarifications. Thereafter, the Fund appointed ICICI Bank Limited and ABN Amro Bank (which later was renamed to RBS Bank) as the non-exclusive distributors of the IM of the Fund ("Distributors"). The IM was furnished to the prospective contributors by the Distributors, to assist them taking an informed decision to invest into the Fund. As such Fund has not done any mis-selling as alleged. The same was managed and operated by the Distributors and no person from the Fund directly sold or marketed the units to any of the investors.

8.46 It has been alleged that the Fund benefitted only its manager, trustee and connected parties rather than benefitting its investors; (i) by raising money from investors and thereafter failing to recover such money; (ii) by giving interest free money to investee companies, and thus the Noticees have violated the provisions of Regulation 3(a), 4(1) and 4(2)(s)(ii) of the PFUTP Regulations. In this regard, in the present facts and circumstances, not only is there no violation of PFUTP Regulations, but even a case for violation of the PFUTP Regulations has not been made out in the show cause notice.

The present case does not pertain to buying/ selling or dealing in securities in a fraudulent manner. The present case also does not pertain to any mis-selling of securities. There is no concealment of or omission of any material fact. All the investors were, at all times, informed about the objective & investment strategy of the Fund as well as the decisions pertaining to its winding up and extending its further. For instance, a full disclosure letter was sent to the investors in the year 2015 explaining the risk of liquidation/ winding up so that the investors could take an informed decision regarding whether to extend the Fund. The investors were transparently informed regarding the difficulties in liquidating illiquid assets like intellectual property rights, etc. and the three options for closure of Fund. In fact, majority of the investors voted for extension of duration of the fund. Furthermore, the investor complaints stem from the inability of the Fund to liquidate the illiquid investments. Thus, the complaints pertain to the aspect of closure of the Fund and not at the time of the investors making the investments. It is not the case of the investors or even SEBI that at the time of raising money from investors, the Fund concealed or omitted material facts in order to raise the money from investors. For the purpose of being regard as manipulative, fraudulent or unfair trade practice in securities market in terms of Regulation 4(2)(s)(ii) which has been purportedly invoked in the show cause notice, such alleged manipulation, fraudulent or unfair trade practice should be in relation to selling the securities or services. In the present case, there is no such allegation from the investors or even SEBI that such alleged manipulation, fraudulent or unfair trade practice is in relation to selling of securities or services. Equally, there is no case for disgorgement made out in the SCN. The Fund has acted in accordance with the IM and in transparent manner. The investors were apprised of every development in timely manner. There was no concealment of facts. Therefore, there arises no question of disgorgement in the SCN.

8.47 By the very words used in PFUTP, intent is inbuilt in each of them, as for instance in the words such as '*fraud*', 'scheme', 'device' etc. The intent in the present case, was clear from the very beginning and all risk factors were fairly and transparently disclosed. As a regulator, SEBI is not concerned with the ultimate profit and/or loss caused to the investors, which is a business decision taken by each of the investors after reading all the clauses of the Placement (Information) Memorandum, including risk factors stated therein. As such, the intent was bona fide from the beginning.

Consequently, no penalty can be imposed on the noticees for the inability to (i) make profits; or (ii) liquidate the assets and distribute the proceeds within the time limits, as alleged or at all. The Fund, Advisory Firm and the Advisory Council were conscious of the Risk Factors associated with investment in the industry. Therefore, through IM, the Fund made its prospective members/contributories aware of the risks associated with investment in the Scheme, Section VIII (Risk Factors) of the IM clearly set out the various risks involved in investing in the Fund.

8.48 The Brochure issued for the Scheme contained a detailed disclaimer for potential investors/contributories that they should rely on their own examination of Fund's documents and the risk factors involved in the investment.

Specific submissions of Noticees 3, 6, 7 and 8:

8.49 The Trustee has acted in accordance with the Deed of Trust dated 9th April 2008 read with Deed of Appointment of New Trustee dated 11th March 2011. There is no violation on the part of the Trustee and/or its directors. The trustees have not violated the PFUTP Regulations. No case for disgorgement has been made in the present SCN.

8.50 Cinema Capital Contributory Company Pvt Ltd. serves as the Corporate Trustee of the Fund, with Noticee Nos.6, 7 and 8 as its directors. Initially, Mrs. Urmila Gupta and Mr. Gopi Kisan Arora were Trustees; following Mr. Arora's death on November 05, 2009, Maj. Gen. Amrit Lal Suri was appointed as a Trustee. On March 11, 2011, the Corporate Trustee was established, replacing the individual Trustee, with Mrs. Gupta and Maj.Gen. Suri as directors. After the Fund's tenure ended on November 15, 2015, Maj.Gen.Suri resigned, and Mr. Binay Mandal was appointed as a director effective October 3, 2017.

8.51 As on 31st March, 2022, Rs.7,64,980/- was receivable from Cinema Capital Contributory Company Pvt. Ltd. These are the expenses which were incurred by the Fund on behalf of Corporate Trustee for payments being made to Professionals, Audit Fees and ROC Fees. Since the Trustee Company was not into any business and had no funds, these expenses were incurred on their behalf. As these amounts were incurred

for the Corporate Trustee, appointed for the benefit of the Fund and its contributories, the amounts are not required to be refunded. The Fund Operating Expenses provided under the Information Memorandum covers these expenses to be borne by the Fund.

8.52 All the expenses incurred by the Fund are duly authorized by the Information Memorandum. Section VII of the IM has very clearly mentioned the list of expenses which the fund can incur. The staff Salary, Expenses on Assets like computers etc. office rent and miscellaneous expenses like electricity etc. are very allowable expenses, as they are required to be incurred to run the fund and are therefore allowable as per the Information Memorandum.

8.53 The Information Memorandum in clear terms provided that the Investment Advisor (Manager) would be paid fees which would be equal to 2% of the total Capital Commitment of the Fund from the date of Closing during the term of the Fund. Admittedly, the Corpus of the Fund was Rs.172 Crore. A simple calculation of 2% per annum from 2008-09 to 2015-16 would result in payment of about Rs.27 Crore of advisory fees to the Investment Advisor. As such, the management fees are in accordance with Information Memorandum.

8.54 With respect to charging annual Trustee fees twice, Noticee 3 became the Corporate Trustee w.e.f. 1st April, 2011. Since this was the first year of Corporate Trusteeship and there was no clarity if the Trusteeship fee was to be paid only to the Trustee Company or to both the Directors, the same was paid to both the Directors for the initial FY 2011-2012. From the next year onwards, when, the Fund got clarity of the same, only Rs.5 lacs per annum was paid to the Corporate Trustee till 15th November 2015.

8.55 The Fund had hired reputed consultants and advisors to audit its books and advice on tax. The Fund's auditors were PricewaterhouseCoopers and Deloitte Haskins & Sells LLP, whereas Ernst & Young was the Fund's taxation advisors, as well as a transaction and valuation advisor. These reputed consultants and advisors also did not find any discrepancies with respect to the expenses incurred and fees paid in terms of the Information Memorandum.

8.56 The payment of Rs.5 lakhs per individual Trustee for one year was a bona fide mistake if the same can be termed as a mistake at all. The fact that from the second year onwards and upon receiving clarity on this aspect, the Fund has not paid this amount only shows the *bona fides* of the Fund, and merely because the Fund has not been able to generate return for its investors cannot be a ground to term the genuine errors of the Fund as deliberate departure from the provisions of the Regulations.

8.57 The allegation of disgorging excess fees is baseless, as the Trustee has acted in accordance with the fee structure approved by SEBI and disclosed to investors. There has been no concealment of facts, nor any intention to mislead investors. The Fund's consistent objective has been to generate attractive returns for investors through its investment in portfolio companies, with full transparency and good faith efforts.

9. I have carefully considered the allegations in the SCN dated August 20, 2024, submissions made by the Noticees in their replies, submissions made during the personal hearing and additional written submissions filed thereafter. The Fund is a discretionary irrevocable trust registered under the provisions of the India Trusts Act, 1882 and is registered under the VCF Regulations vide Certificate of Registration No. IN/VCF/08-09/117 dated May 22, 2008 to carry on the activity of a venture capital fund for the purpose of making available venture capital assistance to portfolio companies primarily operating within the investment focus of the Trust.

10. The Fund has launched only one scheme i.e. a close ended scheme viz "*Cinema Capital Venture Fund Scheme-1*" pursuant to its PPM/IM. It is admitted position that the scheme was not wound up even after extended tenure till November 14, 2015 and the Fund did not liquidate the assets of the scheme and distribute the proceeds accruing to the investors. This issue was within knowledge of SEBI while conducting first inspection in the year 2017 and even thereafter when, on January 15, 2021, the Fund continued its correspondence with

SEBI in this regard. However, the SCN suggests following two reasons for making allegations in this regard viz;

- (a) No directions such as winding up and liquidating the scheme and distributing the proceeds to the investors were passed when Adjudication Order dated March 29, 2019 was passed; and
- (b) The default still continues after passing of the Adjudication Order dated March 29, 2019 and investors have raised complaints in this regard in SCORES.

11. It is pertinent to mention that regulation 23 of the VCF Regulations provides for situation leading to winding up of a scheme of VCF and Regulation 24 provides for effect of winding up. Both these Regulations are inter- linked. As per regulation 23 a scheme of VCF **shall** be wound up,

- (a) when the period of the scheme, if any, mentioned in the placement memorandum is over;
- (b) if it is the opinion of the trustees or the trustee company, as the case may be, that the scheme shall be wound up in the interests of investors in the units;
- (c) if seventy-five per cent of the investors in the scheme pass a resolution at a meeting of unit holders that the scheme be wound up; or
- (d) **if the Board so directs in the interests of investors.**

12. As per Regulation 24 (2) of the VCF Regulations within three months from the date of intimation under sub-regulation (3) of regulation 23, the assets of the scheme shall be liquidated, and the proceeds accruing to investors in the scheme distributed to them after satisfying all liabilities. The word “*shall*” in regulation 23 is of much significance when seen in the context of investors’ interests who take higher risks and make investments in venture capital fund schemes as compared to any other pooled investment vehicles based on the promises made by the VCF in the placement document (PPM/IM). A conjoint reading of aforesaid regulations 23 and 24 clearly shows that when the period of scheme,

in this case, got over it was obligatory on the part of the Fund to forthwith wind up the scheme and intimate to SEBI and within three months from the date of such intimation liquidate the assets of the scheme and distribute the proceeds accruing to investors in the scheme after satisfying all liabilities.

13. The scope of mandatory nature of regulations 23 and its intent is clearly reinforced by SEBI speaking through its order number WTM/SM/AFD-1/AFD-1-SEC/20965/2022-23 dated October 31,2022 passed by the Whole Time Member in the matter of *Urban Infrastructure Venture Capital Fund* wherein it has been said that:-

....once the period of maturity has been fixed including the extension of period of maturity of the Fund (i.e. two extensions of one year each) as specifically provided under the Regulation, it is not open for the Trustees or the Investment Manager of the Fund to further extend the period of maturity of Fund by taking the consent of the unit holders / beneficiaries. Moreover, neither there is any provision under the VCF Regulations which provides for obtaining such further extension of the period of maturity of a scheme of a Fund post the expiration of its term nor any situation has been envisaged under VCF Regulations so as to enable the Trustees or the Investment Manager of the Fund to further extend the term of the Scheme of the Fund, post expiry of its maturity period as declared under its PPM including the Extended Period as permissible in terms of the PPM. Once the period of maturity as declared in the Fund's PPM is over, the Fund has to compulsorily wind up the Scheme under regulation 23 of the VCF Regulations."

14. The Fund has, thus, no other option but to wind up the scheme, liquidate the assets under the scheme and distribute the proceeds to the investors forthwith on expiry of extended tenure. If it deviates for compliance of regulation 23 read with regulation 24, SEBI was expected to use the power under regulation 23 (1)(d) read with Section 11 and 11B of the

SEBI Act to direct winding up of the scheme and consequent liquidation of assets under scheme and distribution of proceeds to investors.

15. There is no quarrel about issuance of placement memorandum or about filing of copy thereof with SEBI and that the concerned department in SEBI was at all times informed about terms of placement and details of monies collected from the investors. Before expiry of the extended tenure of the scheme on November 14, 2015, the Fund started corresponding with investors by proposing three options to investors and then informing SEBI about the same vide its letter dated October 01, 2015 and November 04, 2015 and again (after expiry of the said tenure of the scheme) vide its letters dated December 09, 2015, January 15, 2016, March 07, 2016, September 02, 2016, September 28, 2016 and October 09, 2016. SEBI, at that time did not find it appropriate to invoke the provisions of regulation 23(1)(d) instead conducted inspection of the Noticee on October 21, 2016.
16. It is on March 31, 2017, when comments of the Fund on the 2017 inspection report was sought SEBI enquired about liquidation status of the scheme and informed the Fund that it had not taken any “*serious endeavors*” towards liquidating its investments and distribution of proceeds to the contributories. The reply of the Fund dated April 21, 2017 was not found satisfactory and before initiating the proceedings under section 15I of the SEBI Act as aforesaid, SEBI, on July 06, 2017 enquired about the status of liquidation of the assets acquired under the scheme and when the Fund submitted the response SEBI did not find the explanation satisfactory and, hence, initiated the proceedings under section 15I. Even at this stage, choice to use regulation 23(1)(d) and Section 11 and 11B of the SEBI Act was not exercised and Noticee No.1 Fund was not even made a party in the said Adjudication Proceedings.
17. The Adjudication Order dated March 29, 2019 that came out to be passed under the then prevailing facts and circumstances clearly makes out for winding up of the scheme under

regulation 23 (1) (a) of the VCF Regulations as natural consequence of expiry of term of the scheme and consequential liquidation under regulation 24(2). The Adjudicating Officers do not have jurisdiction in those proceedings to issue any direction to direct winding up and liquidation of scheme in question and distribution of proceeds or any direction as contemplated now. Thus, the first basis of allegation in the SCN is misplaced.

18. Admittedly, when the tenure of the scheme in question as permitted under PPM of the Fund had expired on November 14, 2015, the Fund did not comply with these statutory obligations of winding up the scheme and liquidating the assets of the scheme and distribute the proceeds to investors within timelines stipulated in regulation 23 rather it entered into correspondence with SEBI explaining difficulties and the concerned department did not consider its efforts as “*serious endeavour*” but did not invoke regulation 23(1) d) instead it choose to enforce the Regulations initially only by way of monetary penalty instead of direction, in that regard, at the relevant times. Since the Fund was proposing different options and showing willingness to wind up in view of several factual ramifications as described by it in its correspondences with SEBI during 2015-2018, perhaps for this reason, SEBI, at that time, did not feel appropriate to enforce the directions and decided to go ahead with adjudication proceedings as soft action. Therefore, while passing the order dated March 29, 2019, the Adjudicating Officer had, at that time, considered this aspect as mitigating factor. In the said order, the Noticees (except Noticee No.1 who was not party in the said proceedings), were found to have contravened the provision of regulation 24(2) read with regulation 23(1) (a) of the VCF Regulations.

19. The above order was subsequently upheld by Hon’ble Securities Appellate Tribunal (SAT) vide order dated September 14, 2021 passed in Appeal filed against the said order of SEBI and the concerned Noticees paid the penalty amount imposed, respectively upon them. Following findings in the above order of Hon’ble SAT are worth mentioning for relying upon in these proceedings: -

“10. Thus a conjoint reading of Regulations 23 and 24 of the VCF Regulations indicates that the scheme was required to be wound up and the proceeds were required to be distributed within three months from the date of intimation of the intention to wind up the scheme.

11. It was contended that the word “shall” used in regulations 23 and 24 is not mandatory but is directory in as much as there could be a possibility where the proceeds or winding up was beyond the given circumstances and, therefore what is required to be seen is whether sincere efforts was made on their part in winding up the scheme and distributing the proceeds. We are of the opinion, that it is not necessary for us to go into the question as to whether the period prescribed under Regulation 23 and 24 is mandatory or not is it necessary to go into the explanation given by the appellant as to why they could not wind up the scheme within the stipulated period for the reasons stated hereunder.

12. Admittedly, the scheme expired on November 14, 2015. Decision to wind up the scheme was taken on March 07, 2016. As on date, more than 5 years has elapsed and admittedly the entire proceeds has not been distributed to the investors nor the scheme has been wound up. Assuming that the regulations 23 and 24 are directory in nature, nonetheless, the appellants were required to wind up the scheme and distribute the proceeds at the earliest. Five years is a long time and therefore it is clear that the appellants bona fides is doubtful”.

(... Emphasis Supplied)

20. Considering the mandatory effect of regulations 23 and 24, the facts that the options and proposals of the Fund did not find favour with SEBI, imposition of monetary penalties by the Adjudication Order dated March 29, 2019 and subsequent finality to findings on fact and law in the abovesaid order dated September 14, 2021 passed by Hon’ble SAT, it was clearly obligatory on the part of the Noticees to take prompt steps and comply with requirements of Regulations 23 and 24 of the VCF Regulations without any demur and without raising technicality on SEBI’s remark with regard to lack of “*serious endeavors*” or otherwise.

21. Be that as it may, it is noted that when after above adjudication order dated March 29, 2019 and order of Hon'ble SAT dated September 14, 2021, SEBI received several investors' complaints, it again conducted fresh inspection and the 2023 inspection report observes additional deviations, defaults and failures on the part of the Noticees apart from the findings that the aforesaid non-compliance still continues. It has been observed that, during the said inspection period, there were 104 complaints filed by various investors of Fund with SEBI on its SCORES Portal. Most of the complaints pertain to non-liquidation of scheme upon completion of tenure and non- receipt of invested amount from the Fund. The complaints were duly forwarded by SEBI to the Fund for redressal. But these investors have yet not got their dues. Therefore, the second basis of the allegations in this respect holds good.

22. I further note that with respect to the merits of this allegation, the Noticees have predominantly claimed the efforts taken by them and made same submissions in support of the claim which has already been examined in order dated March 29, 2019. It is pertinent to mention that the findings and observations in the order dated March 29, 2019 are by no means intended to give complete allowance from compliance obligations much less allowance for lethargic indifference or for needless procrastination; if any as sought to be contended by the Noticees. Further, the said order dated March 29, 2019 has been upheld by Hon'ble SAT vide order dated September 14, 2021 passed in the appeal filed by the Fund against the said order dated March 29, 2019. Thus, the findings have attained finality and the same issues cannot be allowed to be reopened, raised and agitated again in these proceedings by the Noticees.

23. It is admitted position that scheme in question is yet not wound up even after the aforesaid order of SEBI and Hon'ble SAT and default is occurring every day after these orders of SEBI and SAT. There are investors' complaints pending resolution till date. Further, the second inspection report has listed few new allegations. Therefore, the following issues

emerge for consideration in these proceedings in view of valiant efforts of the Noticees in raising several technical objections: -

- (a) Whether proceedings for directions under Sections 11(1) and 11B(1) of the SEBI Act read with Regulation 23(1)(d) of the VCF Regulations and Regulation 39 of the AIF Regulations are barred by *res judicata* or *constructive res judicata*;
- (b) Whether monetary penalty under Sections 11(4A) and 11 B (2) read with Section 15C should also be levied upon the Noticees with regard to the alleged violations which were adjudicated under section 15HB but the default continues; and
- (c) Whether the new allegations hold good and if so then what could be the directions under section 11 and 11B (1) and what could be the monetary penalty under section 15HA and 15HB of the SEBI Act.

24. The Noticees have raised several technical objections in this regard. First such objection is that the SCN has been issued without considering their reply to the inspection report dated March 22, 2024. I do not agree with such contention at all. From the material available on record, I note that the reply dated March 22, 2024 has been duly examined for making a *prima facie* case for issuance of the SCN. All the analysis, post such examination, has been duly recorded in the SCN and, therefore, I do not find any infirmity as contended.

25. Another objection is on the ground of the *res judicata* or *constructive res judicata*. In this regard, I have referred to all the Judgements relied upon by the Noticees such as *Celir LLP vs Sumati Prasad Bafna & Ors* (2024) SCC Online SC3727; *Aditya Birla Money Limited v. National Stock Exchange of India Limited* 2020 SCC OnLine Mad 1082; *Sunil Sureshchandra Agarwal vs.State of Maharashtra & Ors* 2022 (4) Mh.L.J 522 ; *M.Nagbhushana v.State of Karnataka* (2011) 3SC 408.

26. In *Celir LLP case*, in the proceedings before the Debt Recovery Tribunal (DRT) the petitioner was the successful auction purchaser of the secured asset a defaulting borrower. However, Hon'ble High Court of Bombay based on willingness of the borrower to pay the total sum of Rs. 129 Crores for redeeming the mortgage failing which the sale of the secured asset in favour of the petitioner would be confirmed. *Celir LLP* challenged the same before Hon'ble Supreme Court (SC) which held that any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly, except on the grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding.
27. In *Aditya Birla Money Limited (Supra)*- SEBI vide Circular No. CIR/MRD/ICC/30/2013 dated 26.09.2013 had devised the Investor Grievance Redressal Mechanism ('IGRM') in the stock exchanges to shorten legal proceedings and give monetary relief to the investors during the course of proceedings. An investor (third respondent) made claim under IGRM from the petitioner, a 'Trading Member' of NSEL, attributing loss to the misconduct of the dealing official of the petitioner, who consistently presented profit statements over a period of four years, thus, inducing to carry on transactions with the petitioner. Petitioner stated that the investor was aware of the trades and its resultant impact through e-mail and SMS and the statement of accounts and profit and loss computation. Investor Grievance Redressal Panel (IGRP) of NSEIL vide Order dated 18.10.2016 held admissible claim of the investor as "Nil" but *inter alia*, reported that the complaint of the investor be re-examined by IGRP of SEBI. Subsequently, complaint registered with SEBI. Petitioner stated that earlier IGRP proceedings on the complaints of the investor were without jurisdiction and not maintainable in law and represented that the investor may be directed to initiate arbitration as contemplated under the Exchange Regulations to redress his grievances. The petitioner then filed a Writ Petition before Hon'ble Madras High Court challenging letter dated 14.11.2018 issued by SEBI scheduling IGRP meeting wherein it was held that attempt to re-examine the complaint without any specific provision to that

effect in IGRM mechanism amounts to re-litigation and is barred. Inasmuch as the earlier adjudication in IGRP of the NSE, does not suffer from any procedural defect, the question of invoking the inherent powers to re-open the proceeding does not arise and, thus, restrained NSE from continuing with the IGRP proceedings initiated in pursuance thereof.

28. In *Sunil Sureshchandra Agarwal* (Supra) the petitioner, a Chartered Accountant, filed a PIL challenging the legality and propriety of permissions granted for a construction project in Navi Mumbai stating that a fraud has been practiced at all stages by one Mistry Construction Company Private Limited in active connivance with the statutory authorities. Respondent Mistry Construction Company objected to the PIL on the ground that SC already gave judgement on same issue. It was held by Hon'ble Bombay High Court that challenge to tender process based on new documents and grounds is barred by the principle of *constructive res judicata*.

29. In *M. Nagabhushana* (Supra); in an earlier writ petition filed by the appellant, a land owner alleging that the plots of land in question were outside the purview of the framework Agreement (FWA) and notification issued under Karnataka Industrial Areas Development Act was dismissed by the single judge of Karnataka HC on the ground that the acquisition proceedings in question were challenged by the petitioner, in a previous writ petition No.46078/03 which was initially accepted and the acquisition proceedings were quashed. Then on appeal, the Division Bench (in writ appeal Nos.713/04 and 2210/04) reversed the judgment of the learned Single Judge. Thereafter, the Division Bench order was upheld before SC and SC approved the acquisition proceedings. Thereafter, in another writ petition, filed, *inter alia*, on the ground that the aforesaid blocks of land were outside the purview of FWA, the Division bench held the second round of litigation as misconceived. Appellant contented that the question of principle of constructive *res judicata* is not applicable to a writ petition. It was held by Hon'ble High Court that the attempt of the appellant to re-agitate the same issues which were considered by SC and were rejected

earlier is a clear instance of an abuse of process and such issues are barred by principles of *res judicata* and *constructive res judicata* and principles analogous thereto.

30. I note that, the Judgement of Hon'ble Madras High Court in *Aditya Birla Money Limited* (Supra) is of not any help in support of this plea since, in this case, Hon'ble High Court did not allow the re-examination of a complaint as the IGRM mechanism did not have any specific provision to that effect and inherent powers cannot be invoked to reopen if specific provisions are not available. The principles pronounced in *Sunil Sureshchandra Agarwal* (Supra) and *M. Nagabhushana* (Supra) lay down that the same issues which were considered by Hon'ble Supreme Court and were rejected earlier was clear instance of an abuse of process and such issues which had attained finality in Hon'ble Supreme Court order would be barred by principles of *res judicata* and *constructive res judicata* and principles analogous thereto, if raised again. I also note that in *Celir LLP* case, Hon'ble Supreme Court carved out exception from the general rule that issues already confirmed or concluded can not to be set-aside or interfered with. The said exception is inherent collusion or fraud. Further, mere irregularity or deviation from a rule which does not have any fundamental procedural error does not take away the foundation of authority for such proceeding.

31. Having examined as above, I note that the general rule so propounded, lay down following principles for legal proceedings: -

- (a) There must be finality to litigation.
- (b) *Henderson Principle* - that prevents parties from raising issues in subsequent legal proceedings that could have been raised earlier.
- (c) *Res judicata*- (same as Henderson Principle)- that implies a legal doctrine that prevents a court from re-examining a case that has already been decided and closed.

32. The *Henderson Principle* or the doctrine of *res judicata* entail claim preclusion and is one of the fundamental principles of civil justice system. Essentially, it refers to a situation

when a case, in which there has been a final judgment, the litigation of the same case is barred as provided in section 11 of the Code of Civil Procedure, 1908 (CPC) that embodies the rule of conclusiveness of a judgment. It is settled principle that legal principles of ‘*issue estoppel*’ and *res judicata* are equally applicable in proceedings before administrative and quasi-judicial authorities as they are based on public policy and justice¹. Whenever a quasi-judicial authority gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal.

33. In ***Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Ors. Civil Appeal No. 540 of 1986***² it was held by Hon’ble Supreme that ‘*issue estoppel*’ operates where *res-judicata* cannot be applied due to issues involved are not identical. Hon’ble SC observed that it is settled law that principles of *estoppel* and *res judicata* are based on public policy and justice. Doctrine of *res judicata* is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of *res judicata* prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrated wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation.

34. In a recent judgement in the matter of *SEBI Vs. Ram Kishori Gupta and Anr (Civil Appeal No. 7914 of 2019 decided on April 07,2025*, Hon’ble Supreme Court recognized that Section 11B of the SEBI Act empowers SEBI to issue directions and levy penalty. Thus, the provisions of this section as amended with effect from July 18,2013 enable SEBI to issue preventive and remedial directions and also to impose penalties. Further, Explanation,

¹ *Ujjam Bai vs. State of U.P.* 1962 SCC OnLine SC 8; *SC in Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Ors. Civil Appeal No. 540 of 1986 decided On: 03.11.1998* ; *Abdul Kuddus vs. Union of India and others (2019) 6 SCC 604 and SC judgement in M/s Faime Makers Pvt. Ltd. Vs. District Deputy Registrar, Co-operative Societies (3), Mumbai & ors CA NO..../2025@ SLP(C) NO.26654/2023 ETC. decided on April 01,2025*

² *decided On: 03.11.1998*

inserted in Section 11B, puts it beyond the pale of doubt that the power to direct disgorgement was deemed to have always been included in the general power of issuing directions thereunder. Hon'ble Supreme Court further held that when an earlier order issuing directions for the same cause of action and based on the very same show-cause notices remained intact and attained finality, as it was neither challenged nor set aside, the later order could not have been passed, supplementing it with additional directions. Hon'ble Supreme Court went on to observe that once SEBI did not choose to issue such a direction in the first instance and was satisfied with lesser penalties in its earlier order under section 11B, the question of permitting SEBI, without just cause, to revisit the said final order and pass fresh directions does not arise. Doing so would be violative of public policy, which attaches great value and sanctity to the finality of judicial determinations and the principle of *res judicata*. SEBI cannot claim exemption from the applicability of the principle of *res judicata*. Because, if the doctrine of *constructive res judicata* is not applied, it would be open to a party to take one proceeding after another and urge new grounds every time and that, plainly, would be inconsistent with considerations of public policy. Needless to state, these stellar principles would not only apply to the parties to a dispute but would also bind the adjudicating authorities seized of such dispute, be they judicial, quasi-judicial or administrative.

35. It was also held in this case that once an order attained finality and was fully given effect to, passing of a fresh order once again, on the very same cause of action, trampled upon and reversed the finality that had already attached to the said order. Hon'ble Supreme Court reemphasized on applicability of *res judicata* and *constructive res judicata* on SEBI penalties and proceedings for same cause of action that has attained finality in an earlier proceedings and held as under :-

*“28. In **Hope Plantations Ltd. vs. Taluk Land Board, Peermade and another**, a 3-Judge Bench of this Court affirmed that the principle of *res judicata* is based on public policy and justice. It was pointed out that the rule of *res judicata* prevents the parties*

to a judicial determination from litigating the same question over again, even though the determination may be demonstrably wrong. It was held that when proceedings attain finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action, nor can they litigate any issue which was necessary for decision in the earlier litigation. It was pointed out that Section 11 of the Code of Civil Procedure, 1908, contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. It was observed that the principles of res judicata would be equally applicable in proceedings before administrative authorities. Further, in **Amalgamated Coalfields Ltd. and another vs. Janapada Sabha Chhindwara and others**, a Constitution Bench observed that constructive res judicata is an artificial form of res judicata and it postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action. Affirming this view in **Devilal Modi vs. State Tax Officer, Ratlam, and others**, a Constitution Bench observed that this view is founded on the same considerations applicable to res judicata, because if the doctrine of constructive res judicata is not applied, it would be open to a party to take one proceeding after another and urge new grounds every time and that, plainly, would be inconsistent with considerations of public policy. Needless to state, these stellar principles would not only apply to the parties to a dispute but would also bind the adjudicating authorities seized of such dispute, be they judicial, quasi-judicial or administrative."

36. The Noticees have vide letter dated April 11, 2025 claimed that instant proceedings are barred in view of the above Judgement of Hon'ble Supreme Court. Hence the current proceedings which were initiated on the same cause of action as the adjudication in respect of which has already attained finality, are bad in law. Hence the present SCN may be discharged.

37. It is noted that the above judgement has been delivered in the context of a proceeding wherein subsequent penal direction in same proceedings were hit by *res judicata* or *constructive res judicata*, when earlier penal direction was passed on the same cause in the same proceedings. However, in the instant case earlier adjudication order was passed on one issue and instant proceedings are different proceedings under different sections for different cause of actions.
38. It is beyond cavil that multiplicity of orders on the same charges would clog-up the quasi-judicial and appellate forum with unwarranted litigations and, thus, should be discouraged. It is not open to SEBI to claim that it could pass multiple final orders on the same cause of action as held by Hon'ble Supreme Court in *Ram Kishori Gupta* (Supra). Further, the principles of *res judicata*, *constructive res judicata* and other analogous principles and its aspect like '*cause of action estoppel*' and '*issue estoppel*' as enshrined in section 11 of the CPC equally applies to quasi-judicial authorities and also to administrative authorities. Thus, if once an issue has been finally determined, parties cannot subsequently in the same proceedings advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to an *issue estoppel*. It operates in any subsequent proceedings in the same issue which had been determined. It also operates in subsequent proceedings between the same parties in which the same issue, that had been decided and closed in earlier same proceedings, arises again. The above judgements do not curtail power to initiate, subsequently, a different proceeding under different and independent power for a different cause of action.
39. Thus, the instant proceedings are not precluded if fresh cause of action has arisen or where a contravention that was determined in earlier proceedings continues or gives rise to a separate default every day after earlier action was taken. The *cause of action estoppel* or *issue estoppel* would not apply in such situation. The present case is not on the same cause

of action that has attained finality. In this case, in fact, the cause of action which according to the noticee has attained finality is open even today as the default continues every day even after passing of order on March 29, 2019. Further, there are no new grounds to initiate action by a different proceeding than that was initiated earlier under different powers permitted by law.

40. Considering the scheme of the SEBI Act and its objective, the rules of procedures need to be seen in perspective of furthering its duty to take measures for investor protection; taking into account the principles laid down by Courts as discussed hereinabove.
41. It is pertinent to mention here that SEBI is empowered to initiate penalty proceedings under Chapter VI A of the SEBI Act and also issue directions and impose penalty under Sections 11(4) and 11B of the SEBI Act against any of the violations of the provisions of the SEBI Act and the regulations framed thereunder for the same cause of action in the interests of investors and securities market. It is also settled position as stated above that the monetary penalty pursuant to adjudication proceedings is penal in nature, but the directions under Section 11 and 11B are remedial and preventive and are to be issued in the interest of investors and the securities market. As the multiple actions are available to SEBI for the same contravention it would not preclude SEBI to resort to multiple actions for investor protection or when market integrity is at stake or the contraventions continue even after conclusion of an earlier proceedings. Here, I would place reliance on the observations of the Hon'ble SAT in the matter of ***Sunita Gupta Vs. SEBI in Appeal No. 193 of 2016 decided on April 21, 2017*** which read as under:

“Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to

impose penalty under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.” While the adjudication order is penal in nature, the directions that are passed under Section 11 and 11B are remedial / preventive in nature issued in the interest of investors and the securities market.

42. Thus, the above powers need to be exercised with caution that the actions are not hit by principles of consistency, *issue estoppel*, *res judicata* or *constructive res judicata* or analogous principles such as *issue estoppel* and *cause of action estoppel*. For example, Hon’ble SAT, in ***S.K. Chowdhary Vs SEBI Misc. Application No. 124 of 2023 And Misc. Application No. 358 of 2023 And Appeal No. 286 of 2023***³ held that there is no doubt that under the Act, separate proceedings can be initiated, one under Section 11, 11B and on the other hand under Section 15I of the Act. In this case, the adjudicating officer exonerated the appellant from the charges levelled in the show cause notice on merits but the Whole Time Member of SEBI, for the same violation on the same issue, in parallel proceedings under section 11 and 11B, found the appellant to be guilty and consequently restrained the appellant from accessing the securities market. The question was as to whether once an Adjudication order under section 15I, after making an inquiry and after adjudicating the matter, has been passed, is it open to SEBI to adjudicate the same issue on the same facts under Section 11 and 11B of the SEBI Act and pass contradictory order? Hon’ble SAT held that direction under Section 11B of the Act can be issued if the Board is satisfied that it is necessary in the interest of the investors or orderly development of the securities market or where the affairs are being conducted in a manner which is detrimental to the interests of the investors or the securities market. Such directions so issued are remedial in nature. On the other hand, Section 15I of the Act gives power to the Adjudicating Officer to impose penalties in the event the person contravenes the provisions of the Act and the Regulations framed thereunder. However, Hon’ble SAT held that once an issue, on the same facts and

³ decided on 12.04.2023

between the same parties has been determined, it gives rise to an *issue estoppel*. It operates not only in the same proceedings but also in subsequent proceedings. I note that Hon'ble SAT has upheld the legal position that multiple actions; one for penalty and other for directions for same default is possible under the SEBI Act. Further, the matter in issue decided in this case was not the one where investors interests were to be protected and default was continuing despite investors filing complaints giving rise to fresh cause of action. The matter in issue in this case was predominantly on consistency and passing of two contradictory orders on same issue by SEBI when the earlier proceedings was identical on facts and law with the later proceedings and fact findings was finally determined in earlier proceedings.

43. I note that present case is not relating to any contradictory findings on facts and law. Further, in this case, the default as settled in order dated September 14, 2021 upholding the findings on facts and law in SEBI order dated March 29, 2019 still continues and investors have been complaining about non receipt of their valid dues from the Fund despite the order of SEBI and Hon'ble SAT. I also deem it cogent to rely upon principle that doctrine of *res judicata* does not rigidly apply to proceedings where ongoing violations are alleged as laid down by Hon'ble High Court of Delhi in ***Atul Punj Vs. Union of India W.P.(C) 9372/2024 & CM APPL. 38510-38511/2024, CM APPL. 44083/2024***⁴ wherein it held that –“*When subsequent developments alter the factual or legal matrix, courts retain the flexibility to revisit and adjudicate such matters to ensure justice*⁵. *In such cases, courts must adopt a pragmatic approach, balancing the need for judicial finality with the imperative to protect constitutional rights in light of new and compelling circumstances. Thus, the doctrine of res judicata or constructive res judicata cannot be stretched to perpetuate restrictions on fundamental rights, particularly when the justification for such restrictions has dissipated.*”

⁴ Decided on 07th January 2025

⁵ See also: *Devilal Modi v. States Tax Officer, Ratlam and Others*, 1964 SCC OnLine SC 17

44. I, therefore, hold that instant proceeding initiated for remedial and preventive directions under section 11 and 11B read with regulation 23(1)(d) are not hit by principles of *res judicata* or *constructive res judicata*, as far as the allegations of non-winding up of scheme and failure to redress grievances of investors in that regard. In the peculiar facts and circumstances of this case, no allowance can be given on the grounds of *res judicata* or *constructive res judicata*, to preclude remedial directions as contended in this case, so as to allow non compliances despite penalties imposed under Chapter VI of the SEBI Act and upheld by Hon'ble SAT with adverse findings as aforesaid. Such allowance, if permitted, would benefit those who seek to delay the enforcement of the rights of investors who are rightful beneficiaries and in turn militate against the very objective of investor protection which is also a part of public policy and welfare measure enshrined in section 11 of the SEBI Act.

45. Another technical objection raised by the Noticees is that the imposition of penalty once again as contemplated in the SCN in the present proceedings would amount to double jeopardy which is impermissible under Article 20 of the Constitution of India. I note that it is judicially settled position that the said principle of double jeopardy under Article 20 of the Constitution applies in criminal proceedings and does not apply to civil proceedings and /or quasi-judicial proceedings. The earlier proceedings as well as the present one, both are civil proceedings as held by Hon'ble Bombay High Court in the matter of *SEBI Vs. Cabot International Capital Corporation (2004) to Comp L J* wherein it held that, “ *the adjudication for imposition of penalty by Adjudication Officer, after due inquiry, is neither a criminal nor a quasi-criminal proceeding. The penalty leviable under this Chapter or under these sections, is penalty in cases of default or failure of statutory obligation or in other words, breach of civil obligation.*” Further, in the case of *Shriram Mutual Fund & Anr (Appeal (Civil) 9523-9524 of 2003)* Hon'ble Supreme Court held that adjudication proceedings under the SEBI Act, 1992 are civil proceedings.

46. The concept of *Double Jeopardy* as reflected in Article 20 (2) of the Constitution of India says that: - “No person shall be prosecuted and punished for the same offence more than once”. In ***Maqbool Hussain Vs Bombay***⁶, it was held that where a person has been convicted of an ‘offence’ by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence. It was also held that there must have been a *prosecution* and a *punishment* in respect of the *same offence* before a court of law or a tribunal required by law to decide the matter in controversy judicially on evidence on oath, which it must be authorised by law to administer, and not before a tribunal which entertained a departmental or administrative enquiry, even though set up by statute, but not required to proceed on legal evidence given on oath. The prosecution in this context would mean an initiation or starting of proceedings of criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which created the offence and regulates the procedure. Again, Article 20(2) has no application where the law provides two punishments for the same offence nor does it apply to alternative punishment.⁷ Also, this article has no application to a continuing offence⁸. Since, in this case, the instant proceedings and earlier proceedings both were civil proceedings, the default is attracting different penalties and the default is continuing, the benefit of this principle as reflected in Article 20 of the Constitution of India is neither applicable nor available in respect of the Noticees in this proceeding. While principle of double jeopardy is not applicable, in my view, the past actions could be factor under section 15J of the SEBI Act while imposing a monetary penalty and also a mitigating factor under while issuing penal directions under section 11 and 11B of the SEBI Act.

47. The other technical contention of the Noticees is that Regulation 23 of the VCF Regulations and there is no violation of Regulation 24(1) in the present case. Regulation 24(2), thereafter, provides that within three months from the date of intimation under Regulation

⁶ (1953) S.C.R. 730, ('55) A.S.C. 325

⁷ *Loomchand Vs. Official Liquidator*. ('53) A.M. 595, (1953) 1 M.L.J. 514.

⁸ *Saharanpur Municipality Vs. Kriparam* ('65) A.A. 160

23(3), the assets of the scheme shall be liquidated, and the proceeds be distributed to investors must be read with Regulation 23(2) or Regulation 23(2A). The period of three months mentioned in Regulation 24(2) on a reasonable construction means that the process of liquidation must start within the stated period. The actual liquidation occurs only upon the disposal of the assets, which is part of the liquidation process, and after all the assets are sold and/or disposed of in liquidation, the last step is dissolution. In my view this interpretation will defeat the whole purpose of investment objectives of the investors as envisaged in the Regulations. This issue has already been examined in para 9 and 10 of the order dated March 29, 2019 which has attained finality pursuant to order dated September 14, 2021 passed by Hon'ble SAT. Further, I have again dealt with the scope of applicability of these regulations in earlier part of this order. I, therefore, do not agree with contentions of the Noticees in that regard.

48. It has also been contended by the Noticees that the Fund has invested in venture capital units which are companies incorporated under the Companies Act, 1956, or the Companies Act, 2013 as the case may be. Winding up of these companies would be governed by the law for the time being in force, which is, the Companies Act, 2013. If the assets, viz., the shares held by the Fund cannot be transferred and/or disposed of for any reason whatsoever as also the debentures held cannot be redeemed, the due process of law will have to be followed which includes provisions contained in Part-I and Part-III of Chapter XX of the Companies Act, 2013. I am unable to accept such contention for the simple reason that the Fund invited investments from investors based on its PPM on unequivocal terms that the tenure of the Fund shall expire on November 2015. Thus, the period of maturity as contemplated in Regulation 17 of the VCF Regulation as per the PPM was mandatory based on the promise made by the Fund to the investors in its PPM. Expiry of the period of the scheme is one of the grounds of the winding up of the scheme under regulation 23(1) a) of the VCF Regulations. Regulations 24(2) deals with effect of winding up of the scheme under regulation 23 and creates obligation to liquidate the assets of the scheme and

distribute the proceeds accruing to the investors in the scheme. If the Fund has launched the scheme on these terms and conditions and under the VCF Regulations it cannot seek shelter under the Companies Act, 2013 based on such artificial contentions. In fact, by its own admission, before the expiry of the period of scheme, the Fund had started exploring possibility of disposal of investments on in-specie distribution of project investments when it gave three options to the investors and when its request to extend the disclosed period of the scheme was not responded by SEBI, it had ultimately decided to wind up the scheme in March 2016 and since time frame provided under regulation 24(2) of the VCF Regulations for liquidation of assets of the Fund had lapsed, it would initiate liquidation steps and that it had decided to proceed with “**Option 1 – ‘Disposal of project investments’**”. Having subjected to provisions of the VCF Regulations, invited investment from the investors in its scheme based on promises of winding up on expiry of period of scheme and decided to make refund based on this option the Noticees cannot be allowed to take this argument after almost 10 years of the expiry of the period of the scheme. Moreover, even if such arguments were to be accepted, the Companies Act, 2013 also provides timelines which cannot be allowed to be extended indefinitely.

49. Noticees have also contended that prescribing mandatory periods to perform certain acts without regard to the delay caused in litigation when the litigant is not at fault for causing the delay, is excessive and unreasonable. In this regard they have placed reliance on the judgement of Hon’ble Supreme Court, in the case of **CoC of Essar Steel India Limited v. Satish Kumar Gupta & Ors**⁹, wherein it struck down the word ‘*mandatorily*’ under section 12(3) of the Insolvency and Bankruptcy Code, 2016 (IBC) as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant’s rights and acknowledged the sometimes tardy process of the Courts / Tribunals which results in delays. Further, treating the Fund as liquidated without actually attempting realizations from these investments or selling the illiquid assets of the

⁹ reported in (2020) 8 SCC 531

Fund in distress would not be in the interest of investors. I have carefully examined these arguments and the said Judgement of Hon'ble Supreme Court. Firstly, the said judgement is in the context of timelines provided in section 12(3) of the IBC that prescribes outer limit of 330 days for completion of a CIRP. The IBC operates in a different field wherein all efforts are to be made to rescue a failing corporate debtor and its liquidation is the last resort. As the CIRP entails complex litigation for determining inter linked rights and liabilities of many interested parties before the National Company Law Appellate Tribunal (NCLT) or in any other court; placing strict mandate of 330 days may eventually push the corporate debtor necessarily to liquidation that would defeat the objective of IBC and would be manifestly arbitrary under Article 14 of the Constitution of India and would be an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. However, the objective of mandatory compliance of regulations is not subservient to rescue of Fund or the assets of its scheme rather it is to ensure investor protection by returning the value of investments in compliance of the PPM and the Regulations. Secondly, while in the above context, the word "*mandatorily*" used in section 12(3) of the IBC was struck down, it was made clear that 'ordinarily' the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the NCLT (Adjudicating Authority) and/or NCLAT (Appellate Tribunal) that only a short period is left for completion of the CIRP beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. It is important to mention that deciding a case beyond the time lines given in IBC is permitted as an exception for valid

reasons. It is not held as a rule that the timelines can be allowed to be flouted as rule on the garb of it being directory. It is also pertinent to mention that in many cases under IBC, Hon'ble Supreme Court has time and again held the timelines under IBC to be the essence of the Code and has also said that desertion should not be exercised arbitrarily and capriciously. Further, it is of utmost importance for all authorities concerned to follow this model timeline as closely as possible.¹⁰ In the instant case, the delays in winding up of scheme of the Fund as per its PPM has not been found acceptable to SEBI and Hon'ble SAT both.

50. Admittedly, the Fund has failed to liquidate the assets of the scheme in question and distribute the proceeds accruing to the investors in its scheme as required under regulation 24(2) read with regulation 23(1)(a) as on the date of the order dated March 29, 2019. This order recognized that, in the facts and circumstances of this case, *“the time imperative may not be strictly enforced, the scheme (s) cannot be allowed to be left open so that the winding up is deferred beyond a reasonable time, much less indefinitely.”* Considering the factual ramification, intricacies involved and efforts shown by the Noticees, at that time, the said order considered those factors as mitigating factors for adjudging the quantum of penalty instead of giving complete allowance to the Noticees to continue the scheme indefinitely. While time imperative was not intended to be strictly enforced at that time, it was clearly found in the said order that the schemes cannot be allowed to be left open so that the winding up is deferred beyond a reasonable time, much less indefinitely. The said order also clearly held (in para 20) that – *“I, therefore, do not find any invincible disability on the part of the Fund to perform its obligations under regulation 24(2) read with regulation 23(1) (a). In my view, therefore, the benefit of maxim "lex non cogit ad impossibilia" cannot be given in this case lest the mandatory provisions of regulation 24(2) would be rendered otiose.”* The order dated March 29, 2019 attained finality in appeal filed by the Noticees before the Hon'ble SAT vide order dated September 14, 2021. Thus, all the contentions

¹⁰ *Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]*

about the impossibility of performance, steps taken till order dated March 29,2019 have already been settled and cannot be allowed to be reopened again. The earlier inspection and consequent adjudication proceedings dealt with noncompliance arising out of non-winding up of the scheme till October 21,2016. The 2023 inspection and the present proceedings are in respect of non –compliance from October 22,2016 to October 31,2023. The Noticees continue to be under obligation to wind up the scheme, liquidate its assets and distribute the proceeds to the investors and redress their grievances and they cannot claim complete allowance either in 2019 or today to continue the scheme indefinitely. The grievances raised by the investors further substantiate this charge levelled against the Fund.

51. According to the Noticees, in the above order dated March 29,2019 the Adjudicating Officer did not find any deliberate defiance of any provisions of the VCF Regulations or negligence on the part of the trustees or advisors of the Fund in discharging their duties. To the contrary, in its Order dated March 29, 2019, SEBI has duly taken note of the efforts taken by the Fund to liquidate the assets / investments keeping the best interest of the investors in mind. I do not agree with this submission. It is pertinent to mention that the order dated March 29,2019 has not completely exonerated the Fund, its trustees, managers or advisors from their compliance obligation under VCF Regulations as sought to be contended by the Noticees. Regulations are mandatory and neither indefinite allowance could be given nor was given at that time and it also cannot be given even now.

52. It is bounden duty of the Fund to wind up the scheme, liquidate the assets under scheme and distribute the proceeds to investors even today; which duty they have failed to fulfil and it gives rise to fresh cause of action every day. Thus, the course correction through remedial and preventive direction is still available and such non-compliance should be dealt with appropriately under section 11 and 11B (1) of the Act read with regulation 23(1)(d) of the VCF Regulations. However, invoking penalty provisions for same violation would not be appropriate, in peculiar facts and circumstances of this case, particularly when SEBI has

already chosen in 2019 to take penal action by imposing the monetary penalty only under section 15HB read with section 15I of the SEBI Act for same default. Same penalty, for same default, under same section 15HB but invoking power under a different section 11B (2) would be hit by *res judicata* and would be inappropriate in the facts and circumstances of this case.

53. A connected and completely interwoven allegation in this regard is that the Fund has not redressed investors' complaints. In this case, SEBI has been receiving investors' complaints in this regard post order dated March 29, 2019 to date. Though non redressed of investor's grievances has been alleged as separate default in the SCN it is directly connected, interwoven and interlinked with the first default. This in itself gives a separate cause of action but also gives valid reasons for initiating instant proceedings for this default. In terms of SEBI Circular No. CIR/OAIE/1/2014 dated December 18, 2014, all SEBI registered intermediaries to whom complaints are forwarded through SCORES, are required to take immediate efforts on receipt of a complaint, for its resolution, within thirty days and that they have to update the Action Taken Report (ATR) along with the supporting documents on SCORES. The said Circular further clarifies that action taken by SEBI registered intermediaries will not be considered as complete if the relevant details / supporting documents are not uploaded on SCORES and consequently, the complaints are treated as pending. The Circular further states that a complaint shall be treated as resolved / disposed / closed only when SEBI disposes / closes the complaint in SCORES. Hence mere filing of ATR by listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them. It is noted that in many complaints, Fund has replied to the complainants about the steps taken by it for winding up the scheme and also reiterated the risk factors mentioned in the information memorandum. While it is true that the Fund has failed in compliance of regulation 23 and 24 as found hereinabove, however, it would not be correct to blame the Fund with any *mala fide* when it had demonstrated and disclosed its efforts whether "serious" or not by

apprising the investors about status investments and its efforts. While in technical sense, the Fund has not complied with above requirements of the SEBI Circular No. CIR/OAIE/1/2014 dated December 18, 2014 due to SEBI not treating the complaints redressed and resolved, but considering the nature of VCF and wanton risk taken by investors in such high risk ventures whether the penal action would be warranted as separate penalty than that already imposed for connected default may lead to curiosity much less a true action for investor protection when penalty amount does not go to the kitty of such sophisticated investors who are better informed and take their risk and cannot claim to be gullible. The choice of measures to be taken for investors protection need to be guided by factual ramifications and not by text but context in which a venture capital fund operates and a pedantic approach should be avoided while choosing a measure for inflicting penalty.

54. In this regard, deem it appropriate to mention then prevailing regulatory architecture of VCF industry. It is the matter of common knowledge that a VCF scheme launched under then applicable VCF Regulations, is different from a mutual fund scheme or any other poled investment scheme. A venture capital funding is critical in the context of it's nature of venture capital undertaking in which it invests and the life cycle of its business. It is also different from other traditional source of financing like equity investment pursuant to IPO/FPO, etc. The investment is made by VCF normally in financing innovative ideas which have potentially high risks with inherent uncertainties. In order to enable growth of such businesses the VCF Regulations have given flexibility in the operations of VCFs except for a few investment restrictions under regulation 12. VCF Regulations clearly prohibited investment from public and permitted investment only through private placement to high net worth individuals and sophisticated and well informed investors. SEBI also generally acted more as a facilitator with minimal regulation instead of being much concerned with protecting the interest of investors as far as the venture capital industry was concerned. Subject to the investment restrictions laid down in the VCF Regulations, VCF invested in accordance with the PPM submitted to the investors, who are

capable of monitoring the use of funds. The private investment was invited from such investors by VCF on the basis of a PPM containing terms and conditions subject to which monies are proposed to be raised from them. A copy of this PPM was also required to be filed with SEBI along with a report of money actually collected from the investors.

55. The PPM of the Fund (Section VIII) categorically disclosed high risk attached to the scheme in questions Some of the risk factors as disclosed to investors and SEBI are as under:

1. Risks relating to the Cinema Capital Venture Fund

- a) Investment in a media and entertainment related venture fund is relatively phenomenon in India and CCVF has no past experience in investing in media and entertainment business. There can be no guarantee that the Cinema Capital Venture Fund shall be able to meet its investment objectives and desired returns.*
- b) The Trust Fund is subject to certain conflict of interests involving the investment advisors and VCUs. Each VCU may manage / undertake projects for other producers and may have incentives to favour other producers over the Trust Fund.*
- c) Management and Key Person Risk – the Fund's ability to provide returns and achieve investment objectives is substantially dependent on the performance of the investment adviser*
- d) Competition – Fund may face significant competition from domestic investors, other foreign investment funds and strategic investors. Many competitors have greater ability to source or access portfolio companies.*
- e) Operational Risk – CCVF is exposed to many types of operational risks including the risk of fraud or other misconduct by employees or outsiders, unauthorized transactions by employees etc.*

2. Portfolio Company / Venture Capital Unit related risks

- a) Highly fragmented and an extremely competitive industry as there is a small number of big and large number of smaller companies. Entry of foreign companies with deep investment pockets making the industry more fragmented.*
- b) Entry of new players due to low entry barriers.*
- c) Project completion risks which includes delays in production with resultant overshooting of budget, non-availability of cast/crew at the last moment due to incompatible schedules, cash crunch faced by producers etc.*

Order in respect of Cinema Capital Venture Fund

- d) *Customer Risks to VCUs due to failure of key customers viz broadcasters, distributors, licensors, franchisees or the exhibitors. This could result in the inability of the customer to pay for the content purchased / licensed.*
- e) *Failure of Project – Risk of films / TV shows / game failing to attract strong audiences.*
- f) *Piracy*

3. Investor and Investment related risks

- a) *Limited liquidity, Legal and regulatory risk including government policies*
- b) *Performance Fees may create an incentive for the Fund to make investments that are riskier or more speculative than would be in case of absence of such incentive compensation arrangements.*
- c) *Illiquidity of Investments – There would be little or no active market for many of the entertainment content initiated, developed and produced by portfolio companies of the trust fund. Consequently, the portfolio company may not be able to dispose of an investment when it desires to do so. In some instances, the sale of portfolio companies and their respective assets owned by the fund may require lengthy negotiations.*
- d) *Transferability – the investment in the trust fund is suitable only for those persons who can bear the economic risk of the loss of their investment and who have no need for liquidity in their investment.*
- e) *There can be no assurance that attractive investments will be available when the Fund starts investing or thereafter.*
- f) *Business Risk – CCVF is newly formed trust and there is no operating history by which to evaluate its likely performance. The return on investments in CCVF will be reliant upon the success of the investment strategies and investments applied by the investment advisory firm, its investment advisory board and its management.*
- g) *Investment Risk – The type of investments which the Trust Fund anticipates making involve a high degree of risk. In general, financial risks confronting the portfolio companies purchased can be significant. A loss of the investor's capital is possible. The timing of profit realization is uncertain.*
- h) *Concentration of Investments – The Fund's Investments will be concentrated on Indian media and entertainment companies. The Trust Fund could be subject to significant losses if the sector as a whole declines in value or is otherwise adversely affected.*
- i) *Suitability – Whilst investment in the Trust Fund can offer the potential of higher than average returns on the investments in which it invests, it also involves a correspondingly higher degree of risk and is only considered appropriate for Informed Investors.*

- j) *Film and entertainment Related Risks – The success of the Trust Fund is likely to be dependent on the ability of portfolio companies with an up-coming state entertainment / content related venture, the adequate marketing and support resources and the ability to time sales in the market to achieve increasing valuations, which is difficult to predict accurately. Neither the Directors, the Investment Advisory Firm shall have any liability to Contributor and shall only be required to indemnify the Trust fund their fraud, negligence or willful default.*

4. General Risks

- a) *Fulfilment of investment objective – There can be no guarantee and the Trust Fund does not present or warrant that the investment objective of the Trust Fund will be met, or that investors will receive back any or all of their investment in the Trust Fund.*
- b) *General risks of the Indian filmed entertainment industry – There are a number of uncertainties inherent in the Film industry, such as, but not limited to, the acceptability of filmed entertainment by audiences, censorship, low box office earning. The Fund may not be in a position to adequately provide for these exigencies, which could have a material impact on the results of the Fund's operations.*
- c) *Producer and Co-producer risks - Such projects will rely on the Co-producers performing their duties and obligations, not only in terms of timely investment but also in terms of their performance obligations. Any such non-performance may result in time and cost overrun of Film Projects and reduce the value of the portfolio company's investment.*
- d) *Potential litigation costs - Any such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on the business, financial condition or results of operations of the Portfolio Companies.*

56. Based on above disclosures, especially the above risk factors, the Fund which is a VCF, collected investments from 1259 such sophisticated investors under the then applicable VCF Regulations. As per SCN, out of total said 1259 investors, 104 investors have grievance with regard to non- winding up of the scheme, liquidation of assets under the scheme and distribution of proceeds to investors and as on October 31, 2023, the Fund had outstanding investments of Rs.2.47 crore only. Further, the investor complaints are predominantly with regard to the winding up of the Fund, liquidation of assets under the scheme and distribution of proceeds and not with regard to any misdemeanors, fraud or

mis- information, etc. It is established fact that the Fund has defaulted in compliance of regulation 23 and 24 of the VCF Regulations despite above said orders of SEBI and Hon'ble SAT and the default continues till date. The blatant failure and lack of intent on the part of Noticees was duly recognized in the above mentioned order of Hon'ble SAT. Investors are complaining and are left with no remedy of getting their return on investment, if any. Hence, the Noticees cannot be allowed to be lethargic and oblivious of their obligations for such a long and unreasonable period and preventive and remedial measures under section 11 and 11B must follow. However, I am not inclined to impose monetary penalty under section 15C read with sections 11(4A) and 11B (2). It is admitted position that the Fund kept the investors and SEBI informed about objective and investment strategy, high risk associated with scheme, the decisions of the winding up of the scheme, risk of liquidation / winding up, exploring possibility of extending the tenure, difficulties in liquidating illiquid asses like intellectual property rights, etc. In my view, monetary penalty already imposed and paid is commensurate and no further monetary penalty need to be imposed for this connected default.

57. The SCN makes an allegation with regard to investments in associate companies as independent charge. It is matter of fact that the Fund had disclosed that it invested in four VCUs/ portfolio companies which were operating in the business of production and distribution of films and creating tie ups with reputed media and entertain companies to make investments such as in: -

- (a) Sunshine Pictures Ltd.
- (b) Kinesis Films Pvt. Ltd.
- (c) Stellar Films Pvt. Ltd.
- (d) Waterfront Films Pvt.

58. It is pertinent to mention that in 2017 inspection also this investment was examined by the inspection team of SEBI (para 3.5 of the 2017 Inspection Report) . The said Inspection Report categorically said that except Sunshine Pictures Ltd. all other three investee companies are 100% subsidiaries of the Fund. It went on to observe that said other three investee companies are created for the sole purpose of channeling the fund's investments and those three investee companies are not VCUs but special purpose vehicles (SPV) created for the purpose of *"facilitating or promoting investment."* In fact, the said Inspection Report acknowledged such investments being legally made in SPVs as permitted in regulation 12(d)(ii)(e) of the VCF Regulations which allows investments in SPVs for the purpose of *facilitating or promoting investment*. The inspection report but questioned the breach of 33.33% threshold of investible funds by way of SPVs and ostensibly did not question the credentials or veracity of such investments as now sought to be done after such investments were examined and observations were dropped. It is noted that on receipt of reply of the Fund in April 2017 even that observation was dropped and instead, SEBI initiated adjudication proceedings alleging that -*"one of the portfolio companies of the Fund i.e. Waterfront Films Pvt.Ltd. made investments in a company named Junobo Hotels Private Limited which is related to hotel industry amounting to Rs. 6,02,85,230/. Thus, the Fund, its manager and trustee have failed to invest in accordance with investment objective as stated in the ppm by the fund."* After due inquiry this charge was also dropped then. In my view, the allegation is clearly hit by the principles of *res judicata* and *issue estoppel* as nothing new has been brought on record with regard to investment in the above investee companies which was earlier examined and found to be valid. I, therefore, do not deem it necessary to delve into merit of this allegation again.

59. It is also relevant to mention that this matter has been closed earlier finally and also based on some amount of regulatory acquiescence and cannot be reopened without bringing any new fact or development. It is relevant to mention that Hon'ble Supreme Court, in the

matter of *Chairman, State Bank of India v. MJ James*, 2021 SCC OnLine SC 1061¹¹, SC held that acquiescence virtually destroys the right of the person. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance.

60. Apart from failure to redress investors' grievances which, essentially, is a corollary of first allegation as dealt with above, the SCN makes few other new allegations that were not subject matter of earlier 2017 inspection and 2019 adjudication proceedings. These allegations are: -

- i. extending interest free loans and advances to investment advisor i.e. Noticee No.2 and its directors (Noticee no 4, 5 and 6)
- ii. extending interest free loans and advances to associate companies viz; Kinesis Films Pvt. Ltd., Stellar Films Pvt. Ltd., Waterfront Films Pvt. Ltd, and also to another company viz; Salsette Films Pvt. Ltd.
- iii. extending interest free loans and advances to trustee Noticee No.3 and its directors (Noticee no 7 and 8)
- iv. extending interest free loans and advances to staff;
- v. charging excess fees to trustees out of investors' funds.
- vi. Mis- management of investors' Fund (manipulative, fraudulent and unfair dealings in securities and mis- selling)
- vii. Non filing of quarterly reports.

¹¹ Decided on 16.11.2021

61. The above allegations are independent and the first five of the said allegations are also the basis of the sixth allegation. Further, the fund raising by the Fund is also an additional basis of the sixth allegation but the non- disclosure by avoiding uploading of quarterly report is not. I proceed to deal with these allegations accordingly.

62. The Noticees have attempted to take shelter of *issue estoppel* and have claimed that all the amounts advanced were timely disclosed by the Fund to SEBI and are reflected in its Annual Reports, which were made available to SEBI throughout its tenure and even thereafter, including with the reply to inspection report of 2017. SEBI is estopped from raking up such issues at this stage, since it has thoroughly inspected the books of accounts of the Fund in 2017 and did not find any breach or violation of VCF Regulations or of its PPM/IM. I do not agree with these contentions of the Noticees. Firstly, because these findings of 2023 inspections were neither inspected nor examined and were never raised in earlier adjudication proceedings and hence *issue estoppel* does not apply with regard to this allegation. I note that during the 2017 inspection these matters were neither raised not explained. In response to 2023 inspection, the Fund had provided the copies of the audited financial statements for the period 2008 to 2023. From said audited financial statements, I have been perused the disclosures with regard to the loans/advances made to the investee companies, employees, investment manager and trustee company and their directors. It is observed that in the said audited financial statements, the Noticees have made incomplete, inaccurate and obscure and limited disclosures about such loans and advances were made as shown in the following table: -

Financial ending	Year	Loans and Advances to entities
2010		Kinesis
2012		Cinema Capital Contributory Company Pvt.Ltd., Employees
2013		Employees
2014		Cinema Capital Contributory Company Pvt.Ltd.

Order in respect of Cinema Capital Venture Fund

2015	Cinema Capital Contributory Company Pvt.Ltd., Employees
2016	Cinema Capital Contributory Company Pvt.Ltd. , Employees
2017	Cinema Capital Contributory Company Pvt.Ltd., Employees
2018	Cinema Capital Contributory Company Pvt.Ltd., Stellar
2019	Cinema Capital Contributory Company Pvt. Ltd., Stellar, Waterfront, Kinesis Employee i.e Vilash
2020	Cinema Capital Contributory Company Pvt.Ltd., Stellar, Waterfront, Kinesis, Salsette Films Pvt Ltd. Staff and Others i.e. Vishwas, Vilash, A.Kasliwal &Co.
2021	Cinema Capital Contributory Company Pvt.Ltd., Stellar, Waterfront, Naik & Naik Co, Kinesis, Salstette Films Pvt. Ltd.. Staff and Others i.e. Vishwas, Vilash
2022 *(information as provided in the Financial statement of 2023)	*Cinema Capital Contributory Company Pvt. Ltd., Stellar,Waterfront, Naik & Naik Co., Kinesis, Salsette Films Pvt. Ltd., Staff and Others i.e. Vishwas , Jagdish Prasad
2023	Waterfront, Staff and Others i.e. Mohit Jain & Co., Jagdish Prasad

63. From the above table, it is observed that the disclosures of loans/advances *inter alia*, to Cinema Capital Advisory Pvt. Ltd., Big Bang Media Pvt. Ltd., Bluefrog Media Pvt. Ltd. and Samir Gupta, were not made in these financial statements. I, therefore, do not agree with such misleading and evasive replies. The disclosures, whatsoever, even if made in such statements about a loan or advance which is not permitted, cannot absolve the Noticees.

64. Secondly, SEBI has right to conduct inspections of the Fund at any time and any deviations and noncompliance, if not observed during earlier inspection, cannot be allowed to be given complete go by so as to give a stamp of legality. Lastly, there is no acquiescence on the part of SEBI in giving any tacit consent or concurrence if the earlier inspection did not go into the disclosures as claimed and could not make any observations in those respect which the 2023 inspection has observed. Principle of regulatory acquiescence does not apply if lapse of time is of no importance or consequence. The time taken in raising new issues in second inspection is of no consequence as the Fund continues to be a VCF registered with SEBI, it has continued with its scheme having investors who are complaining and its activities continue to be under regulatory and supervisory preview of SEBI. These allegations have not been examined at all in the earlier adjudication proceedings. There is neither commonality of charge nor commonality of proceedings with regard to these allegations. Hence, the instant proceedings are not hit by principle of *issue estoppel* or *res judicata* in so far as these fresh allegations are concerned.

65. I note that regulation 12(d) states that a VCF shall make investment in the enumerated securities. Regulation 16(1) (a) provides that the Fund shall issue a placement memorandum containing details of terms and conditions subject to which monies are to be raised from investors. In terms of regulation 17(1) (i), the Fund is required to disclose, in the placement memorandum /subscription agreement, the details of the fees to be paid to the fund manager or asset management company. Regulation 17(1) (k) obligates the VCF to disclose investment strategy of the fund in the PPM. It is also important to take into account the requirement of regulation 16(2) that the VCF must file with SEBI a copy of the PPM/ subscription agreement alongwith a report of money actually collected from the investor(s). There is no quarrel that the Fund in this case did issue a PPM/IM containing all requirements as laid down in these regulations and also complied with requirement of regulation 16(2). However, when seen in the context of activities in the light of disclosures made in the PPM, the matter rests with compliance of these regulations in their true spirit.

If the Fund deviated from investment objectives, paid monies and paid excess fees to the trustee in deviations as disclosed in the PPM, it would certainly amount to contravention of these regulation 16(1) (a), regulation 17(1) (i) and regulation 17(1) (k) apart from breach of terms of the PPM.

66. It is a matter of fact that, in this case, the PPM/IM (Section III) issued by the Fund declared that investment objective of the Fund was to make investments in various media and entertainment sector related companies to deliver medium and long term capital appreciation. As per PPM, Fund's objective was to invest in portfolio companies to derive attractive returns to its investors. It was never the objective of the Fund to further the business cause of the Trustees or the investment advisory firm through means of funds available to it (page 22 of PPM). It is also not the case that entire monies collected from investors have been deployed elsewhere than those intended for as the per PPM. There is no dispute either that the Fund invested 86% corpus into the VCUs, which aimed to advance its objectives.

67. This issue seems to have fallen in the whole huckmuck as the SCN treats loans and advances extended in this case as investment (from investible fund) and the Noticees treat them as expenditure to enable the VCUs to ensure that they meet their statutory and third-party monetary obligations. Theoretically, an investment is spending which creates an asset which is expected to help produce profits or returns over a period of time and an expense is a cost of operations that a company incurs to generate revenue. It is worth mentioning that regulation 12(d) of the VCF regulations provides for investment conditions with regard to "*investible funds*" i.e. corpus of the fund net of expenditure for administration and management of the fund. Investment conditions in regulation 12 are, thus, not to suggest that entire corpus raised from investors in a VCF has to be mandatorily invested in the enumerated categories under regulation 12(d) as alleged in the SCN. It is gainsaying that regulation 12(d) clearly allows adjustments of expenditure for administration and

management of the fund. Thus, this case does not involve investment in contravention of disclosures in PPM. The Regulations, however, do not provide for any regulatory conditions or restriction of expenditure incurred and payable and on fees of the investment manager. These aspects are exclusively left at the discretion of the trustee. Generally, the VCFs charge fund organizational and administrative expenses which is charged for formation and management of the Fund.

68. I have carefully glanced through the PPM of the Fund in this case. The PPM lays down the conditions for ‘*Fund Operating Expenses*’ as set out in Section VII and is entitled, at the discretion of the trustee to pay for such expenses and fees to Investment Advisor. Section VII also lists out several activities for which the costs and expenses are payable to such Investment Advisor apart from the investment advisory fee which can be paid in advance also. Such list includes several costs including for payment to attorneys, counsels, auditors and expenses for any claims arising out of any litigation by or against the Trust or Investment Advisor. Further, the Trustee has been authorized in the PPM to allocate to the Trust or the Investment Advisor any cost or expenses that are not listed in said Section VII. The definition clause in Section I of the PPM says that “Investment Advisor” shall include any corporate entity in which the present partners of Noticee No.2 jointly have majority voting rights or right to appoint majority of directors or have power to direct or cause the direction of the management and policies of the entity. Thus, Trustee could allocate to the “Investment Advisor” any cost or expenses beyond the items listed in Schedule VII.

69. It is also noted that the Fund had entered into an Advisory Services Agreement dated April 1, 2010 with Noticee No.2 for the purpose of recommending, advising, managing, monitoring and assisting the Fund in taking investment decisions and also appointed a Film Advisory Council of individuals from both the Industry and Investment Banking/Finance sector. The role of the Investment Advisor /Manager as laid out in the said Advisory Services Agreement dated April 1, 2010 is as follows; -

“2.1 In consideration of receipt of Service Fee by the Advisor from the Trustees on behalf of Trust Fund, the Advisor hereby accepts its appointment as investment manager and agrees to be responsible for the day-to-day management of the Trust Fund and to provide managerial and administrative services, including without limitation, identifying investment opportunities and appraising, negotiating terms of investments and making investment decision in accordance with the provisions of the Agreement, the Information Memorandum and the Contribution Agreement, subject to the provisions of the Trust Deed and administrative services relating to the contributors and related agreements.”

70. The Noticees have claimed that it was incumbent upon the Fund to advance certain amounts to these VCU's to ensure that they meet their statutory and third-party monetary obligations, while discharging the sole objective of the Fund. It is noted that while the PPM read with Advisory Services Agreement allows trustee to pay fees and fund operating expenses, it does not permit such loans and advances as given to the associate companies viz; Kinesis Films Pvt. Ltd., Stellar Films Pvt. Ltd., Waterfront Films Pvt. Ltd. and also to Salsette Films Pvt. Ltd. and to Noticee No.2 and its directors i.e. Noticee No. 4,5 and 6 to recompense the expenses for management of the Fund. The explanations given by the Noticees is not cogent and are vague and evasive.

71. As regards, extending interest free loans and advances to trustee i.e. Noticees 3 and its directors i.e Noticees No, 7 and 8, the PPM clearly says that the trustee is entitled to a lump sum annual fee of Rs 5 lakh only per trustee (plus service tax) for all other services than those to be performed by the Investment Advisor. Thus, the trustee is not expected to get any other monies out of the corpus of the total capital commitment. The Noticee have not offered any cogent and plausible explanation as to why such loans and advances were necessitated when as per the PPM of the Fund the trustee is entitled to a lump sum annual fee of Rs 5 lakh only per trustee (plus service tax). The PPM does not provide for any payment to trustee for the services as part of fund operating expenses nor does it permit

any additional fund to be given to the trustee and its directors. Further, the submission that advances to the staff has been done in a routine manner to enable the staff members of the Fund to meet personal exigencies is a complete eye wash particularly when such advance is not permissible at first place and cannot be applied even towards salary in the way as it has been claimed by the Noticees. Nevertheless, such claim that the advance had been fully appropriated against the salaries payable to staff is not substantiated by any evidence. I, therefore, agree that interest free loans and advances were extended to trustee i.e. Noticees 3 and its directors i.e. Noticees No, 7 and 8 and to the staff as alleged in the SCN.

72. With regard to payment of excess fees to the trustees, it is noted that the fact regarding payment of excess fee of Rs. 5 lakh each to Ms.Urmila Gupta and Mr. Amrit Lal Suri as trustee fees for one Financial Year even after being replaced by the corporate trustee, Noticee 3 i.e. Cinema Capital Contributory Pvt. Ltd. is also admitted in this case. The Noticees have claimed that there was no clarity given by the auditors of the Fund as to whether the corporate trustee is required to be paid as one trustee or the two directors of the corporate trustee would be required to pay the fee individually and this ambiguity was resolved later and as per advice received from the auditors, from F.Y.2013. In view of this, there has not been any deviation, much less any deliberate / intentional deviation from the provisions of the information memorandum. Considering the clarity in the language of provisions of regulation 16(1)(a) and 17(1)(i) of the VCF Regulations and clear disclosures about fees to be paid to the trustee, the submissions of the Noticees in this regard are just an afterthought and cannot be accepted. In my view the payment of extra fees cannot be allowed to the trustee at all. I, therefore, reject this contention of the Noticees. Mr.Binay Mandal (Noticee 6) is a common director both in the investment manager (Noticee 2 -w.e.f. December 12,2016) and trustee company (Noticee 3-w.e.f. October 03,2017). The trustee company owes a fiduciary duty towards the investors who are *cestui que trust* having entrusted their monies with expectation of return and have taken high risk. Such conduct clearly is breach of trust when the trustee themselves utilize the monies for their own

benefits. Considering the nature of such default, no leniency can be given merely because the default was not arrested and not dealt with earlier.

73. Apparently, such advances and loans are neither investments nor part of fund operating expenses. In fact, whatever limited disclosures were made as referred above, it is noted that in all the Annual Reports (the audited financial statements) for the period 2008 to 2023 investments, expenditures and some of the advances/loans have been disclosed separately. Further, the Noticees have failed to explain as to why such loans and advances were necessitated when PPM allowed wide discretion to trustee to enable payment of fees and all costs and expenses listed therein to run the Trust. Any relief based on such unexplainable defence would run counter to the predictability that is central to the discretion given to the trustees in regulating the VCFs and the regulatory architecture for the VCFs.

74. I, therefore, find that the Fund extended such loans and advances as alleged in the SCN and also paid excess fees to the trustee without authority in the PPM and in brazen default in compliance of provisions of regulation 16(1)(a), regulation 17(1)(i) and regulation 17(1)(k) of the VCF Regulations. Such a default is bizarre and consequences of this brazen defiance must follow.

75. With regard to the sixth fresh charges i.e. mis- management of investors' Fund (manipulative, fraudulent and unfair dealings in securities and mis- selling), the Noticees have contended that VCF Regulations cover the entire field of functioning of VCFs. The VCF Regulations are specific. Hence, the PFUTP Regulations do not have any application to the facts of the present case. I do not agree with this contention for the reason that the activities covered in any governing Regulations could also attract PFUTP Regulations if any element of fraudulent, manipulative or unfair trade practice is found in the said activity.

76. I note that one of the basis of this allegation i.e. fund raising to be fraudulent does not hold good as the Fund had clearly demonstrated compliances in this regard since inception and

neither there was any concern in this regard in earlier proceedings. SCN does not demonstrate as to how the fund raising by the Fund was fraudulent. This basis is based on surmises and assumptions. Thus, this basis is not taken into account while examining this allegation.

77. Be that it may, I proceed to examine as to whether deploying of the funds by extending of interest free loans and advances as found hereinabove and, thereafter, failure to recover such money and payment of excess fee to trustee tantamount to manipulative, fraudulent or unfair trade practice relating to securities market and mis-selling in contravention of Regulation 3(a), 4(1) and 4(2)(s)(ii) of the PFUTP Regulations which read as under: -

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

...

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

...

s) mis-selling of securities or services relating to securities market;

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

...

(ii) knowingly concealing or omitting material facts, or

...

78. It is seen that above regulations 3 and 4 of the PFUTP Regulations are clothed with negative command and are to be interpreted strictly. It is also established position that with regard to charge of violation of the PFUTP Regulations there must be convincing preponderance

of probability to support the allegation of fraud and fraudulent practices. In the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjecture or suspicion cannot sustain the finding of fault. Merely, probablising to prove the fact on the basis of preponderance of probability and incomplete circumstantial evidence is not sufficient to establish a serious charge of fraud and fraudulent act¹². Further, having regard to the gravity of the wrong doing higher must be the preponderance of probabilities in establishing such charges. Hon'ble Supreme Court in *Union of India vs. Chaturbhai M. Patel* (AIR 1976 SC 712) held that fraud, even in civil proceedings, must be established beyond reasonable doubt. According to the decision of Hon'ble SAT in *Parsoli Corporation vs. SEBI* (Appeal No. 146/2010 order dated 12th August 2011) held that :- "...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same." In the matter of *Networth Stock braking Ltd vs. SEBI* (SAT Appeal No 5 of 2012) , vide order dated June 19, 2012 Hon'ble SAT held that :- "This Tribunal has been consistently holding that violation of PFUTP regulations involves commission of fraud which is indeed a serious market offence and a high degree of probability is required to establish such a charge."

79. The allegations in this particular case, needs to be looked with utmost care and caution taking into above guiding principles and other factual ramifications of this case and the fact that the same has been alleged after post fact inquiry after 2017 inspection. The allegation of violation of regulation 3(a), in this case, has two facets of principles enshrined under clause (c) of regulation 2(1) of the PFUTP Regulations i.e. there was promise without intention to perform and there was active concealment of fact by persons having knowledge or belief of the fact.

¹² *Sterlite Industries Vs. SEBI* (2001) 34 SCN 485 (SAT)].

80. It is admitted fact that the PPM was issued and copy was filed with SEBI under regulation 16(2) of the VCF Regulations. It is not a case of non –fulfilment of promise of investment of “*investible fund*” as disclosed. This is not a case of allegation that the Fund has diverted the “*investible fund*” fraudulently either. But this is a case of unreasonable and negligent exercise of discretion given in the PPM and deviation from terms of the PPM read with VCF Regulations as observed hereinabove. Thus, this basis of element of promise without intention to perform is missing in the facts alleged. In fact, the deployment of such monies was certainly in contravention of regulations as found hereinabove and there was active concealment of the fact about such deployments by persons having knowledge of the fact, since the PPM neither permitted such deployment nor were any disclosure in the PPM in that regard and the disclosures made in the audited financial statements of the Fund as claimed were incomplete, inaccurate and obscure and payment of excess fees to trustees was nowhere disclosed at all. Thus, deliberate false/misleading disclosures, misrepresentations of the material facts and active suppression and concealment of these material and known facts *prima facie* suggest a case of '*suppressio veri* and *suggestio falsi*' which a facet of '*fraud*' as defined in regulation 2(1)(c) of the PFUTP Regulations. But the SCN has missed this connect and cannot be cured at this stage in the order as doing so would be in violation of principles of natural justice.

81. Such loans and advances were not investments at all instead they were deployment of monies against the promises made in the PPM. In fact, the SCN itself recognizes the recovery of Rs. 91,82,27,225 out of Rs. 94,07,86,091 advanced by the Fund as alleged. Further out of Rs.31.31 crore advanced to associate companies and Salsette Films Pvt. Ltd, Rs 29.45 crore has been recovered. Thus, the said alleged deployment was not an investment but unauthorized and unlawful deployment by way of loans/advances which in the context of this case could perhaps fall into ambit regulation 3(a) of the PFUTP Regulations. But, the SCN has missed this link and is ambiguous in material particulars

and has made an altogether different and disconnected basis for this element of fraud under regulation 2(1)(c).

82. The second aspect of the allegation is that the Fund has returned only Rs. 7.93 Cr to contributors and Rs. 2.47 Crore had been outstanding investments after booking losses. However, the Investment Manager and Trustee have charged the fund and in turn the investors Rs 63.14 Crore towards various expenses. This was done through active concealment of these facts by making obscure, non-specific, generic disclosures in the PPM. This basis fails for simple reason that the fees (except the excess fee to the trustees which is charged to be disgorged) and expenses were charged as per disclosures made in PPM and there is no regulatory guidance and restrictions. Further, comparison of fees and expenses with return on investment which is subject to disclosed risk factors may look intriguing but cannot be made a basis of charge when the fees and expenses are left with impunity and wide discretion has been allowed with tacit consent and concurrence of SEBI. It is further noted that while the SCN contemplates disgorgement of excess fees paid to the trustees, it does not contemplate disgorgement of any illegal gain earned by way of alleged extending of interest free loans and advances to investment manager and its directors, trustee company and its directors and to the staff of the Fund.

83. Considering the above facts and circumstances of this peculiar case particularly vagueness, ambiguities and disconnect in the SCN, I give benefit of doubt to the Noticees with regard to the allegation of violation of regulation 3(a) of the PFUTP Regulations as alleged in the SCN.

84. It is also noted that Regulation 4(2)(s) of the PFUTP Regulations was amended vide the Securities Market (Amendment) Regulations, 2018 with effect from February 1, 2019. Before the substitution of the provision, the regulation only referred to “*mis-selling of units of a mutual fund scheme*”. After the amendment, the scope has been widened to cover all types of securities and services relating to the securities market. Since, the scheme of the

VCF was launched prior to the amendment of the Regulation, the VCF cannot be charged with mis-selling as the regulation was not in force at the relevant time. The Fund had appointed ICICI Bank Limited and ABN Amro Bank (which later was renamed to RBS Bank) as the non-exclusive distributors to procure investment and to assist them taking an informed decision to invest into the Fund. The SCN has failed to establish how the investment in Fund which was also involving these distributors is fraudulent device employed by the Noticees. As the Fund was managed and operated by the Distributors the charge of mis- selling is not made out on the basis of required test of probability. There is no dispute that the Fund had mentioned in the PPM the various risks involved and the uncertainties which are inherent with these kinds of investments. With respect to risks involved with respect to fulfilment of its investment objective, the PPM states that there is no guarantee and the Fund does not represent that the investment objective of the trust fund will be met, or that the investors will receive back any or all of their investment in the Fund. Hence, the Fund has not assured or promised returns on investments to the investors which seems to be the factor for probablising the charge of mis – selling.

85. Having held as above, I deem it necessary to mention that the brazen default and noncompliance by negligent and unreasonable act on the part of those who have been entrusted with monies of investors and endowed fiduciary duties with wide discretion should meet with commensurate consequences. The aforesaid fact though could not be established on technical grounds of congruent findings and disconnected observations, the act is more than a plain and simple default and clearly unfair on the part of the Noticees. I cannot lose sight of the scheme of regulation 4(1) of the PFUTP Regulations which is not limited to the definition of ‘*fraud*’ under clause (c) of regulation 2(1) of the PFUTP Regulations. Regulation 4 (1), prohibits indulgence in “*fraudulent and unfair trade practices*” in securities market. The unfair trade practice has not been defined under the regulations. But, the concept of ‘*unfairnesses*’ appears to be broader than and includes the concept of ‘*deception*’ or ‘*fraud*’. A clear cut generalized definition of the ‘*unfair trade*

practice’ may not be possible to be culled out from the aforesaid definitions. It is also to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Broadly, trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction.

86. In this case, the use of investors’ monies by the Fund, Investment manager, trustee and their directors is clear breach of fiduciary duties which imposes strict obligations on the Noticees to act solely in the best interest of investors and avoid all conflict of interest and not profit from their status and position. In this case, the Noticees had greater burden of responsibility towards maintaining transparency and acting in the best interest of investors particularly when the investment was to be made in highly risky venture, connected SPVs/ VCU were used for investment and investment manager (Noticee 2) and trustee company (Noticee 3) were connected entities having Mr. Binay Mandal (Noticee 6) as a common director. The trustees and investment manager acting in tandem have used the funds received from the contributors for their own benefits. Noticees’ reckless and negligent conduct is further demonstrated in para 19 of the Order dated March 29, 2019 wherein it has been found that despite updating account details of investors in 2017, the proceeds received from the liquidation of investment in Sunshine Films Pvt. Ltd. was used by the Noticees to meet expenses while the scheme which was continued in violation of regulation 23 and 24 of the VCF Regulations. This was incumbent upon the Noticees to distribute these proceeds to investors. A clear finding in said para 19 was recorded that “ *..These facts show lethargic approach of the Fund towards its obligations with respect to its main mandate of liquidation of the assets of the scheme and distribution of the proceeds accruing to the investors in the scheme.* ” Further, it is admitted position that the Fund received total Rs. 44.13 crore by way of redemptions, interest and dividend from its investments but it returned only Rs. 7.93 crore to investors. However, they charged Rs.63.14 crore as fees and

expenses. All such acts though not proved on desired level of probability as above are certainly within the scope of prohibition of unfair trade practice in securities market under regulation 4(1).

87. It is a case where the persons bestowed with fiduciary duties have brazenly defaulted the regulations and have breached the promises made in the PPM. It is gainsaying that the fiduciary duty first demands avoidance of conflict of interest and duty of care and not to act negligently in managing the affairs of the Trust (Fund) in the best interests of the investors. This is a case where such persons have clearly subjugated the interests of investors for their own benefits. Therefore, this is fit case where the enforcement of regulations and powers given in that regard must be used with stern signals. In this regard, I rely upon the judgement of Hon'ble Supreme Court in *SEBI v. Kishore R. Ajmera*, (2016) 6 SCC 368 wherein it has been observed that:-

“the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.”

88. The seventh new but independent allegation is that the Fund has not submitted quarterly reports as required under regulation 22 of the VCF Regulations read with SEBI Circular

SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010. The said regulation 22 and requirement under SEBI circular dated January 11, 2010 are reproduced as under: -

Submission of reports to the Board.

22. The Board may at any time call upon the venture capital fund to file such reports as the Board may desire with regard to the activities carried on by the venture capital fund.

SEBI Circular SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010

1. Please refer to SEBI circular No SEBI/MFD/VCF/CIR no 1/7352/03 dated April 29, 2003 regarding submission of quarterly report on venture capital activity in the prescribed format.

2. Format for the quarterly report on venture capital activity to be submitted by Venture Capital Funds has been revised as per enclosed Annexure. In accordance with Regulation 22 of SEBI (Venture Capital Funds) Regulations, 1996, all venture capital funds are directed to submit the report on venture capital activity to SEBI, complete in all respects in the new format with effect from the quarter ended 31st March, 2010.

3. The report is to be uploaded online on SEBI portal within 7 days from the end of each calendar quarter. Physical copies of the report are not required to be submitted.

..... ”

89. The Noticees have admitted that the Fund has not uploaded on SEBI portal any such quarterly report from the period of end of the tenure of the fund in November 2015. They have claimed that there was nothing for the Fund to submit any report on a quarterly basis. The Fund has been apprising its investors and SEBI from time to time of the liquidation proceeds received and the distribution thereof made to the investors. During the inspection in 2017, SEBI did not point out that the Fund was required to make quarterly filings despite initiating the process of winding up. Therefore, the fund was under a *bona fide* belief that such quarterly filings were not required to be made.

90. Apparently, this deviation has not been made a basis of any active concealment when levelling the sixth new allegation. The regulations do not give exemption from filing quarterly report if the scheme is continued after expiry of its tenure. Considering that the Fund has failed to wind up even after the passing of the Adjudication Order and above observations of Hon'ble SAT, the reporting of the investments of the Fund become even more important. The Noticees' contention that there is no fresh investment activity, does not absolve the Fund from the responsibility of filing the quarterly reports on the SEBI portal. If the Fund was still continuing with the scheme it cannot wait for an inspection to find out what is being done by the Fund. It is axiomatic that the Fund had to be more vigilant in making disclosures by filing quarterly reports on SEBI portal without waiting for investors to file compliant and triggering second inspection by SEBI. All the claims of disclosures to investors and SEBI relates to old period. Such lethargic approach with needless procrastination cannot be taken leniently.

91. The disclosure requirement under regulation 22 read with aforesaid SEBI circular assumes further significance when VCF Regulations are soft regulations giving flexibility to Fund and trustees and facilitating venture capital investments with soft regulations. Although, the fiduciary duties is not codified by any statute and is tested on the facts of each case , in the context of VCF Regulations the nature of such fiduciary duties has to be strictly construed and not liberally. The claim of the Noticee howsoever valiant in this regard cannot be accepted at all. If such approach is allowed with impunity, the whole purpose of regulations would be defeated and Funds will continue to act in a clandestine manner which will not only hamper regulatory oversight but will also create information asymmetry for the investors in the Fund and they will be in lurch about future of their investment in such risky schemes. I, therefore find that the Noticees have violated the provisions of Regulation 22 of the VCF Regulations read with SEBI Circular SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010 read alongwith Regulation 29 of the AIF Regulation and consequences of this contravention must follow in the facts and circumstances of this case.

92. With regard to non-winding up of the scheme, liquidation of assets under scheme and distribution of assets to investors and also to address their grievances, the Noticees have claimed that:-

- (a) The Fund has liquidated Rs. 1,25,00,000 (redemption of Kinesis Films debenture), Rs.4,40,00,000 from Big Screen Entertainer (Kumar Mangat) and distributed a sum of Rs.3,56,65,774/- to the investors / contributors from the proceeds realized therefrom amongst others.
- (b) The Fund had entered into a Film Production Agreement with Mr. Kumar Mangat Pathak. The said litigation with Mr.Pathak is one of the main reasons causing delay in liquidation of the assets of the Fund. The Fund has, however, been able to recover from Mr. Pathak a sum of Rs.4,40,00,000 (during the period 13.12.2019 to 19.07.2023). Further, post-hearing reply the Noticees have informed that a further sum of Rs. 55,00,000/- have been recovered from Mr.Pathak in October 2024. Hence, out of the 2.47 crores (as alleged in the SCN) which is yet to be liquidated and distributed to the investors, currently an amount of Rs.1.92 crores is yet to be liquidated.
- (c) Waterfront Films Pvt. Ltd., the VCU of the Fund which focuses on international collaborations acquired stake in Junobo for a sum of Rs.6,02,85,230/-. Junobo owns and operates the Mumbai Franchise of Soho House which commenced its operations only in 2018. Pursuant thereto, Waterfront called for expression of interest from intending purchasers for sale of Waterfront's investment in Junobo. One non-binding offer was received from the investor for a consideration that was about 50% of the original investment by Waterfront. However, the investor withdrew his offer. In March 2023, the Fund got a buyer from whom Rs.50 lakhs were received as a token on March 31, 2023.

(d) The Fund has also been actively pursuing ongoing litigation and arbitration proceedings pending against it in respect of “Sher”. From the date of initiation of its winding up till the date of the Inspection Report (minus the expenses incurred towards operations of the Fund), the Fund has distributed Rs.7.93 crore to the investors / contributors.

(e) The above submissions corroborate the allegation that the Fund has distributed Rs.7.93 crore to the investors / contributors. The Noticees have claimed that out of Rs 2.47 crores outstanding investments after booking losses amount of Rs.1.92 crores is yet to be liquidated. Be that as it may, the scheme is yet not wound up and lethargic and supine indifference despite adverse observations in order of Hon’ble SAT dated September 14, 2021 is demonstrated by the conduct of the Noticees as observed hereinabove.

93. I have carefully examined contention that there are no penal provisions provided for not being able to liquidate the assets within a time bound manner. I have also referred to the judgments of the Hon’ble Supreme Court in ***Excel Corp Care Ltd. v.Competition Commission of India*** as well as ***State of West Bengal v. Swapan Kumar Guha*** relied by the Noticees. Such arguments though look attractive but when considered in light of observations of Hon’ble SAT in order dated September 14, 2021 (Supra) that –“.. *nonetheless, the appellants were required to wind up the scheme and distribute the proceeds at the earliest. Five years is a long time and therefore it is clear that the appellants bona fides is doubtful.*”; and still occurrence of the continued default alongwith other several other demeanors and defaults on the part of the Notices, the entire episode tells an altogether different story.

94. The Noticees have also contended that alleged failure to wind up the scheme is not a case of lethargic indifference or needless procrastination by the Fund. I do not agree with these contentions of the Noticees. The efforts shown 8 years back during the year 2016 to 2017 had been given due regard only as mitigating factor in the SEBI’s order dated March 29,

2019 and this order did not allow the perpetual default to continue indefinitely. In fact, the findings in para 19 of the said order are clear and emphatic. Hon'ble SAT also has not accepted such arguments in the above observations in its order dated September 14, 2021.

95. It is the established fact that the above efforts have not found acceptance with investors in the Fund due to inordinate delays in liquidation of assets in scheme and distribution to the investors. SEBI has been receiving investors' complaints in this regard post order dated March 29, 2019 to date. Keeping in perspective, the scope of the purpose and duties of SEBI under the SEBI Act and there being a timeline for winding up of the scheme and the continuous failure, the purpose of law cannot be allowed to be defeated by the Noticees by raising moonshine defence only to delay the compliance as sought to be attempted by them in this case.

96. While it is true that the investors have voluntarily chosen and have taken informed decision to invest in sectoral investments which are known to be highly risky, the Fund cannot be allowed to continue with schemes indefinitely. If such contumacious approach of delaying winding up and liquidation of scheme is allowed indefinitely it would completely muzzle the interests of investors. The other defaults are clearly not technical but serious when seen holistically putting entire gamut of facts together as discussed hereinabove. I, therefore, do not agree with the contentions of the Noticees. After all, section 11(1) envisages a role for SEBI to guard against the dangers when the rubber meets the road. With this paramount duty, SEBI is expected to find answers to strategies which are utilized to defeat the norms laid down by the law, in order to secure public interest. Section 11(1) not only prescribes duties but confers powers as well, to effectively discharge those duties.

97. Having found Noticees being in contravention of provisions of Regulations as above, I proceed to examine as to what preventive and remedial directions should be issued, and what penalty should be inflicted upon the Noticees and also their individual/collective responsibilities in this regard. I have taken into consideration the principles of consistency

and proportionality. I note that in the matter of *Urban Infrastructure Venture Capital Fund* (Supra) in respect of the first charge as in this case, no directions remedial or punitive was issued to the Fund and monetary penalty was also not imposed upon the Fund. Even in this case, while initiating adjudication proceedings earlier for this allegation, SEBI did not make the Fund a Noticee. As a matter of consistency, I, therefore, do not deem appropriate to issue any direction or impose any penalty with respect to this allegation/charge on the Fund i.e. Noticee No.1.

98. Coming to the individual liability of the Noticees it is noted that actions of the Fund are controlled by the investment manager i.e. Noticee 2 or the trustee company i.e Noticee 3. Noticees 4 and 5 as directors of Noticee No. 2 and Noticee No 7 and 8 being the director of the trustee. Mr.Binay Mandal (Noticee 6) is a common director both in the investment manager (Noticee 2 -w.e.f. December 12,2016) and trustee company (Noticee 3-w.e.f. October 03,2017). The Noticee 8 has resigned from the trustee company w.e.f. October 16, 2017. The Noticee 8, however, was the director during the extended tenure of the scheme (i.e November 14, 2015). As disclosed in the risk factors narrated in the PPM of the Fund the directors and investment manager “..... *shall only be required to indemnify the Trust fund their fraud, negligence or willful default.*” All these individuals were responsible for all activities of the Fund from the date they have taken charge in their position as directors in Noticee No.2 and Noticee 3 respectively. It is also a case that the Noticee Nos 7 and 8 being directors in trustee Noticee 3 took extra and unauthorized fees for themselves as found in this case. This case is a clear example of a situation which started with existential Roman dilemma: “*Who will guard the guardians*”, the so-called “*rakshak bhakshak*” syndrome.

99. Thus, the conduct of the investment manager i.e. Noticee No.2 and the trustee No 3 and their respective directors as named in the order as Noticees is not in the interests of investors in the securities market. Such entities must not remain active with lethargic and

reckless approach. This is case of higher gravity where erring entities pose risk of repeating their skillful ignorance as shown in this case. The conduct of the parties shows least care on their part not only about the statutory obligations but also to defiance of judicial findings. Further, the willful negligence in deploying investors' monies against the commitments given in PPM, using them for personal gain but avoiding distribution of returns and using them otherwise for fees and expenditure must be dealt with preventive directions as well. Such persons must be kept away from the system. Hence, appropriate preventive and remedial directions under sections 11(1) and 11B (1) of the SEBI Act need to be issued against them, else it may lead to loss of investors' trust in the securities market. Further, the Noticees in this case deserve to be penalized by way of monetary penalties under section 15HA and 15 HB of the SEBI Act read with section 11(4A) / 11B(2). Said sections 15HA and 15HB provide as following :-

“Penalty for fraudulent and unfair trade practices.

15HA *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty ¹⁰²[which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher”.*

“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.”*

100. For the purpose of adjudging the quantum of penalty, it is relevant to mention that discretion has to be exercised having due regard to the factors specified in Section 15J of the SEBI Act, 1992, which reads as follows:-

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

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

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

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

101. This is a case where additional defaults as found in this case are wilful, deliberate and blameworthy. Any allowance on the grounds of technicalities as contended in this case would compromise with the very objective for which these penalty provisions have been made in the SEBI Act. As a matter of principle, while enforcing the regulations, the authority must weigh against an interpretation which will protect unjust claims over just, fraud over legality and expediency over principle. All the findings with regard to defaults require imposition of monetary penalty. The Noticees have gained out of their default although the SCN fails to quantify exact gain if the money is taken in excess of any fund operating expenses. The SCN also does not clearly quantify as to what was illegal gain out of total monies unfairly deployed by the Noticees, rather it recognizes that manager and trustee have charged the Fund and in turn its investors Rs, 63.14 crore as various fees and expenses. Further the SCN does not contemplate any disgorgement of any illegal or unlawful gain out of the defaults except for the disgorgement of excess fees paid to the trustees. The default is continuing one. Not filing of quarterly reports in this case has been found to be serious. Further, in the facts and circumstances of this case, I deem it worth relying on the observations of Hon'ble SAT, vide its order dated June 09, 2014 in the matter of Ashok Jain v/s SEBI (Appeal No. 79 of 2014) wherein it was held that - “...disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations”.

102. I also note that the power under section 11B (2) is *pari materia* the power under section 11(4A). In fact, the power under the both sections are nothing but a replica of each other in

two different sections. This power is not intended for inflicting same penalty twice under the same charging sections referred in suction 11(4A) and replicated under section 11B (2).

103. It is brought on record that Noticee No.5 (Shashanka Ghosh) has resigned as director from Cinema Capital Advisory Private Limited (Noticee 2) w.e.f.March 10, 2017 and Noticee No. 8 (Amrit Lal Suri) has resigned as director from Cinema Capital Contributory Company Private Limited (Noticee 3) w.e.f October 16, 2017.

ORDER AND DIRECTIONS

104. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1) and 11B(1) read with Section 19 of the SEBI Act, 1992 and Regulation 23(1)(d) of the Venture Capital Regulations read with Regulation 39 of the Alternative Investment Fund Regulation and taking into consideration the gravity of this case hereby issue the following directions:

104.1 Noticee Nos. 2, 3, 4, 6 and 7 shall, within fifteen (15) days of this order, file complete details of the scheme alongwith, details of the bank accounts pertaining to the Scheme as well as of the Noticees and amount of balance available in those accounts; details of all the movable and immovable assets pertaining to the Scheme as well as of the Noticees; and details of any receivables with respect to the Scheme as well as of the Noticees.

104.2 Noticee Nos. 2, 3, 4, 6 and 7 shall ensure that the Scheme i.e Cinema Capital Venture Fund Scheme -1 of the Fund is wound up by providing exit to its investors /unitholders within a maximum period of three (3) months from the date of this Order in the following manner:-

- (i) Two separate valuations of all the remaining assets of the Scheme of the Fund (as on April 30, 2025) shall be obtained from two independent reputed valuers;

Order in respect of Cinema Capital Venture Fund

- (ii) The NAV of the Scheme of the Fund as on April 30, 2025 shall be determined on the aforesaid valuation reports by adopting higher of the valuations arrived at in the aforesaid two valuation reports.
- (iii) Exit to the investors / unitholders shall be provided first, by offering an option to the existing investors / unit holders to take exit by way of in-specie distribution of interest / rights / stakes/ shares, etc. in the investee companies / projects;
- (iv) The investors / unitholders who do not exercise their option for in- specie distribution, shall be given exit on the basis of the NAV determined as per the directions stated in Paragraph 104.2 (ii) above.
- (v) It is clarified and directed that the entire process of winding up the Scheme of the Fund and providing exit to the investors / unitholders as per the above stated directions shall be completed within a maximum period of three (3) months from the date of this Order i.e. latest by July 31, 2025.

104.3 Noticee Nos. 2, 3, 4, 6 and 7 shall file a report for the Scheme certified by a Chartered Accountant declaring that all the investors / unitholders of the Scheme of the Fund have been provided an exit and the Scheme of the Fund stands wound up. The said report shall be filed within a period of three weeks after completion of the winding up and after providing an exit to the investors / unit holders of the said Scheme of the Fund i.e. August 21, 2025.

104.4 The Noticees viz 2 to 8 are hereby restrained from associating themselves, directly or indirectly with any SEBI registered intermediaries including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services, etc. which deal with investors' money in manner for a period of three (3) years from the date of this Order.

104.5 The Noticees 7 and 8 are directed to disgorge the excess trusteeship fees of Rs. Five (5) lakhs, which was charged in 2011-12. The said amount shall be remitted to the Investor Protection and Education Fund (IPEF) as referred to in Section 11(5) of the SEBI Act, 1992 within 45 (Forty-Five) days of this Order.

104.6 In light of the facts and circumstances of this case as discussed hereinabove, the factors listed in section 15J of the SEBI Act and the guiding principles laid down by the Hon'ble Supreme Court in the matter of SEBI v/s Bhavesh Pabari (CIVIL APPEAL NO(S).11311 OF 2013), and exercising the powers conferred upon me under section 11B(2) of the SEBI Act, I hereby impose the following monetary penalties on the following Noticees for the various violations of the provisions of the VCF Regulations and the Circulars:

Noticee No.	Name of the Noticee	Penal Provision	Penalty Amount (in Rs.)
2	Cinema Capital Advisory Private Limited	Section 15 HA of the SEBI Act, 1992 for violating Regulation 4(1) of the SEBI (PFUTP), Regulation, 2003.	Rupees One (1) crore to be paid jointly and severally by Noticees 2 to 8.
3	Cinema Capital Contributory Company Private Limited	Section 15HB of the SEBI Act, 1992 for violating : –	Rupees Ten (10) lakhs to be paid jointly and severally by Noticees 2 to 8.
4	Samir Gupta	Regulations 12(d), 16(1)(a), 17(1)(k) of VCF r/w Regulation 39 of the AIF Regulations	
5	Shashanka Ghosh		
6	Binay Mandal		
7	Urmila Gupta		
8	Amrit Lal Suri	Regulation 22 of the SEBI (Venture Capital) Regulations, 1996 read with SEBI Circular dated January 11, 2010.	
TOTAL			Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs only)

Order in respect of Cinema Capital Venture Fund

105. The Noticees shall remit/ pay the amounts of penalties mentioned against their names in the table above, 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 www.sebi.gov.in/ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, the Noticee(s) may contact the support of portalhelp@sebi.gov.in.
106. The Noticees shall forward the details of online payment made in compliance with the directions contained in this Order to the “*The Division Chief, AFD-SEC-1, Securities and Exchange Board of India, SEBI Bhavan I, Plot No.C-4, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051*” and also to email id : tad@sebi.gov.in in the format as given in the table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: Penalty or Disgorgement	

107. It is hereby clarified that if the Noticees have any open position in any exchange traded derivative contracts, as on the date of this order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.
108. This Order shall come into force with immediate effect.

Order in respect of Cinema Capital Venture Fund

109. The direction for winding up and providing exit to investors / unitholders, as given in Para 104 above, does not preclude the investors / unitholders of the Fund to pursue other legal remedies available to them under any other law, against the Fund and / or the Noticees regarding their investment or deficiency in service before any appropriate forum of competent jurisdiction.
110. This Order shall be served on all the Noticees, Recognised Stock Exchanges, Depositories and Registrar and Share Transfer Agents to ensure necessary compliance.
111. A copy of this Order shall also be served on the Securities and Exchange Board of India.

Date: April 30, 2025
Place: Mumbai

SANTOSH SHUKLA
QUASI JUDICIAL AUTHORITY (CGM)
SECURITIES AND EXCHANGE BOARD OF INDIA

Order in respect of Cinema Capital Venture Fund