

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/S./2022-23/16410]

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

In respect of

Adhunik Industries Ltd.
(Currently known as, “Incredible Industries Limited”)
[PAN: AACCB2765Q]

In the matter of Adhunik Industries Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’), in the interest of investors, vide its letter dated August 7, 2017 took the pre-emptive interim measures under section 11(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’), in respect of certain listed companies identified as “shell companies” vide letter dated June 09, 2017 by the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) including M/s Adhunik Industries Limited (hereinafter referred to as “**AIL**”/“**Company**”/“**Noticee**”) which is listed with National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) and BSE Limited (hereinafter referred to as “**BSE**”). SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip of AIL in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated December 29, 2020 SEBI appointed the undersigned as the Adjudicating Officer under Section 19 read with Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') and under Section 23-I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules**") to inquire into and adjudge, the alleged violations of Regulations 23(1), (2), and (4) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (hereinafter referred to "LODR Regulations") and Clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show-cause notice dated January 25, 2022 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon them under Section 23E of SCRA, for the aforesaid violation alleged to have been committed by them.
4. The allegations levelled against Noticee in the SCN are as under:

a) *"With respect to related party transaction, it was alleged that during the Financial Year (FY) 2015-16, several funds transfer with Adhunik Corporation Limited (ACL) amounting to more than Rs. 400 crores are not reflected in the related party transactions. Further, requisite Audit Committee Approvals, Board Approvals and Shareholders' approval were not obtained by AIL while executing such funds transfers amounting to more than Rs. 400 crores with ACL. Thus, it was alleged there that AIL was not in compliance with regulation 23(4) SEBI (LODR) Regulations."*

b) *"ACL was a related party as per the provisions of Section 2 (76) of the Companies Act, 2013 since directors of AIL viz. Jugal Kishore Agarwal, Mohan*

Lal Agarwal and Mahesh Kumar Agarwal were directors in ACL and they along with their relatives were holding are more than 2% of the total shareholding of both the companies.”

- c) “Funds are ‘Financial Resources’ and ‘Financial Resources’ and therefore transfer of funds is a transfer of resources. Thus, transfer of funds (regardless of the interest / price being charged) between a listed entity and a related party falls under the definition of related party transactions as per the LODR Regulations.”*
- d) “Hence, it was observed that the transfer of funds of more than Rs. 200 crores between AIL and ACL across multiple transactions during FY 2015-16, even if they were for temporary accommodation, would fall under definition of related party transactions.”*
- e) “A series of transactions occurred during the financial year has to be taken together into consideration while determining the materiality of the transaction. Thus, in the instant case, the transactions between AIL and ACL, taken together during a financial year 2015-16, amounted to more than Rs. 200 crores which was more than 10% of total gross turnover of AIL during FY 2015-16 i.e. INR 454.32 crores.”*
- f) “Further, it was noted that AIL had not submitted the requisite Audit Committee Approvals, Board Approvals and Shareholders Approvals for transfers of funds amounting to more than Rs. 200 crores between AIL and ACL. Thus, it was observed that AIL had not obtained the requisite Audit Committee Approvals, Board Approvals and Shareholders Approvals with respect to the transfers of funds amounting to more than Rs. 200 crores between AIL and ACL.”*
- g) “Therefore, in view of the above findings with regard to the related party transaction, it is alleged that Noticee has violated the provisions of Clauses 49(VII)(C) and 49(VII)(E) of Listing Agreement and Regulations 23(2) and 23(4) of LODR Regulations.”*
- h) Noticee, is, therefore, called upon to show cause as to why an inquiry be not held against them in terms of Rule 4 of SCRA AO Rules read with Section 23-I of*

SCRA and Rule 4 of SEBI AO Rules read with Section 15-I of SEBI Act and penalty, if any, be not imposed under Section 23E of the SCRA for the aforesaid violations alleged to have committed by Noticee.

5. The SCN was sent to the Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') which was duly served and digitally signed email dated January 25, 2022 which was also duly served on Noticee. Noticee were given fifteen (15) days' time to make submissions in respect of the allegations made in the SCN. Subsequently, the Noticee, vide letter dated February 08, 2022 requested extension of time to reply to the SCN. Thus, vide email dated February 09, 2022 the Noticee was informed that it was granted time till February 28, 2022 to file reply to the SCN. Thereafter the Noticee submitted their reply vide letter dated February 28, 2022 to the allegations levelled in the SCN.
6. In the interest of natural justice, vide hearing notice dated March 25, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on March 31, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and digitally signed email dated March 26, 2022 and was duly served upon it. Subsequently, the Noticee, vide letter dated March 26, 2022, requested an additional time of 21 days from March 31, 2022 in order to prepare for the hearing. The aforesaid request was acceded to and vide email dated April 29, 2022, the Noticee was informed that the hearing was rescheduled on April 08, 2022. Thereafter, the Noticee availed the opportunity of hearing granted to it on April 08, 2022. In view of the difficulties posed due to Covid-19 pandemic, hearing proceedings were conducted online through videoconferencing on the Webex platform. On the date of scheduled hearing, the Noticee was represented by its Authorised Representatives ('**ARs**') namely, Mr. Bharat Agarwal, Mr Vikash Modi, Mr. Vikram Nankani, Mr. Aditya Bhansali, Ms. Nirali Mehta and Ms. Pankhuri Swarnim. The ARs made their submissions, reiterating the earlier reply filed in the matter on February 28, 2022. During the hearing, the ARs' request for additional time for submission of additional written submissions was acceded to and the same was submitted by Noticee vide letter dated April 18, 2022.
7. The relevant extracts of the Noticee's reply and additional written submissions are given hereunder:-

A. “The issuance of SCN amounts to a fishing and roving inquiry:-

- i *The Noticee, at the very start, submits that the SCN mechanically takes recourse to the Interim Order dated September 21, 2018 while making bland, mindless references to the allegations pertaining to related party transactions, as contained in the said Interim Order, without either attempting to or actually assessing the disputed transactions in question, in an independent manner.*
- ii *The Noticee submits that the inception of the present proceedings dates back to June 09, 2017 when the MCA provided SEBI with a list of 331 companies, along with a letter of SFIO, allegedly containing observations against the Noticee, classifying the Noticee as one of the suspected shell companies. The said list prompted SEBI to commence an inquiry and issue an Order Letter dated August 7, 2017 vide which it placed severe restrictions on the trading of the shares by the Noticee. The Noticee made a representation against the said Order depicting how it is a fully operational corporate entity, in the business of iron and steel industry and hence, a going concern and not a shell company, as alleged. Subsequent to the receipt of the said representation, SEBI, instead of closing the inquiry then and there, as should have been the proper course of chose to continue with the investigation and further initiated WTM proceedings against the Noticee which eventually culminated into the present adjudication proceedings, further alleging that the Noticee has misrepresented its financials and misused its books of accounts and funds, in alleged violation of the Listing Agreement and the LODR Regulations. This act, on part of SEBI, typifies the conduct of a fishing and roving inquiry which, the Noticee contends, is prohibited in law, established by the virtue of various Supreme Court Judgments.*
- iii *The Noticee, as regards the aforesaid, states that the right to fair trial includes in its ambit, maintaining justness in procedure during, before or after the conduct of investigative proceedings and also enabling by granting sufficient opportunity to an entity/ individual to meet the case built against them. In this regard, your goodself's attention is drawn to the observation of the Hon'ble Supreme Court in the case of Krishna Mohan Medical College and Hospital and Ors, vs, Union of India.*
- iv *The Noticee submits that the inquiry should have halted when the representation made by the Noticee was conclusive of the fact that it is not a shell company instead of spiraling into a full-blown detailed investigation into the affairs of the company. It is noteworthy, the Noticee says, that the said turn of events took place,*

at the cost of the Noticee being oblivious to the cause and purpose of the investigation deemed to be carried by the initiation of the WTM proceedings vide the Interim Order. At the cost of repetition, the Noticee was kept in the dark about the time period which was the reference of the said investigation and the same corroborates the fact that the allegations pertaining to the alleged related party transactions were simply a product of a shot made in the dark.

- v Noticee further argues that the entire investigation process is tainted as it is and so is the case that has been built against the Noticee, as the Noticee was, right at the very outset, not made opportunely aware of the allegations that it had to refute and the case that it was supposed to meet. In this regard, your goodself's attention is drawn herewith to the observations of the High court of Punjab and Haryana in the case of Rajindta Singh vs. Kishan Lal Panwar, wherein the Hon'ble High Court has condemned the act of conducting a fishing and roving inquiry.*
- vi Your goodself's attention, in this regard, is invited to the judgment rendered by the Hon'ble SAT in the matter of Sudha Commercial Company Limited V. SEBI, on January 20, 2017, wherein the Hon'ble Tribunal censures the act of conducting a fishing and roving inquiry."*

B. "Submission on merits:-

- i In the instant case, the Noticee availed of an interest free amount cumulatively rounding up to over Rs. 200 crores, for the FY 2015-2016, from its related party, ACL. Logically, the Noticee was required to return the said amount, which it duly did, in the same FY of 2015-2016. In this regard, it is the submission of the Noticee that counting both the forward and backward flow of cumulative funds worth over Rs. 200 crores, for the FY 2015-2016, amounts to double-counting and hence, is equivalent to an impaired analysis of facts.*
- ii The Noticee, with respect to the allegation that it executed related party transactions with its related party, ACL, in an alleged violation of the LODR Regulations and the Listing Agreement, submits before your goodself that the working capital requirement of the Noticee, as a company, is very high. The cycle pertaining to the said working capital is also very long, the Noticee being a steel manufacturing company. In order to meet the high requirement and the long cycle of the working capital, the Noticee had previously resorted to taking working capital loans and cash credit facilities from various banks/financial institutions. Despite the same, the Noticee had overdrawn its available cash credit limits, as a result of*
Adjudication Order in the matter of Adhunik Industries Ltd.

which, it arranged for a temporary interest-free cumulative amount of over Rs. 200 crores from its related party, ACL, for the FY 2015-2016, so that the interest of its investors, especially its minority shareholders was not jeopardized. It was solely, bearing in mind the goodwill of the investors that the Noticee chose to engage in facilitating the said movement of funds, from and to ACL.

- iii Noticee states that the act of the Noticee availing an interest-free cumulative amount of more than Rs. 200 crores for the FY 2015-2016, from its related party, ACL, was equivalent to several temporary fund movements from and to ACL, totaling up to a sum of over Rs. 200 crores for the FY 2015-2016, in the nature of a borrowing which was also returned back in due course to ACL. Hence, the same was treated as interest-free accommodations in the Noticee's books of accounts, in lieu of the Noticee having overdrawn its working capital account. The Noticee further submits, that for the same reason, these can in no way be termed as transfers per se, as contemplated under the LODR Regulations or the Listing Agreement, as no resources, services or obligations were transferred.*
- iv Noticee states that the said fund movement cumulatively amounting to a total of over Rs. 200 crores in the FY 2015-2016 from and to ACL, although having taken place between related parties, cannot categorically be deemed to be violative, by nature, of the LODR Regulations or the Listing Agreement, on account of non-disclosure. This is because, the Noticee did not disclose the same in its regular sale or purchase account only because there was no sale or purchase of goods that took place between the and its Related Party, ACL and the said movement of funds between the Noticee and its Related Party, ACL was only suggestive of a simple interest-free amount being taken by the former and returned back in due time, after having fulfilled purpose, in the wake of the Noticee having exhausted its cash credit limit.*
- v Your goodself will be pleased to take note of the fact that the temporary movement of the funds, from and back to ACL, was facilitated by the Noticee at arm's length. This is because both the parties to the transaction acted in an extremely independent manner, in furtherance of their own self-interest and hence, the same can in no way be deemed to be a part of the alleged contravention, In this regard, the Noticee further submits that related party transactions are not prohibited per se but are deemed to be illegal and violative, only if they are executed in furtherance of a fraudulent, manipulative activity. However, the same is not the case of the Noticee and as is visibly apparent, the Noticee has not indulged in any fraudulent*

activity prior to, pursuant to or during the disputed related party transactions, amounting to a cumulative of over Rs. 200 crores for the FY 2015-2016.

- vi Noticee, with respect to the aforesaid, says that your goodself is called upon to note that there was no exchange of ownership that ever took place between the Noticee and its Related Party, ACL, as regards the cumulative amount of more than Rs. 200 crores for the FY 2015-2016. This is because the said cumulative amount, that was in the nature of a simple interest-free facility, was received by the Noticee from its related party, ACL, in several*
- vii Noticee further submits that the transactions which are entered into, in the normal or ordinary course of the business, in furtherance of the company's business objectives are not, by nature or type, violative in nature and hence, not illegal... was in the normal and ordinary course of business, in order to promote the Noticee's business objectives. Moreover, it was also in accordance with the usual customs and practices of the business that the Noticee is engaged in. Therefore, the Noticee states that there was nothing unusual or out of the ordinary, in the temporary movement of interest-free funds totaling .up to a cumulative sum of over Rs. 200 crores, for the FY 2015-2016, from and back to ACL, as the same was done only to keeping in mind the well-being and interests of the Noticee's investors, especially the minority shareholders, in order that there were no impediments in the smooth functioning of the Noticee's business.*
- viii The Noticee had made required disclosures on materially significant related party transactions even in its Annual Report for the FY 2015-16, which was already provided to SEB], during one of the correspondences exchanged between the Noticee and the SEBI.*

C. "There was no adverse effect on any public shareholders of the Company:-

- i The Noticee states that the alleged related party transactions, amounting to a cumulative total of over Rs. 200 crores for the FY 2015-2016, had a huge benefit to the Noticee's business and its shareholders. This is because there was a significant reduction in the burden of interest cost and there were funds available as per the requirement of the Noticee, Your goodself is requested to consider the fact that the Noticee was able to save over Rs. 2 crores in interest cost only because funds were made available to the Noticee by ACL free of interest. Accordingly, your goodself is also requested to take note of the irrefutable fact that*

the underlying purpose of the required disclosure stood fulfilled as the hard-earned money of the shareholders was not misappropriated by the Noticee. In pursuance of the same, the Noticee would also like to place on record the fact that for the FY 2015-2016, the details pertaining to exchange of goods against the funds were duly accounted for. In fact, the Noticee further submits, necessary approvals, in this regard, were taken and disclosures were also made in its financial statement for the FY 2015-2016.

- ii Noticee deems it pertinent for your goodself to appreciate the intention of the legislature in formulating the requirement of specific disclosures pertaining to related party transactions. The significance of the said disclosures lies in the fact that no undue benefit should be allowed to be transferred to a related party at the cost of the innocent investors. Your goodself has initiated the present adjudication proceedings, only because there's a presupposition of an alleged contravention. Accordingly, vide the said SCN, an attempt is being made by your goodself to ensure that no harm, at large, is caused to the concerned investors and shareholders of the Noticee and that the hard-earned money belonging to the shareholders has not been funnelled, to the disadvantage of the shareholders, and hence, being used by the Noticee for its own unjust enrichment. However, the Noticee has in no manner whatsoever siphoned off funds belonging to the shareholders and has neither incurred any wrongful gain nor caused the shareholders any loss or harm, in the process.*
- iii Therefore, in lieu of all the afore-stated submissions, the Noticee strongly denies and refutes being in violation of the provisions Of Clauses 49 (VII) (C) and 49 (VII) (E) of the Listing Agreement and Regulations 23 (2) and 23 (4) of the LODR Regulations and further states that the Impugned SCN has defaulted in levying allegations to that effect, for they are bereft of any reason whatsoever.*

D. "The violation is technical or venial in nature and does not warrant penalty:-

- i The Noticee contends that the violations, if any, are technical or venial in nature which does not warrant the imposition of penalty. The Noticee further contends that the transactions in question did not cause any loss or harm to investors and the same were executed for the benefit of shareholders of the company.*
- ii In support of the aforesaid contention, the Noticee places reliance upon the rulings of the Hon'ble SAT in M/s. Cabot International Corporation vs. Adjudicating Officer,*

Sudha Commercial Company Limited vs. SEBI and Reliance Industries Limited vs. SEBI, Samkit Shares, Stock Brokers Pvt Ltd vs. SEBI, Chona Financial Services P. Ltd. vs. SEBI, KSL & Industries Ltd vs SEBI and RK Global vs. SEBI, as well as the Hon'ble Supreme Court in Hindustan Steel Ltd. vs. State of Orissa, Akbar Badrudin Badrudin Jiwani vs. Collector of Customs, Bombay, Superintendent and Remembrancer Legal Affairs to Government of West Bengal vs. Abani Maity, Nandakishore Prasad vs. State of Bihar and Union of India vs. HC Goel."

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:
- 1) Whether Noticee has violated Clauses 49(VII)(C) and 49(VII)(E) and Regulations 23(1), (2), and (4) of LODR Regulations?
 - 2) Does the violation, if any, attract monetary penalty under Section 23E of SCRA?
 - 3) If the answer to the aforesaid issues is in affirmative, then what should be the quantum of monetary penalty?
9. The relevant provisions of the LODR Regulations and Clause 49 of the Listing Agreement, which were in force at during the time of the alleged violations, are reproduced as under:

"Regulation 23(1):

(1) A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity."

"Regulation 23(2):

(2) All related party transactions shall require prior approval of the audit committee."

"Regulation 23(4):

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.”

“Listing Agreement

Clause 49(VII)(C):

The company shall formulate a policy on materiality of related party transactions and also on dealing with Related Party Transactions. Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company.

...

Clause 49(VII)(E):

All material Related Party Transactions shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.”

Issue No. 1 Whether Noticee has violated Clauses 49(VII)(C) and 49(VII)(E) and Regulations 23(1), (2), and (4) of LODR Regulations?

10. Before going into the merits, I note that the Noticee has made a preliminary objection stating that the allegations made in the SCN were bald, baseless and sweeping and beyond the remit of the initial enquiry made by SEBI in relation to the letter dated June 9, 2017 issued by MCA, which pertained only to the verification of the genuineness and operational status of the company. The Noticee has contended that the aforesaid letter issued by MCA only pertained to the list of alleged shell companies. Thus, the Noticee has contended that SEBI's inquiry in connection with the same letter ought to have confined to the operational status of the company and genuine nature of its business and there was no need for further detailed investigation which, in this case, was undertaken despite the fact that sufficient material had been provided by the Noticee establishing therein that it was a fully operational steel manufacturing company and not a shell company. Noticee has also contended that since nothing could be found on record to establish that the Noticee was a shell company, a full-blown detailed investigation into the affairs of the Noticee was undertaken which was akin to a full-fledged fishing expedition, with an underlying malicious motive to implicate the Noticee whether or not the Noticee was

actually culpable and wherein the Noticee was kept oblivious about the cause and purpose of the investigation. Thus, the Noticee has contended that the inquiry had abruptly turned into a wild-goose chase as the Noticee was implicated for a completely different and diametrically opposite set of allegations. The Noticee has further contended that the submissions of the Noticee were not considered in the Interim Order dated September 21, 2018 which was harsh and extremely unjust. Therefore, Noticee has termed the initiation of the instant adjudication proceeding as being tantamount to a fishing and roving inquiry, causing prejudice to the Noticee. In relation to the aforesaid contentions, Noticee has placed reliance upon the judgements of the Hon'ble Supreme Court of India (hereinafter referred to as "**Hon'ble Supreme Court**") in the case of Krishna Mohan Medical College and Hospital & Ors. vs. Union of India & Ors., the judgement of Hon'ble High Court of Punjab and Haryana in the case of Rajindra Singh vs. Kishan Lal Panwar, and the Hon'ble Securities Appellate Tribunal's (**Hon'ble SAT**) order in Sudha Commercial Company Limited vs. SEBI.

11. In regard to the foregoing, I note that the remit of SEBI's powers cannot be said to be restricted to merely seeking information about operational status of a company which is listed on the stock exchanges. I note that under Sections 11 and 11C of SEBI Act, SEBI has broad powers to seek information from various entities and appoint Investigating Authority for undertaking investigation relating to violation of securities regulations by any person associated with the securities market. The aforesaid provisions of SEBI Act also empower SEBI to call for information from listed entities and conduct an independent examination pertaining to compliance with securities regulations. In this regard, I note that in terms of the aforesaid provisions, vide letter dated August 31, 2017 issued under Section 11 of SEBI Act, and email dated September 18, 2017 sent in reference to the aforesaid letter, information pertaining to financial transactions for Financial Year ('FY') 2015-2016 was sought from the Noticee which was provided by the Noticee vide email dated September 25, 2017. On the basis of the said information gathered by SEBI, the matter was duly investigated pursuant to which, violations of securities laws by the Noticee were observed. Thus, in view of the above, the instant adjudication proceedings were initiated. I also note that contravention of applicable regulations merits the initiation of adjudication proceedings as per Section 15-I of SEBI Act and Section 23-I of SCRA. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the*

statutory obligation as contemplated by the Act and the Regulations is established...” I also note that the judgements quoted by the Noticee i.e. Hon’ble Supreme Court’s judgement in Krishna Mohan Medical College and Hospital & Ors. vs. Union of India & Ors. the judgement of Hon’ble High Court of Punjab and Haryana in the case of Rajindra Singh vs. Kishan Lal Panwar, and Hon’ble SAT’s order in Sudha Commercial Company Limited vs. SEBI are not applicable to the present proceeding, as the legal provisions as well as the facts and circumstances of the present proceeding are different from those in the aforesaid judgements quoted by the Noticee. Therefore, in view of the above, I find no merit in the aforesaid contentions of the Noticee.

12. In this regard I note that the Noticee has also contended that the allegations levelled in the SCN have been made mechanically in the lines of the Interim Order dated September 21, 2018 without independent assessment of facts relating to the transactions in question and the SCN blindly makes continuous references to the Interim order, mechanically copying the allegations as contained therein while disregarding that the Interim order and SCN arise out of distinct proceedings which should be based on an independent examination of allegations of allegations/facts. Thus, Noticee has contended that prejudice has been caused to it which constitutes a violation of principles of natural justice and an infringement of the right of Noticee to be subjected to a fair and just set of proceedings. In this regard, I note that, as established earlier, the instant adjudication proceeding has arisen out of an independent examination of facts by SEBI pursuant to which violations of securities laws by the Noticee were observed. I further note that the instant adjudication proceeding is also an independent inquiry in terms of Rule 4 of Adjudication Rules and Rule 4 of SCR Adjudication Rules. I further note that as part of the said inquiry, the allegations/charges against the Noticee have been clearly spelt out in the SCN issued to the Noticee and sufficient materials and evidence which formed the basis for the aforesaid charges were provided to the Noticee along with the SCN. Hence, I note that the Noticee was afforded adequate opportunity to peruse the materials relied upon in the SCN and furnish their reply to the SCN. I note that vide letter dated February 28, 2022, Noticee submitted their reply to the SCN. In the interest of natural justice, the Noticee was afforded two opportunities of hearing in the matter on March 31, 2022 and April 08, 2022 which were availed of by the Noticee. Subsequently, Noticee also submitted additional written submissions vide their letter dated April 18, 2022. Thus, I note that Noticee has been provided ample opportunity to furnish sufficient defence to the charges/allegations made in the SCN and which has been availed of by them. I further note that all facts which are a matter of record should

necessarily be taken into consideration in an adjudication proceeding. Therefore, I find no merit in the aforesaid contentions of the Noticee. Thus, I note that principles of natural justice have been complied with in the matter and no prejudice has been caused to the Noticee.

13. The Noticee has also contended that the Interim order did not record any finding about the initial inquiry pertaining to whether the Noticee was a shell company and that the allegations were not clear and Noticee was not informed about what case it had to meet and pertaining to what time period and that the same is a violation of natural justice and infringes upon the Noticee's right to a fair trial. The Noticee has also contended that the Interim order perversely admits the fact that the Noticee's claim of temporary interest free accommodation has not been verified and the same was reiterated in the confirmatory order, and such indifference to the submissions of the Noticee amounts to a latch on the part of the investigation conducted by SEBI. Thus, the Noticee has contended that the Interim order constituted a gross aberration which vitiated the proceeding and violated Noticee's right to be heard. In this regard, I note that the aforesaid contentions pertain to a proceeding under Section 11 of SEBI Act which has been concluded and are, therefore, not relevant to the instant adjudication proceeding. Therefore, I find that the aforesaid contentions do not have merit.

14. I now proceed to deal with the matter on merits. I note that the allegation against the Noticee is that it had entered into a material related party transaction ('RPT') with Adhunik Corporation Limited ('ACL') during FY 2015-2016, by way of fund transfers from ACL of more than Rs. 200 crores and subsequent repayment of the same to ACL. It has been alleged that the aforesaid fund transfers were "transfer of resources" of the Noticee which falls within the definition of a material RPT as per Clause 49(VII)(A) of the Listing Agreement and Section Regulation 2(1)(zc) of the LODR Regulations. It has also been alleged that no requisite approval of the shareholders through a special resolution or requisite approval of Audit Committee had been obtained with respect to the aforesaid RPT and therefore, on account of the aforesaid RPT, Noticee violated Clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations.

15. W.r.t to the aforesaid allegations I note the definition of related party as per the provisions of Section 2(76)(v) of the Companies Act, 2013, which is as follows:-

COMPANIES ACT, 2013

*“2 (76) “related party”, with reference to a company, means—
(v) a public company in which a director or manager is a director and holds along
with his relatives, more than two per cent of its paid-up share capital”*

I note from the Annual Report for FY 2015-2016 that directors of the Company, viz. Jugal Kishore Agarwal, Mohan Lal Agarwal and Mahesh Kumar Agarwal, were directors in ACL at the time of the impugned transaction and the aforesaid directors along with their relatives held more than 2% of the total shareholding of both the Noticee as well as ACL. Therefore, in view of the provisions of Section 2(76)(v) of the Companies Act, 2013, I find that ACL is a related party to the Noticee. I further note that the Noticee, in its reply, has accepted that ACL was a related party in respect of the Noticee.

16. At this juncture, I find it pertinent to refer to the definition of a Related Party Transaction as laid down under Clause 49(VII)(A) of Listing Agreement and Regulation 2(1)(zc) of the LODR Regulations which is reproduced as under:-

CLAUSE 49(VII)(A) OF LISTING AGREEMENT

“A related party “transaction” is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

Explanation: “A “transaction” shall be construed to include single transaction or a group of transactions in a contract”

REGULATION 2(1)(zc) OF LODR REGULATIONS

“Related Party Transactions means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract”

Thus, I note from the above that Clause 49(VII)(A) of the Listing Agreement and Regulation 2(1)(zc) of LODR Regulations define a related party transaction as a transfer of resources, which includes corporate funds, between a listed entity and its related party, irrespective of the nature of such transfer i.e. whether temporary or permanent and regardless of whether a price is charged.’

17. In this regard, on perusal of the Annual Report for FY 2015-2016, and bank statements of twenty three (23) accounts of the Noticee for FY 2015-16 submitted by the company vide letter dated September 25, 2017, I find that there were amounts credited/debited from/to ACL during the FY 2015-16, the summary of which is stated as under:

Particulars	Amount as per Annual Report of FY 2015-16 (in Rs.)	Amount as per Bank statements during FY 2015-16 (in Rs.)
Amount received	-	2,05,49,95,000 *(approx.)
Amount Paid	-	2,34,62,53,663 *(approx.)
Sale Amount	10,34,20,647	-
Purchase Amount	16,29,81,859	-
Amount receivable	0	-
Amount Payable	4,48,82,087	-

**This approximate amount is as reflected in the entries against the name of 'Adhunik Corporation Ltd' seen in 23 bank accounts statements submitted by the company.*

Therefore, from the above table, I observe that considering all the transactions for FY 2015-16 between AIL and ACL, taken together, Noticee received Rs. 205 crores (approximately) from and paid Rs. 234 crores (approximately) to ACL during FY 2015-16. I also note that in response to queries raised by SEBI vide email dated April 19, 2018, the Noticee, vide letter dated April 27, 2018, had admitted to aforesaid transaction between itself and its related party i.e. ACL, stating that the Noticee had received and made on-account payments from and to ACL and these on-account payments were occasioned mainly due to cash credit limit of the company being overdrawn when temporary interest free accommodation was arranged from ACL. Noticee, in its aforesaid communication, had further stated that these payments were not related to any sale or purchase of goods. In view of the foregoing findings and the aforesaid admission, I find that the aforesaid transaction was a related party transaction in terms of Clause 49(VII)(A) of the Listing agreement and Regulation 2(1)(zc) of LODR Regulations.

18. I further refer to the provisions of Regulations 23(1), (2) and (4) of LODR Regulations and clauses 49(VII)(C) and 49(VII)(E) of Listing Agreement which are as under:-

CLAUSE 49(VII)(C) OF LISTING AGREEMENT

"The company shall formulate a policy on materiality of related party transactions and also on dealing with Related Party Transactions. Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent

of the annual consolidated turnover of the company as per the last audited financial statements of the company.”

CLAUSE 49(VII)(E) OF LISTING AGREEMENT

“All material Related Party Transactions shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.”

LODR REGULATIONS

“23(1) A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(2) All related party transactions shall require prior approval of the audit committee.

...

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.”

19. I note from the above that the aforesaid provisions of Regulation 23(1), (2) and (4) of LODR Regulations and clauses 49(VII)(C) and 49(VII)(E) of Listing Agreement, define a Material Related Party Transaction as a transaction whose value exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company and provides that such transactions mandatorily require approval of the shareholders. The Noticee, in its additional written submissions, has contended that approval of shareholders as well as Audit Committee was not required for the purpose of the aforesaid RPT as it was not a material RPT within proviso to Regulation 23(1) of the LODR Regulations because the aforesaid RPT did not breach the threshold of ten per cent of annual consolidated turnover of the listed entity. The Noticee has further contended that the aforesaid RPT amounted to only 9.68% of the total turnover and that the aforesaid RPT was not a single transaction but was executed by way of many transactions in which funds moved cyclically from ACL to Noticee and vice versa. Thus, the Noticee sought to explain that at any particular point of time, the Noticee never had dues exceeding Rs. 43.97 crores which was 9.68% of the total turnover of the Noticee in 2015-16 i.e. Rs. 454.32 crores. However, as already noted above, Noticee received Rs.

205 crores (approximately) from and paid Rs. 234 crores (approximately) to ACL during FY

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2015-16 in a series of transactions and the Noticee had admitted to aforesaid transfer of funds between itself and its related party i.e. ACL. I note from the Annual Report for FY 2015-16 that the total gross turnover of AIL during FY 2015-16 was Rs. 454.32 crores and AIL's total net turnover during FY 2015-16 was Rs. 410.08 crores. I note that the aforesaid transfer of funds to and from ACL exceeded 10% of both the total gross turnover of AIL during FY 2015-16 i.e. Rs. 454.32 crores and AIL's total net turnover during FY 2015-16 i.e. Rs. 410.08 crores. Thus, in the instant case, I note from the material available on record that the transactions between AIL and ACL taken together during FY 2015-16, amount to transfer of funds to/from ACL which is a transfer of resources as per clause 49(VII)(A) of Listing agreement and Regulation 2(1)(zc) of LODR Regulations. Therefore, I note that the aforesaid related party transaction amounts to a material related party transaction.

20. In this regard, I note from the extracts of resolution passed in the Board meeting and Audit Committee meeting dated May 29, 2015 as submitted by AIL, that omnibus approval of related party transaction with ACL was obtained only for 'Sale of Finished Goods' for Rs. 12 crores and 'Purchase of Goods' for Rs. 20 crores. In this regard I note that Noticee, in its reply, has stated that the Noticee had arranged for a temporary interest free cumulative amount of over Rs. 200 crores from ACL and had repaid the same amount to ACL, by way of separate fund transfers from ACL, for the FY 2015-2016, and that the said transaction did not involve any sale of goods or purchase of goods from ACL. The Noticee has also contended that the aforesaid transaction was executed for the benefit of the investors as the Noticee had overdrawn its available cash credit limits for its working capital needs and therefore, was in urgent need of funds. Noticee has also contended that the said transaction was undertaken on an arms' length basis and all requisite approvals were taken and disclosures had been made by the Noticee in relation to all related party transactions in its Annual Report for the Financial Year 2015-2016, which was provided to SEBI. Thus, the Noticee has contended that the requirement of disclosure stood fulfilled. However, I note that the Noticee had disclosed a list of related party transactions in the Annual Report for the FY 2015-2016 wherein Noticee falsely stated that related party transaction with ACL worth Rs 200 crores was on account of "sale of goods". Thus, the Noticee had made a blatantly false disclosure in its aforesaid Annual Report as it did not disclose the fact that the Noticee had availed an interest free facility by way of funds transfer to the tune of more than Rs. 200 crores from ACL. Therefore, I find that the requirements under LODR Regulations do not stand fulfilled by the said false disclosure. I

also note that the aforesaid false disclosure stands contradictory to the Noticee's admission, in its reply, that the aforesaid RPT did not involve any sale or purchase of goods. I further note that the Noticee has not placed any evidence on record to demonstrate that Noticee had taken approval from shareholders and Audit Committee in terms of clauses 49(VII)(E) and Regulations 23(2) and (4) of LODR Regulations. Therefore, I find that the Noticee violated clauses 49(VII)(E) and Regulations 23(2) and (4) of LODR Regulations in relation to the aforesaid material related party transaction.

21. The Noticee has also contended that the aforesaid RPT was executed in order to safeguard investors and to promote the Noticee's business objectives as the Noticee was able to save over Rs. 2 crores in interest cost because of funds which were made available by ACL. The Noticee has contended that even if the RPT were to be considered as a violation of Clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations, the said violation, if any, was purely technical in nature and that the instant adjudication proceeding should not be pursued against the Noticee. In support of the aforesaid contention, the Noticee has placed reliance upon the judgements of Hon'ble SAT in *M/s. Cabot International Corporation vs. Adjudicating Officer, Sudha Commercial Company Limited vs. SEBI* and *Reliance Industries Limited vs. SEBI*, *Samkit Shares, Stock Brokers Pvt Ltd vs. SEBI*, *Chona Financial Services P. Ltd. vs. SEBI*, *KSL & Industries Ltd vs SEBI* and *RK Global vs. SEBI*, as well as the Hon'ble Supreme Court in *Hindustan Steel Ltd. vs. State of Orissa*, *Akbar Badrudin Badrudin Jiwani vs. Collector of Customs, Bombay*, *Superintendent and Remembrancer Legal Affairs to Government of West Bengal vs. Abani Maity*, *Nandakishore Prasad vs. State of Bihar* and *Union of India vs. HC Goel*. In this regard, I note that the facts involved in the instant adjudication proceeding are different from the judgements cited by Noticee, insofar as the instant adjudication proceeding involves a serious violation of Clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations. Therefore, I find that the reliance placed by the Noticee upon the aforesaid judgements is without any basis. I further note that Noticee has admitted that it had entered into the aforesaid material RPT and has only sought to explain the regulatory violation by way of the aforesaid submission. However, I note that the aforesaid explanation is not a valid reason for non-compliance of its mandatory regulatory obligation.

22. Therefore, in view of the foregoing findings, and Noticee's own admission that it has entered into the aforesaid material RPT without requisite approval as established above, I

find that the allegation that Noticee has violated Clauses 49(VII)(C) and 49(VII)(E) and Regulations 23(1), (2), and (4) of LODR Regulations stands established.

Issue No. 2- Does the violation, if any, attract monetary penalty under Section 23E of SCRA?

23. It has been established in the foregoing paragraphs that the Noticee has violated Clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established....."*
24. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund, I find that the aforesaid violation of Clauses 49(VII)(C) and 49(VII)(E) and Regulations 23(1), (2), and (4) of LODR Regulations by the Noticee will attract monetary penalty under Section 23E of SCRA, as applicable at the time of the impugned transactions, which is reproduced as under:

SCRA

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

23E. If a company or any person managing collective investment scheme or mutual fund fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees

25. I note that in the matters of M/s. NDTV vs. SEBI (Appeal No. 358 of 2015 – Hon'ble SAT's order dated 07.08.2019) and Oasis Securities Ltd. & Ors. vs. SEBI (Appeal No. 316 of 2018 – Hon'ble SAT's order dated 17.03.2020) Hon'ble SAT had upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for violation of clauses of Listing agreement. However, I note that in a subsequent order, the Hon'ble SAT vide its order dated 03.05.2021 in Suzlon Energy Ltd. and Anr. vs. SEBI (Appeal No. 201 of 2018) had set aside the imposition of penalty by AO under Section 23E of SCRA on the
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ground that the said provision was not applicable to violation of provisions of Listing agreement. I note that the said order has been challenged by SEBI in its appeal before the Hon'ble Supreme Court in Civil Appeal No. 4741 of 2021 titled SEBI vs. Suzlon Energy Ltd & Anr and the matter is pending. The limited purpose of these proceedings is to determine if the Noticee has violated Clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations and if so, determine whether penalty should be imposed and assess the quantum of such penalty. However, the enforcement of this order, shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

Issue No. 3 - What should be the quantum of monetary penalty?

26. While determining the quantum of penalty under Section 23E of SCRA, it is important to consider the factors as stipulated in Section 23J of the SCRA, as applicable at the time of the impugned transactions, which is reproduced as under:-

SCRA

Factors to be taken into account by the adjudicating officer.

Section 23J - While adjudging quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

27. I note that the material made available on record does not quantify the amount of disproportionate gain or unfair advantage obtained by the Noticee or loss caused to investors as a result of the default. I also note that the records do not bring out any repetitive default on the part of the Noticee in ensuring compliance with clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations. However, I find that the Noticee failed to adhere to the best practices of corporate governance as a listed entity.

28. I find that the Noticee had not obtained mandatory shareholders' approval for a material related party transaction which amounted to more than 10% of the annual turnover of the

Noticee. I further note that the Noticee had disclosed a list of related party transactions in the Annual Report for the FY 2015-2016 wherein Noticee falsely stated that related party transaction with ACL worth Rs 200 crores was on account of “sale of goods”. Thus, the Noticee had made a blatantly false disclosure in its aforesaid Annual Report as it did not disclose the fact that the Noticee had availed an interest free facility by way of funds transfer to the tune of more than Rs. 200 crores from ACL. In this regard, I note the following observations from the Adjudication Order dated September 18, 2019 in the matter of R.T. Exports Limited:

“It is pertinent to mention that the LODR Regulations were framed keeping in view that the related party transactions may pose potential or actual conflicts of interest and may raise questions whether such transactions are in the larger interest of the company as well as the stakeholders. Such allowance as resorted to by the Noticees would put related parties in position to influence the approval and vote against the resolution on rescinding the contract to ensure the continuation of the related party transaction in their favour.”

I further note the following observation from the Adjudication Order dated November 19, 2020 in the matter of Raymond Limited:

“It was observed over a period of time that the RPTs are prone to abuse by persons in control of the decision making of the corporate entity for personal gains. RPTs, if misused, may cause significant loss of value of the corporate entity entering into the RPT... SEBI came out with a circular ref. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 wherein certain changes were made in Clause 49 of listing agreement setting up a procedure to be followed in case of a listed corporate entity entering into an RPT. The objective behind the said provisions was to prevent a mischief of related parties entering into such RPTs with the listed corporate entity which would unjustly enrich them at the cost of loss of value of the corporate entity and ultimately the shareholders of such listed entity.”

29. Therefore, I am of the view that as a listed entity, the Noticee has the most solemn and onerous obligation to ensure compliance with Clause 49 of the Listing Agreement and Regulation 23(1), (2), and (4) of LODR Regulations and therefore is expected to maintain a higher level of due diligence in its regulatory compliance. I note that any failure to ensure compliance with mandatory regulatory provisions under clause 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations would adversely affect the integrity of securities market and interest of investors. I note that the

Noticee has not only failed to comply with the aforesaid regulatory provisions but had also given false information to shareholders about the aforesaid material related party transaction in its Annual Report for the FY 2015-2016 which in my opinion, is a serious violation of Clauses 49(VII)(C) and 49(VII)(E) of the Listing Agreement and Regulations 23(1), (2), and (4) of LODR Regulations and the quantum of penalty must be commensurate with the serious nature of the aforesaid regulatory violation in order to serve as a deterrent example against such violation.

ORDER

30. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 23J of the SCRA, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules and Section 23-I of SCRA read with Rule 5 of SCR Adjudication Rules, I hereby impose a penalty of Rs. 7,00,000/- (Rupees Seven Lakhs only) on the Noticee under the provisions of Section 23E of SCRA.
31. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.
32. As mentioned earlier in the paragraph 25 of the order, the enforcement of this order shall be subject to the outcome of Civil Appeal No. 4741 of 2021 titled SEBI vs. Suzlon Energy Ltd & Anr pending before the Hon'ble Supreme Court.
33. In terms of the provisions of Rule 6 of the Adjudication Rules and Rule 6 of SCR Adjudication Rules, a copy of this order is being sent to Noticee viz. Adhunik Industries Ltd. and also to SEBI.

Place:Mumbai

Date: May 13, 2022

**SOMA MAJUMDER
ADJUDICATING OFFICER**