

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/VV/AS/2022-23/22482 - 22489]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee No.	Noticee Name	PAN No.
1	India Quotient Advisers LLP	AADFI8263Q
2	Mr. Raichand Lunia	AAMPL8468K
3	Mr. Anand Lunia	ABBPL1111H
4	Mr. Madhukar Sinha	AWSPS9073R
5	Amicorp Trustees (India) Private Limited	AAKCA1834H
6	Mr. Mohamed Tariq Aboobaker	ADIPA1928J
7	Ms. Pallavi Prabhakar Uzgare	AATPU2492H
8	Ms. Kiran Madhusudan Bohra	BJTPB2320K

(The aforesaid 8 noticees are hereinafter being referred to as Noticee No. 1 to 8, respectively or collectively referred to as ‘the Noticees’)

In the matter of IQ Startup Fund Category I AIF

1. IQ Startup Fund Category I AIF (hereinafter referred to as “**AIF-IQ**” or “**Fund**”) has been set up in the nature of trust and it has been registered with SEBI as “*Category I Alternative Investment Fund*” on June 28, 2017 bearing registration no. IN/AIF1/17-18/0347. Securities and Exchange Board of India (“**SEBI**”) has conducted an offsite inspection of AIF-IQ for the period April 01, 2020 to March 31, 2021 (hereinafter referred as “**Inspection Period**”). The focus of the inspection was to look into compliance with respect to SEBI (Alternative Investment Funds) Regulations, 2012 (hereinafter referred as “**AIF Regulations**”) and circulars thereunder, Know Your Client (“**KYC**”), on-boarding of clients, fees/ charges, dealing with clients and their money, due diligence carried out by AIF-IQ, investor service / complaints redressal mechanism, Anti Money Laundering guidelines issued by SEBI from time to time etc. During the inspection following has been observed by the SEBI:
 - i. India Quotient Advisers LLP (hereinafter referred to as “**investment manager**” or “**Noticee No. 1**”) registered office address is “8, Lake View - I, Jagabhai Park, Rambaug, Maninagar, Ahmedabad, Gujarat - 380008, India” and it is acting as the Investment Manager of AIF-IQ. Details of its partners is as follows:

Table 1

Name of the partner	Date of appointment	PAN	DPIN
Raichand Lunia	24/04/2012	AAMPL8468K	01188845
Anand Lunia	24/04/2012	ABBPL1111H	01192870
Madhukar Sinha	01/07/2013	AWSPS9073R	02710802

- ii. Amicorp Trustees (India) Private Limited registered office address is “802, B Wing, 8th Floor, Naman Midtown, Off Senapati Bapat Marg, Elphinstone Road, Mumbai, Maharashtra – 400013, India” is the Trustee of the fund. Details of directors of Trustee is as follows:

Table 2

Name of the Director	Date of Appointment	PAN	DIN
Mohamed Tariq Aboobaker	11/01/2012	ADIPA1928J	05155876
Pallavi Prabhakar Uzgare	04/06/2013	AATPU2492H	06599473
Kiran Madhusudan Bohra	28/02/2019	BJTPB2320K	08336341

- iii. Key Investment Team of Investment Manager comprises of the following:

Table 3

S No.	Name and Designation /Role	Qualification	Scheme	Date of Appointment	Experience in brief
1.	Anand Lunia	MBA	IQ Alpha III and IQ Opportunities Fund	Since the launch of scheme	Founder & Partner at India Quotient Advisers LLP (IM entity). Prior to India Quotient, Anand worked as an Executive Director & Partner at Seed Advisers Private Limited where he handled the affairs of Seedfund (USD 150 Million fund).
2.	Madhukar Sinha	MBA	IQ Alpha III and IQ Opportunities Fund	Since the launch of scheme	Founder & Partner at India Quotient Advisers LLP (IM entity). Prior to founding India Quotient, he worked as a Senior Investment Manager in Aavishkaar Group and led investments in healthcare, education, and BOP ventures. He has also worked as consultant at Weather Risk Management Services where he worked on setting up the company's operations at SIDBI incubation Centre at IIT Kanpur.
3.	Prerna Bhutani	MBA	IQ Alpha III and IQ Opportunities Fund	Since the launch of scheme	She has been a serial entrepreneur and has been a part of the start-up ecosystem since the past 7 years. She launched her 1 st entrepreneurial venture in 2010 – a hyperlocal services company called One Call, with an aim to organize India's fragmented household services market. After running it for 2 years she moved to her next adventure –as co-founder at Red Quanta, India's leading mystery shopping app. After

S No.	Name and Designation /Role	Qualification	Scheme	Date of Appointment	Experience in brief
					scaling that up, she got pulled into CarTrade, India's #1 portal for automobiles as Business Head of the 'Sell Car' vertical.
4.	Gagan Goyal	B.Tech	IQ Opportunities Fund	Since the launch of scheme	One of the Partners at India Quotient Advisers LLP (IM entity). Previously, he worked as an Angel investor at Powai Lake Ventures. He was also the founder of 'Thinklabs'.

iv. Details of associates of AIF-IQ is as follows:

Table 4

Name of the Associate	Type of intermediary	SEBI Registration Number	Relationship	Nature of Business
India Quotient Investment Trust	A category I AIF with two schemes India Quotient 1 and India Quotient 2	IN/AIF1/12-13/0003	AIF managed by common IM and sponsored by partner of Fund's IM.	Investment
IQ Startup Fund II	Category 2 AIF	IN/AIF2/21-22/0882	AIF managed and sponsored by common IM and sponsor	Investment
First Cheque LLP	NA	NA	Entity where IM is the majority partner	Advisory and consultancy

v. AIF-IQ has launched two schemes, namely, IQ Alpha III and IQ Opportunities Fund. The corpus as on March 31, 2021 of IQ Alpha III was Rs.396.04 crores and of IQ Opportunities Fund was Rs. 227.2 crores, which complies with the minimum corpus requirement of Rs. 20 crores in each scheme. Further, the schemes IQ Alpha III and IQ Opportunities Fund have 85 and 69 investors, respectively, which is below the maximum permissible limit of 1000 investors in each scheme.

vi. **Continuing interest in the Fund was not maintained by India Quotient Management Consulting LLP ('sponsor'):**

a. In terms of Regulation 10(d) of the AIF Regulations, the Manager or Sponsor shall have a continuing interest in each scheme of an Alternative Investment Fund ("AIF") of not less than two and a half percent (2.5%) of the corpus or five crore rupees, whichever is lower. Further, Clause 3(e) of SEBI circular dated June 19, 2014 clarifies that continuing interest under Regulation 10(d) of the AIF

Regulations may be maintained pro-rata to the amount of funds raised from other investors in the AIF.

- b. It was observed from the contribution agreement dated August 30, 2019 entered with Noticee No. 1 by AIF-IQ, that the sponsor has committed an amount of five crore rupees. It was further observed that an amount of Rs. 111 crores have been drawn down from investors (*excl. India Quotient Management Consulting LLP*) of the scheme IQ Opportunities Fund as on March 31, 2021, who have committed an amount of Rs. 222 crores i.e. 50% of total commitment amount from other investors. Accordingly, Sponsor has been obligated to contribute an amount of Rs. 2.5 crores i.e. 50% of Rs. 5 crores commitment, as Sponsor's contribution to the Fund. However, it is observed that Sponsor has contributed an amount of Rs. 1 crore as on March 31, 2021. In view of the above, it has been observed that Sponsor was not having continuing interest in the Fund as prescribed under Regulation 10(d) of the AIF Regulations.
- c. The above observations have been corroborated from – 1) AIF-IQ bank statements, wherein, on Aug 21, 2020 an amount of Rs. 1 crore was credited by the Sponsor in to AIF-IQ; and 2) the audited financial statements, wherein, under 'Schedule to Financial Statement as on 31st March, 2021' it was observed that the Class B unit holders' fund (*Sponsor's contribution*) at the end of Mar 31, 2021 was Rs. 99,87,147/- (Rs. 1 crore less Rs. 12853 which was distributed during the year).
- d. In view of the above observations, it has been alleged that, by not ensuring Sponsor of the Fund to have continue interest, AIF-IQ has violated the provisions of Regulation 10(d) of the AIF Regulations read with Clause 3(e) of SEBI circular no. CIR/IMD/DF/14/2014 dated June 19, 2014.

vii. **AIF-IQ Fund made investment in an associate without obtaining prior approval of seventy-five percent of investors:**

- a. The details of holding of AIF-IQ in IQ Alpha III scheme is as follows:

Table 5

Name of the Scheme	Name of the Associate	Date of Investment	Amount Invested (in Rs. Crore)	Amount Outstanding as on Mar 31, 2021 (in Rs. Crore)
IQ Alpha III	India Quotient Investment Trust	FY 2020	0.01	0.01
	First Cheque LLP	FY 2019 and FY 2020	1.00	0.81

- b. The aforementioned transactions were also mentioned in the auditor's report for FY 2020-2021 under the head '*Related Party Transactions*'.
 - c. From the annual returns of First Cheque LLP ("**FCL**") for FY 2018-2019 and FY 2020-2021, it was observed that 'India Quotient Advisers LLP' (*investment manager of AIF-IQ*) with 99% partnership interest and Mr. Gagan Goyal, Partner in Sponsor and Investment Manager of AIF-IQ with 1% partnership interest collectively hold 100% partnership interest in FCL since its date of incorporation i.e. June 25, 2018. Therefore, in terms of Regulation 2(c) of the AIF Regulations, 2012, FCL is an associate of AIF-IQ.
 - d. Further, as per the note and term sheet submitted by AIF-IQ vide its reply dated February 04, 2022, it was observed that an investment of Rs 1 crore was committed by IQ Alpha III to the issuer FCL for '*Series seed convertible preferred stock*' on November 15, 2018. Subsequently, AIF-IQ transferred the said amount in tranches to FCL from December 2018 to June 2019.
 - e. It was observed from the reply of AIF-IQ dated Feb 04, 2022, that it had not sought the approval of minimum 75% of investors prior to the investment in associate as mandated under the Regulation 15(e) of the AIF Regulations.
 - f. In view of the above observations, it has been alleged that, by not obtaining prior approval from 75% of investors before making investment in its associate, AIF-IQ has violated the provisions of Regulation 15 (e) of the AIF Regulations read with provisions of Clause 3(h) of the SEBI circular CIR/IMD/DF/14/2014 dated June 19, 2014.
- viii. There were several other violations by AIF IQ for which administrative warning has been issued to the Noticee No. 1 vide letter dated July 05, 2022. Details of such violations are as follows:
- a. AIF-IQ failed to transfer stamp duty to RTA on issue, transfer and sale of units.
 - b. AIF-IQ failed to provide a detailed tabular example of distribution waterfall and how the fees and charges are applicable to all the classes of investors.
 - c. AIF-IQ failed to upload the quarterly report for the quarter ended December 2020 on SI portal within 7 calendar days from the end of quarter and also submitted

incorrect information in its quarterly report for quarter ended March 2021, June 2021 and September 2021.

- d. AIF-IQ failed to obtain registration from any of the SEBI registered KYC Registration Agencies (KRAs). It failed to collect requisite KYC documents from its clients, failed to upload KYC of its clients on the system of KRA and failed to carry out in-person verification of its clients.
 - e. AIF-IQ failed to maintain proper records of its investors owing to which it submitted incorrect information. It also failed to collect and maintain proper KYC records of its investors.
 - f. AIF-IQ failed to submit Compliance Test Report (CTR) to Trustees within 30 days from the end of the financial year 2020-2021.
 - g. AIF-IQ failed to inform changes in designated partners of Sponsor/Manager of the fund to SEBI.
- ix. For allegations and violations mentioned in above paras 1(vi) and (vii) w.r.t. investment manager, partners of Noticee 1 at relevant point of time i.e. Mr. Raichand Lunia (Noticee 2), Mr. Anand Lunia (Noticee 3), Mr. Madhukar Sinha (Noticee 4), its trustee *viz.* Amicorp Trustees (India) Private Limited (Noticee 5) and directors of Trustee namely, Mr. Mohamed Tariq (Noticee 6), Ms. Pallavi Prabhakar Uzgare (Noticee 7), Ms. Kiran Madhusudan Bohra (Noticee 8) have also been held responsible for the act of the Noticee No. 1 and together the aforementioned Noticees have been alleged to have violated the provisions of the AIF Regulations and SEBI Circulars as follows:-
- a. Regulation 15(1)(e) of the AIF Regulations read with Clause 3(h) of SEBI circular no. CIR/IMD/DF/14/2014 dated June 19, 2014.
 - b. Regulation 10(d) of AIF Regulations read with Clause 3(e) of SEBI circular no. CIR/IMD/DF/14/2014 dated June 19, 2014.
2. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the aforesaid provisions of the AIF Regulations and SEBI Circulars by the Noticees. Accordingly, vide communication order dated July 28, 2022, Ms. Asha Shetty (“**erstwhile AO**”) had been appointed as the Adjudicating Officer under Section 15-I (1) of the SEBI Act read with SEBI (Procedure for

Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') in the matter to inquire and adjudge under Rule 5 of the Adjudication Rules and under Section 15EA read with section 15HB of the SEBI Act, of the alleged aforesaid violations by the Noticees. Thereafter, pursuant to transfer of erstwhile AO, undersigned has been appointed as the Adjudicating Officer vide communication order dated October 06, 2022. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect*'. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders*'.

3. Accordingly, in terms of Rule 4(1) of the Adjudication Rules, a notice to show cause no. SEBI/HO/EAD-8/AS/SM/2022/46499/1-8/2022 dated August 30, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticees by erstwhile AO calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and why penalty, if any, be not imposed under Section 15EA read with section 15HB of the SEBI Act, as the case may be for respective alleged violations as mentioned hereinabove.
4. On receipt of records, it was observed that the SCN was forwarded *via* Speed Post Acknowledgement Due ("**SPAD**") and digitally signed e-mail to the Noticees and same was duly served upon them. It was also found from the records that, vide e-mail dated September 14, 2022, the Noticees common authorized representative, namely, Khaitan & Co. on the behalf of the Noticees requested for the inspection of records and the documents referred to and relied on therein. Accordingly, the Noticees have been granted inspection of documents and records and on November 17, 2022, the Noticees authorized representative had undertaken the aforementioned inspection in the matter.
5. Thereafter, on considering the material available on record and in the interest of natural justice, an opportunity of personal hearing has been granted to the Noticees in terms of Rule 4(3) of the Adjudication Rules on December 15, 2022. After seeking adjournment, the Noticees have availed the personal hearing on December 15, 2022 through its authorized representative(s) ("**ARs**"), wherein, ARs has made oral submissions w.r.t. charges and violations alleged against the Noticees. ARs further requested for a weeks' time for filing written reply in the matter. Accordingly, the Noticees have been allowed time up to December 22, 2022 to make written submissions in the matter. The Noticees through their common reply dated December 22, 2022 has *inter-alia* stated as follows:

- A. It is a settled position of law that the object of conducting inspection of a regulated entity is not to impose penalty, especially in the instances of procedural irregularities, if any, which have not affected the interests of the unit holders. In this regard, reliance has been placed upon the judgement of Hon'ble Securities Appellate Tribunal ("SAT") in the matters of *UPSE Securities Limited v. SEBI* (Appeal No. 109 of 2011, decided on July 25, 2011) and *Religare Securities Limited v. SEBI* (Appeal No. 23 of 2011, decided on June 16, 2011); and Ld. Adjudicating Officer of SEBI order in the matter of *inspection of Indiabulls Mutual Fund*.
- B. IQ Startup Fund Category I AIF is set up in the nature of a Trust and registered with SEBI as Category I Alternative Investment Fund on June 28, 2017 bearing registration no. IN/AIF1/17-18/0347. India Quotient Advisers LLP is the said scheme's investment manager. Amicorp Trustees (India) Private Limited acts as the Trustee to the Fund. India Quotient Management Consulting LLP is the sponsor of the Fund. The Fund has *two* schemes, namely:

I. IQ Opportunities Fund:

- a) The primary investment objective of the said scheme is to achieve attractive risk-adjusted returns through long term capital appreciation by investing in equity and/or equity linked and/or permissible mezzanine or other instruments of relatively lower-risk, high growth portfolio companies. Initial closing of the said scheme, which is close-ended in nature was effected on October 08, 2019 and the final closing on April 08, 2021. Units of the said scheme have been placed with high-net-worth individuals, corporate, financial institutions, insurance companies, foreign investors and other permissible investors. Per terms of Pre-Placement Memorandum ("PPM") of the said scheme, units of the said scheme are classified under the following categories:

Class A Units:

- i. **Class A1 Units:** Evidence beneficial interest in the scheme to the contributors contributing an amount equal to or more than INR 1 crore but less than INR 5 crore.
- ii. **Class A2 Units:** Evidence beneficial interest in the scheme to the contributors contributing an amount equal to or more than INR 5 crore.

Class B Units:

- i. **Class B1 Units:** Evidence beneficial interest in the scheme to the Sponsor or any other eligible person/s, as the Sponsor may designate on the making of capital contribution to the scheme.
- ii. **Class B2 Units:** Evidence beneficial interest in the scheme to such eligible person as the IM may designate, on the making of capital contribution.

Class C Units: Evidence beneficial interest in the scheme to the contributor to the scheme which is a government entity.

- b) The commitment period for the holders of class A1 units, Class A2 units and Class C Units is 42 (forty-two) months from the date of final closing. Whereas, for the holders of Class B1 Units and Class B2 Units, the commitment period is 60 (sixty) months from the date of the final closing.
 - c) The said classification and terms connected thereto are contained in the PPM of the scheme, which (i) was filed with SEBI before the launch of the scheme, at which stage, SEBI had no objections/comments/observations; and (ii) was commercially agreed between investors of the scheme.
- II. **IQ Alpha III:** The primary objective of the scheme is to achieve attractive risk-adjusted returns through long-term capital appreciation by early stage investing in equity and/or equity linked and/or mezzanine or other instruments of the companies engaged in differentiated technology enabled services or product offerings in information technology ('IT'), internet, technology driven consumer plays, technology driven global market plays, education and training, retail, media, entertainment, financial services and other spaces. Initial closing of the said scheme, which is close-ended in nature was effected on April 01, 2018 and the final closing on December 01, 2020. Units of the said schemes have also been allotted on private placement basis to high-net-worth individuals, corporate, financial institutions investors, residing in India or outside India. Units of the said scheme have also been categorised into classes.

C. Allegation A: Continuing interest in the IQ Opportunities Fund was not maintained by the Sponsor:

- I. SEBI has failed to appreciate that as per terms of PPM of IQ Opportunities Fund, units of the scheme are divided in different categories, which have different drawdown

terms and commitment period. The commitment period for Class A1, A2 and C units of IQ Opportunities Fund is **42 months** from the end of final closing. Whereas, the commitment period for Class B1 (units subscribed by the Sponsor) and Class B2 is **60 months** from the end of final closing. Accordingly, drawdown from investors belonging to Class B category is required to be gotten over a period of 60 months, i.e., 5 years. Accordingly, as per terms of the PPM, drawdown from the Sponsor (Class B1 units) has been pro-rated at the rate of 20% annually (i.e., total 100% over a period of 5 years). Thus, an amount of INR 1 crore had/is being drawn down from the Sponsor, as per pre-agreed terms of the PPM every year.

- II. The drawdown of commitment from the Sponsor is in compliance with provisions of the PPM, which was duly filed with SEBI prior to the launch of IQ Opportunities Fund and Regulation 10(d) of the AIF Regulations read with Clause 3.e of the AIF Disclosure Circular. Accordingly, an amount of INR 1 crore has been drawn down by the Sponsor in terms of the *pro-rata* requirement set out in the PPM.

D. Allegation B: Not obtaining prior approval from 75% investors before making investment in an associate, namely First Cheque LLP

- I. At the time of the concerned investment in FCL, it was not envisaged that FCL to be an '*associate*' of the Fund. The intention was to onboard around 15 investors, and once such investors would be on boarded, interest in FCL would be transferred to such investors, who would have held equal partnership interest in FCL (i.e. ~7% each), resultantly bringing down the investment manager's stake in FCL to negligible proportions. The same is also evident from the term sheet between IQ Alpha III and FCL, which states that all economic interest would be transferred to the proposed investors, and the Fund was supposed to be one of the partners with only ~7% stake. Further, even the amount transferred to FCL was held as '*advance for investment*' as per the audited financials of IQ Alpha III and not as '*investment*'. However, as the plan to raise funds from other investors did not fructify, FCL became an associate of the Fund, and was reported as such in IQ Alpha III's audited financial statements for the financial year 2020-21. At this stage however, as the investment by the IQ Alpha III had already been effected, it was not possible to obtain *prior approval* of investors of the said scheme.
- II. Moreover, the transaction with FCL had already been unwound during the financial year 2021-22, and all amounts outstanding from the initial investment of INR 1 crore has already been returned, **along with gains** to the tune of INR 9.47 Lakhs. Ledger

extracts evidencing the repayment to the Fund was also submitted with SEBI at prior instances. Furthermore, investors of IQ Alpha III had also been informed of the overall transaction, the circumstances leading up to FCL's classification as an "associate" and the subsequent unwinding of the transaction vide a communication dated April 22, 2022.

- III. The Fund had also assured SEBI that going forward, prior approval of investors shall be obtained prior to investment(s), if any in any associate of the IM/Trustee/Sponsor.
- IV. Thus, given that the investment in question has been unwound, without any loss, and in fact gains to the scheme's investors to the tune of INR 9.47 Lakhs, there exist no violations in this regard, and consequently the allegation levelled by SEBI to this end is infructuous and ought to be withdrawn.

E. Given the Technical/venial/procedural nature of allegations levelled in the SCN, all directors, including former director of the Trustee, and all partners of the IM ought not to be arrayed in the instant adjudication proceedings as noticees

- I. The SCN does not contain any specific allegation / findings against each of the Noticees, *especially the individual Noticees* to establish that *they* have failed to comply with the AIF Regulations or any direction issued by SEBI in this connection. The SCN also does not contain any reasons why the individual Noticees have been arrayed as parties to the instant adjudication proceedings.
- II. Penalty under Section 15EA of the SEBI Act can only be imposed on a person, if such person fails to comply with the AIF Regulations or the directions issued by SEBI. However, as it is not even SEBI's case that the individual Noticees had themselves failed to comply with any of the aforesaid, no penalty can be imposed on them as a consequence under Section 15EA or any other provision of the SEBI Act. In this regard, reliance has been placed upon the judgement of Hon'ble Supreme Court in the matter of *Dayle De'Souza v. Government of India Through Deputy Chief Labour Commissioner* (SLP (CRL.) NO. 3913 of 2020, October 29, 2021).
- III. Thus, given that there is no finding or allegation in the SCN which is directed against/ or attributed to the individual Noticees that could justify the initiation of instant proceedings against them, the SCN ought to be withdrawn with immediate effect.

- F. Noticees prayed that the SCN be withdrawn with immediate effect and no penalty under Section 15EA of the SEBI Act be imposed on the Noticees, as a consequence of the

alleged violations which, without prejudice to the aforesaid are *non est*, or taken at the highest are only technical and venial in nature. In this regard, reliance has been placed upon the judgement of Hon'ble SAT in the matter of *P.G Electroplast Limited v. SEBI* [Appeal No.281 of 2017] and the judgement of Hon'ble Supreme Court in the matter of *SEBI v. Sunil Krishna Khaitan* (Civil Appeal No. 8249 OF 2013).

6. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, common reply/ submissions of the Noticees submitted/ made during the instant proceedings before the undersigned. Before dealing the case, it would be appropriate to provide reference to the provisions alleged to be violated by the Noticees at the relevant times and same read as under: -

AIF Regulations, 2012

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,

—

(c) “associate” means a company or a limited liability partnership or a body corporate in which a director or trustee or partner or Sponsor or Manager of the Alternative Investment Fund or a director or partner of the Manager or Sponsor holds, either individually or collectively, more than fifteen percent of its paid-up equity share capital or partnership interest, as the case may be.

Investment in Alternative Investment Fund.

10. Investment in all categories of Alternative Investment Funds shall be subject to the following conditions: -

(d) the Manager or Sponsor shall have a continuing interest in the Alternative Investment Fund of not less than two and half percent of the corpus or five crore rupees, whichever is lower, in the form of investment in the Alternative Investment Fund and such interest shall not be through the waiver of management fees.

General Investment Conditions.

15. (1) Investments by all categories of Alternative Investment Funds shall be subject to the following conditions: -

(e) Alternative Investment Fund shall not invest in associates except with the approval of seventy-five percent of investors by value of their investment in the Alternative Investment Fund.

SEBI circular CIR/IMD/DF/14/2014 dated June 19, 2014

Guidelines on disclosures, reporting and clarifications under AIF Regulations.

3. Clarification on certain aspects of the AIF Regulations

e. For the purpose of maintaining continuing interest under Regulation 10(d) of the AIF Regulations, such interest may be maintained pro-rata to the amount of funds raised (net) from other investors in the AIF.

h. For the purpose of Regulation 15(1)(e), prior to every investment in an associate, approval of the investors as specified shall be obtained.

7. I note that, the limited questions before me in this case are – a) whether Sponsor has failed to maintained the continuing interest in the IQ Opportunities Fund; and b) whether AIF-IQ has failed to obtained prior approval from 75% investors before making investment in an associate, namely First Cheque LLP. Further, I need to look into the role of the partners i.e. Noticees No. 2 – 4 of AIF-IQ and directors i.e. Noticees No. 6 - 8 of trustee Amicorp Trustees (India) Private Limited in this case. With regard to first issue of maintaining continuing interest by a Manager/ Sponsor, I note that Regulation 10(d) of the AIF Regulations has clearly brought out that, the Manager or Sponsor shall have continuing interest of not less than 2.5% of the corpus or 5 crore rupees in Alternative Investment Fund, whichever is lower. Further, as per Clause 3(e) of *SEBI circular No CIR/IMD/DF/14/2014 dated June 19, 2014*, such continuing interest under Regulation 10(d) of the AIF Regulations may be maintained **pro-rata to the amount of funds raised (net) from other investors** in the AIF (*emphasis applied*). In terms of aforesaid clause 3(e), it is amply clear that the pro-rata calculation referred herein is with respect to the “**amount of funds raised (net) from other investors**” and same is nowhere related to the timelines or the commitment period of an AIF. In this case, amount of Rs 111 crores had been drawn down from the investors out of the total commitment amount of Rs 222 crores i.e. 50% of the total commitment amount from other investors. Accordingly, by virtue of Regulation 10(d) of the AIF Regulations, AIF-IQ/ Sponsor (India Quotient Management Consulting LLP) was under the obligation to contribute Rs 2.5 crores i.e. 50% of Rs 5 crores commitment of the Sponsor. From the available records, I note that AIF-IQ/ Sponsor (India Quotient Management Consulting LLP) had only contributed an amount of Rs. 1 crore as on March 31, 2021. Therefore, I found that AIF – IQ/ Sponsor (India Quotient Management Consulting LLP) were well short of the desired requirement of maintaining continuing interest in AIF and thus, I am of a view that Noticee No. 1 has violated the Regulation 10(d) of the AIF Regulations read with Clause 3(e) of SEBI circular No CIR/IMD/DF/14/2014 dated June 19, 2014.
8. The Noticees have contended that the drawdown from the Sponsor (Class B1 units) has been pro-rated at the rate of 20% annually (*i.e., total 100% over a period of 5 years*) and accordingly, an amount of Rs 1 crore had/is being drawn down from the Sponsor, as per pre-agreed terms of the PPM every year. Therefore, the drawdown of commitment from the Sponsor is in compliance with provisions of the PPM. In this regard, I note that, it is clearly brought out in above para 7 that, pro rata requirement mentioned under Clause 3(e) of aforementioned SEBI

circular dated June 19, 2014 is with respect to the “*amount of funds raised (net) from other investors*” and same is nowhere related to the timelines or the commitment period of an AIF. However, the Noticees in this case has pro-rated the desired requirement on the basis of the timelines or the commitment period of an AIF and therefore, same cannot be said to be in compliance of desired provision of the Regulation 10(d) of the AIF Regulations. Thus, I find no merits in such contentions of the Noticees.

9. Coming to the second allegation of making investment in an associate without obtaining prior approval of seventy-five percent of investors, I note that in terms of Regulation 2(c) of the AIF Regulations, a company or a limited liability partnership or a body corporate in which a director or trustee or partner or Sponsor or Manager of the Alternative Investment Fund or a director or partner of the Manager or Sponsor holds, either individually or collectively, more than fifteen percent of its paid-up equity share capital or partnership interest, terms to be an “*associate*”. Further, Regulation 15(1)(e) of the AIF Regulations clearly mentions that an AIF shall invest in “*associate*”, only with the approval of seventy-five percent of investors by value of their investment in the AIF. Also, Clause 3(h) of SEBI circular No CIR/IMD/DF/14/2014 dated June 19, 2014 states that for the aforesaid purpose of investing in “*associate*” in terms of Regulation 15(1)(e) of the AIF Regulations, approvals of investors (75% of investors by value of their investment in the AIF) shall be obtained prior to every investment in an “*associate*”. Considering the language of aforementioned provisions of the AIF Regulations and said circular, I note that the requirement of obtaining approval of 75% of investors by value of their investment in the AIF has been clearly spelt out and there is no ambiguity in this regard.
10. I note from the available records that during FY 2018-19 and 2019-2020, FCL had received investment of Rs 1 crore from IQ Alpha III scheme and as on March 31, 2021 outstanding amount was Rs 0.81 crore. I further note from the annual returns of FCL for FY 2018-19 and 2019-2020 that, India Quotient Advisers LLP (*investment manager of AIF-IQ*) with 99% partnership interest and Mr. Gagan Goyal (*Partner in Sponsor and Manager of AIF-IQ*) with 1% partnership interest collectively hold 100% partnership interest in FCL, since its date of incorporation i.e. June 25, 2018. Therefore, I found that in terms of Regulation 2(c) of the AIF Regulations, FCL is an associate of AIF-IQ. I also note that the Noticees in their common submissions has also admitted that FCL has been an associate to AIF-IQ. The Noticees have also admitted the fact that they have not obtained prior approval from its investors of the said scheme regarding the same. Therefore, I found that the Noticees have failed to obtained prior approval from 75% of investors as per the provisions of Regulation 15(1)(e) of the AIF Regulations read with Clause 3(h) of SEBI circular No CIR/IMD/DF/14/2014 dated June 19, 2014.

11. The Noticees have contended that at the time of concerned investment in FCL, it was not envisaged that FCL to be an ‘associate’ of the Fund. The intention was to onboard around 15 investors, and once such investors would be on boarded, interest in FCL would be transferred to such investors, who would have held equal partnership interest in FCL (i.e. ~7% each), resultantly bringing down the investment manager’s stake in FCL to negligible proportions. Moreover, the transaction with FCL had already been unwound during the financial year 2021-22, and all amounts outstanding from the initial investment of INR 1 crore has already been returned, along with gains to the tune of INR 9.47 Lakhs. In this regard, I note that the desired requirements have been clearly spelt out under the AIF Regulations and aforesaid submission of the Noticees shows that before receiving investment from FCL, they were well aware of the same. However, the Noticees have deliberately committed an investment of Rs 1 Crore in associate FCL by IQ Alpha III scheme for ‘Series seed convertible preferred stock’ on November 15, 2018. Subsequently, AIF-IQ transferred the said amount in tranches to FCL from December 2018 to June 2019. I further note that Clause 3(h) of the said circular clearly states that approval from 75% investors is desired prior to every investment in an “associate”. Therefore, such contentions of the Noticees are devoid of any merit and thus, rejected hereby.
12. In the instant matter the partners of Noticee No. 1 and the directors of trustee i.e. Noticees No. 2 to 4 and 6 to 8 have also been charged for the violations of AIF Regulations and said SEBI circular. In this regard, the Noticees have contended that SCN does not contain any specific allegation/ findings against them to establish that they have failed to comply with the AIF Regulations or any direction issued by SEBI in this connection. Further, the SCN does not contain any reasons, why the individual Noticees have been arrayed as parties to the instant adjudication proceedings. I have perused the material before me and the contentions raised by the Noticees and I note that, it is true that nothing specific about the roles and responsibilities of partners of Noticee No. 1 and the directors of trustee w.r.t. alleged violations has been mentioned. I further note that, in terms of Regulation 2(q) of the AIF Regulations, a “manager” means any person or entity who is appointed by the Alternative Investment Fund to manage its investments. Since, Noticee No. 1 viz. India Quotient Advisers LLP, who is manager of the AIF-IQ and Noticee No. 5, who is trustee of the AIF-IQ has already been charged for the aforementioned violations of AIF Regulations and said SEBI circulars, therefore, in my opinion until and unless specific role of partners of Noticee No. 1 and the directors of trustee i.e. Noticees No. 2 to 4 and 6 to 8 is brought out in the SCN, it would not be appropriate to fastened them with the charge of non-compliance of the provisions of the AIF Regulations and said SEBI circulars. In view of the above, I found merit in the contentions of the Noticees No. 2 to 4 and 6 to 8 and thus, I absolve them from the charge of violations of aforementioned AIF Regulations and said SEBI circulars.

13. During instant proceedings, the Noticees have contended that the object of conducting inspection of a regulated entity is not to impose penalty, especially in the instances of procedural irregularities, if any, which have not affected the interests of the unit holders. In this regard, reliance has been placed upon the judgement of Hon'ble **SAT** in the matters of *UPSE Securities Limited v. SEBI* (Appeal No. 109 of 2011, decided on July 25, 2011) and *Religare Securities Limited v. SEBI* (Appeal No. 23 of 2011, decided on June 16, 2011); and Id. Adjudicating Officer of SEBI order in the matter of *inspection of Indiabulls Mutual Fund*. In this regard, I note that the Noticee No. 1 and 5 i.e. Manager and Trustee of AIF-IQ have been issued **"Administrative Warning"** vide letter dated July 05, 2022 by SEBI. The aforementioned "Administrative Warning" has been issued for non-compliance with AIF Regulations and various circulars/ guidelines issued thereunder for – "a) *failing to transfer stamp duty to RTA on issue, transfer and sale of unit*; b) *failing to provide detailed tabular example of distribution waterfall*; c) *failing to upload quarterly report*; d) *submitting incorrect information in its quarterly report*; e) *failing to obtain registration from KYC Registration Agencies*; f) *failing to collect KYC documents from clients*; g) *failing to maintain proper records of its investors*; h) *failing to submit Compliance Test Report to Trustees*; i) *failing to inform changes in designated partners, etc*". Therefore, I found that the Noticee No. 1 and 5 have already been issued warning by SEBI w.r.t. instances of procedural irregularities at their end. Further, the instances of not maintaining continuing interest by Sponsor and not taking approvals from 75% of investors are serious lapses and in no means can fall under the category of procedural irregularities. Instead, in my considerate view, such violations on part of the Noticees No. 1 and 5 is deliberate defiance of the laid down requirements under the AIF Regulations and therefore, this case is fit for initiating adjudication proceedings for aforementioned violations. I have also perused the aforesaid judgements relied upon by the Noticees and I found that benefit of little irregularity/ deficiency/ procedural requirements noticed during the course of the inspection has already been extended to them in way of "Administrative Warning" issued to them in this case.
14. In view of the above discussions, I found that the Noticees No. 1 and 5 being manager of AIF-IQ and trustee of AIF-IQ, respectively, have failed in - a) maintaining continuing interest of Sponsor of Rs 2.5 Crores in IQ Opportunities Fund; and b) obtaining prior approval of 75% of investors w.r.t. AIF-IQ investment of Rs 1 Crore in its associate FCL. Therefore, the Noticees No. 1 and 5 have violated the provision of the Regulation 10(d) of the AIF Regulations read with provisions of Clause 3(e) of SEBI circular no. CIR/IMD/DF/14/2014 dated June 19, 2014 and Regulation 15(1)(e) of the AIF Regulations read with Clause 3(h) of SEBI circular no. CIR/IMD/DF/14/2014 dated June 19, 2014 and thus, the Noticees are liable for penalty under Section 15EA of the SEBI Act. The aforesaid penalty provision is mentioned is as follows:

SEBI Act, 1992

Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts.

15EA. Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.

15. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act. The factors stipulated in Section 15J of the SEBI Act reads as follows: -

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

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

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

16. In this case, from the material available on record, the extent of loss suffered by the investors or unit holders as a result of the default cannot be computed. However, it is found in this case that the Noticees No. 1 and 5 being manager of AIF-IQ and trustee of AIF-IQ, respectively, have failed in maintaining continuing interest of Sponsor of Rs 2.5 Crores in IQ Opportunities Fund and have failed in obtaining prior approval of 75% of investors w.r.t. AIF-IQ investment in its associate FCL. Considering the same, I am of the view that the aforesaid requirements under the AIF regulations serve very important purpose of ensuring serious involvement of an investment manager, sponsor and trustee in an Alternative Investment Fund and enhancing transparency in its management of Fund.
17. The Noticees have contended that the failure at their end in complying with the requirements under the AIF regulations and said SEBI circulars is of technical and venial in nature. In this regard, I am of a view that requirement of maintaining continuous interest of Sponsor in an AIF in terms of Regulation 10(d) of the AIF Regulations and obtaining prior approval of 75% of investors before making investment in associate in terms of Regulation 15(1)(e) of the AIF

Regulations, as found in this case is neither technical nor venial in nature. I have perused the judgement Hon'ble SAT in the matter of *P.G Electroplast Limited (Supra)* and I note that the said judgement has referred about “*party not acting deliberately*”, however, in this case I found that there was deliberate defiance by the Noticees No. 1 and 5 in complying with the aforesaid requirements clearly brought out in the respective provisions of the AIF Regulations and said SEBI circular. Further, I am of the opinion that “*doctrine of doubtful penalization*” as mentioned in the Hon'ble Supreme Court judgement in the matter of *Sunil Krishna Khaitan (Supra)* is not applicable in terms of facts and circumstances of instant case. In view of the above, I found no merits in such arguments of the Noticee and in my considerate opinion such deliberate defiance of statutory provisions envisaged in the AIF Regulations to guard the interest of investors in the AIF schemes cannot be in the interest of securities market. Considering the aforesaid facts and circumstances, I am of the view that this case deserves imposition of monetary penalty for the act of non-compliance with the statutory provisions by the Noticees No. 1 and 5.

18. Considering all the facts and circumstances of the case, factors listed in Section 15J of the SEBI Act and the principle laid down in *SEBI v/s Bhavesh Pabari* (CIVIL APPEAL NO(S).11311 OF 2013) and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose following penalty upon the **India Quotient Advisers LLP (Noticee No. 1)** and **Amicorp Trustees (India) Private Limited (Noticee No. 5)** and in my view following penalties commensurate with the violations committed by these Noticees:

Name of the Noticee	Penalty
India Quotient Advisers LLP (Noticee No. 1)	Rs 2,50,000/- (Rupees Two Lakh Fifty Thousand Only).
Amicorp Trustees (India) Private Limited (Noticee No. 5)	Rs 2,50,000/- (Rupees Two Lakh Fifty Thousand Only).

19. The Noticees shall remit / pay the said total amount of penalty within 45 days of receipt of this order by way online payment on SEBI website at following tabs on SEBI website www.sebi.gov.in – ENFORCEMENT -> Orders ->Orders of AO -> Pay Online or by way of using the web link <https://portal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case you face any difficulties in payment of penalties, you may contact the support at portalhelp@sebi.gov.in.
20. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD 1- DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery / settlement amount and legal charges along with order details)	

21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
22. In terms of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: December 28, 2022
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer