

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/VC/2022-23/21304)**

UNDER SECTION 23-I OF THE SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of
Vipul Limited
(PAN: AAACA5396C)

In the matter of Vipul Limited

BACKGROUND OF THE CASE

1. Vipul Limited (hereinafter referred to as '**Noticee**' / '**Company**' / '**Vipul Ltd**') is listed on NSE and BSE with effect from April 04, 1995 and is in the business of Real Estate. The registered and corporate offices of the Company are in New Delhi. The listed capital of the company is ₹ 11,99,84,480.
2. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination, wherein it was alleged that the Company had not disclosed that it had defaulted in payment of interest / repayment of secured loans to PNB Housing Finance Ltd (hereinafter referred to as '**PNBHFL**') and the notice by the PNBHFL in this regard u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '**SARFAESI Act**') was served on February 11, 2020, on the Company. The said disclosure was mandatory as per Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI felt satisfied that there were sufficient grounds to inquire and adjudicate upon the violation of provisions of the LODR Regulations and SEBI Circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 (hereinafter referred to as '**SEBI Circular**'), by the Noticee. SEBI appointed Shri Prasanta Mahapatra as the Adjudicating Officer, vide order dated October 06, 2021 under Section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA, 1956**') read with Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCR Adjudication Rules**') read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 23E of the SCRA, 1956 for the violation of the provisions of Regulation 30(1) read with Regulation 30(2) and (6), of LODR Regulation and with Para A of Part A of Schedule III of LODR Regulations and read with clause 2 of Listing Agreement and Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of LODR Regulation and read with clause 2 of Listing Agreement alleged to have been committed by the company. Pursuant to transfer of Shri Prasanta Mahapatra, the undersigned was appointed as the Adjudicating Officer in the matter vide *communiqué* dated June 07, 2022 to inquire into and adjudge under the provisions of the Section 23E of the SCRA, 1956 for the aforesaid violations alleged to be committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing ref. no. SCN/SEBI/EAD/PM/GD/12328/1/2022 dated March 24, 2022, (hereinafter referred to as '**SCN**') was served on Noticee in terms of the provisions of rule 4 of the SCR Adjudication Rules read with Section 23-I of the SCRA, 1956, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of Section 23E of the SCRA, 1956 for the alleged violations. I note that SCN issued to the Noticee was duly served and acknowledged by the Noticee. Noticee vide email dated April 26, 2022

requested for additional 15 days' time period for filing of reply to the SCN, due to unavoidable circumstances. Thereafter, Noticee furnished interim reply to the SCN vide letter dated May 10, 2022.

5. In the interest of natural justice, an opportunity of hearing on August 29, 2022 was granted to the Noticee, vide Hearing Notice dated August 11, 2022. Mr. Sunil Kumar, Company Secretary of the Company appeared for the scheduled personal hearing on August 29, 2022, by way of video conference on cisco Webex and sought time till September 05, 2022 to make the detailed submissions to the SCN which was acceded to. Vide email dated September 5, 2022, Noticee informed that the Mr. Amitabh, Authorised Representative (hereinafter referred to as 'AR') of the Company, is not well due to COVID and therefore, requested 2 weeks' time to make detailed submissions. Thereafter, Noticee vide letter dated September 19, 2022 furnished reply to the SCN. Vide hearing notice dated November 10, 2022 opportunity of hearing on November 16, 2022 was granted to the Noticee. The AR, Mr. Alok Srivastava and Mr. Sunil Kumar, Company Secretary appeared for the scheduled personal hearing on November 16, 2022, before the adjudicating officer and reiterated the submissions made by Noticee vide replies dated May 10, 2022 and September 19, 2022, to the SCN. The AR further submitted that the incidental non-compliances in disclosures were absolutely non-intentional and has neither benefitted any one nor incurred losses to anyone. The main reason for non-disclosure was the shortage of staff during the pandemic period and indulging of compliance team in litigations due to the defective notices.

6. The allegations levelled against Noticee in the SCN are summarised as under:

- 6.1 *"SEBI had conducted an examination wherein it was alleged that Vipul Ltd had not disclosed that it had defaulted in payment of interest/ repayment of secured loan to PNBHFL and that the notice by PNBHFL in this regard u/s 13(2) of the SARFAESI Act was served on February 11,*

2020. The said disclosure was mandatory as per Regulation 30 of LODR Regulations.

6.2 The said observation was forwarded to Bombay Stock Exchange (BSE) for comments. The Exchange after obtaining replies from the Company, had commented the following:

“It is observed that the Company has admitted that it has delayed the disclosure of the SARFAESI notice. The explanation provided by the company that it did not want to adversely affect the company’s stakeholders, is unacceptable as it was a material information and hence had to be disclosed. Further, it is observed that the SARFAESI notice is dated February 11, 2020, which is much before the lockdown was implemented in the country and the company cannot take shelter under the force majeure conditions. BSE issued a warning letter dated January 11, 2021 to Noticee for non-disclosure”.

6.3 The observation was also forwarded to National Stock Exchange (NSE) for their analysis and comments. NSE, after obtaining reply from the company, had provided the following comments:

- (i) Non-compliance of disclosures as per SEBI circular dated November 21, 2019 for all quarter starting Dec 31, 2019 (Format C2) and every time monthly instalment was not honoured within 30 days (Format C1).*
- (ii) Non-compliance of disclosure of defaults made by listed entity since September 2019 in terms of Regulation 30 of LODR read with Schedule III Part A Para A point 6.*
- (iii) Non-disclosure of following events considering Reg 30(4) & 30(7) of LODR:*
 - SARFAESI notice dated 11-02-2020*
 - Possession notice dated 22-05- 2020*

- Sale notice dated 01-07-2020
- Interim order dated 05-08-2020 (DRT)
- Possession notice dated 14-08-2020
- Auction Notice dated 26-08-2020
- Demand Notice to Promoter of the company dated 09-12-2020

(iv) *The company has updated about litigation with PNB housing on July 31, 2020. However the company has not provided details of line items of litigation in terms of SEBI Circular dated September 09, 2015. The exchange has raised a clarification for disclosure of the same which is unanswered till date. It is also understood that the said update was given with delay based on the wordings in the disclosure. The company has been selective in its disclosures relating to whole events as positive updates (Restoration Notice dated Aug 12, 2020) was disclosed and all updates were not disclosed.*

6.4 *During the examination conducted by SEBI, replies were also sought from PNBHFL (the Lender) in this regard. It was observed from PNBHFL's notice dated February 11, 2020 that the Company had obtained sanctioned loan facility from the Lender to the tune of more than ₹ 1000 Crores during 2016-2018. PNBHFL had sanctioned Construction Finance Facilities across various timelines for the sum of ₹ 300,00,00,000/- (Rupees three hundred Crores only) vide Sanction Letter dated December 29, 2016 as Loan Facility 1, ₹ 90,00,00,000/- (Rupees ninety Crores only) vide Sanction letter dated January 22, 2018 as Loan Facility 2 and ₹ 695,00,00,000/- (Rupees six hundred and ninety-five Crores only) vide Sanction letter dated August 31, 2018 in favour of Vipul Ltd along with Moon Apartments Private limited as security provider, Punit Beriwalla as guarantor vide Loan Account No. WFN/CCF/0616/297395, WFN/CCF/0118/482644 and WFN/CCF/0918/575112 respectively thereto with respective Loan Agreements dated September 09, 2016, February 05, 2018 and September 10, 2018. Subsequent to the execution*

of Construction Finance Loan Corporate Term Loan related documents, the above said Loan Facility No.1 was disbursed in two tranches for ₹ 212,80,00,000/- (Rupees two hundred twelve Crores and eighty lakh only) (Loan A) and ₹ 87,20,00,000/- (Rupees eighty seven Crore twenty lakhs only) (Loan B) respectively. Thereafter, on February 07, 2018 Loan Facility No.2 for ₹ 90,00,00,000/- (Rupees ninety Crores only) was disbursed. Thereafter, the Loan Facility No.3 was disbursed In various tranches for ₹ 230,00,00,000/- (Rupees two hundred and thirty Crores only) from September 2018 to December 2019 and no disbursement has been made for thereafter in respect of this facility. However, as per the terms and conditions of the Sanction Letter issued for Loan Facility no.3 after this disbursement, the Loan A amounting to ₹ 212,80,00,000/- (Rupees two hundred twelve Crores and eighty lakh only) was closed. Thereafter, there were defaults by the Company, subsequent to which the Loan account was classified as Non-Performing Asset (NPA) on January 31, 2020.

6.5 The Lender in its reply dated February 25, 2021 informed following details regarding active loans pertaining to Vipul Ltd (Copy of the email of PNBHFL was enclosed with the SCN):

(i) List of all active accounts with PNBHFL:

Table No. 1

Loan Number	Customer Name	SANC_AMT	Loan Amount Disb	Current Loan Status (as on 25/02/2021)
WFN/CCF/061 6/297395	Vipul Limited	872000000	872000000	Open
WFN/CCF/011 8/482644	Vipul Limited	900000000	900000000	Open
WFH/CCF/091 8/575112	Vipul Limited	2450000000	2300000000	Open

(ii) As per reply of PNBHL, the default by the Company started in February 2019 against the above loans. A notice dated February 11, 2020 was served to the Company for default. It was observed from Para 9 of the notice dated February 11, 2020 that PNBHFL had informed the Company that:

"We hereby inform you that you (Vipul Ltd) the above named addressee have committed breach of the terms and conditions of the said loan agreement and other documents executed in relation thereto by inter alia defaulting in payment of instalments due and payable by you to PNBHFL under the said loan agreement. Despite repeated requests calling upon you to repay the interest due, all of you and each of you who are jointly and severally liable, have failed to repay the outstanding dues.

.....

As the Equated Monthly Instalments of the aforesaid Loan Accounts has remained overdue, your Account has been classified as a "Non-Performing Asset (NPA)" on 31.01.2020 in the books of accounts maintained by PNBHFL in accordance with the directives and guidelines relating to asset classification, issued by the National Housing Bank/ Reserve Bank of India, from time to time."

(iii) The said notice also contained intimation that the lender may take possession of the secured assets of the Company. Following is the list of notices sent by PNBHL to the Company in chronological order:

Table No. 2

S. No.	Type of Notice	Date	Purpose
1.	Notice under Section 13(2), SARFAESI Act, 2002	February 11, 2020	Demand Notice under SARFAESI Act, 2002 read with its rules

S. No.	Type of Notice	Date	Purpose
2.	Notice under Section 13(4), SARFAESI Act, 2002	May 22, 2020	Possession notice
3.	Sale Notice issued under rules of SARFAESI Act, 2002	July 01, 2020	Sale Notice for auction to be held on August 06, 2020
4.	Interim Order passed by the Hon'ble DRT -2, New Delhi wherein no interim stay was granted to the Borrower, Security Provider and Guarantor. However, certain observations were narrated in the order regarding the Financial Institution can cure the defects of the Possession Notice under Rule 8(1) of the Security Interest Enforcement Rules and the Sale Notice.	August 5, 2020	The Borrower had approached the DRT-II, New Delhi filed a SARFAESI Application (SA) under Section 17 of the SARFAESI Act, 2002.
5.	Restoration of Possession Notice	August 12, 2020	In terms of the order of DRT-II possession was restored in favor of the Borrower
6.	Possession Notice	August 14, 2020	Possession notice
7.	Sale Notice	August 26, 2020	Sale Notice for auction to be held on September 28, 2020
8.	Demand Notice issued under Insolvency and Bankruptcy Act, 2016 read with rules, 2019 as amended from time to time.	December 9, 2020	Notice issued to Mr. Punit Beriwalla (guarantor to all the loans mentioned above)

6.6 The Company has not made any disclosures to the exchanges regarding the defaults mentioned in the above table. The company vide its reply

dated February 22 and 26, 2021 has acknowledged defaults in payments with regard to loans availed from State Bank of India, PNBHFL and DMI Finance Pvt Ltd (Copy of email of the Company was enclosed with the SCN). It has provided details of the 3 loans and dates of defaults as on December 31, 2020 (Copy of reply of the Company was enclosed with the SCN). The Company in its reply has provided details of defaults related to loans outstanding only from SBI, DMI Finance Ltd, and PNBHFL. The Company has not provided details of defaults related to IOB cash credit and Reliance Home Finance Ltd even when specifically asked about details of all such default. The same details were asked by exchange (NSE) vide its email dated February 26, 2021. The Company failed to provide specific details of all the loan defaults by the Company. Vide their email dated June 28 and June 29, 2021 (Copy of email of the Company was enclosed with the SCN) the Company submitted as under:

“In case of DMI Finance Pvt Ltd, PNB Housing Finance Ltd and Reliance Home Finance Ltd, the Company has made default in the repayment of dues due to reconciliation of account with the party. The Company was in active negotiation with the Lenders in view of cash strapped situation marked coupled with vicious pandemic COVID 19, which has further deteriorated the situation. Further we would like to submit that in case of IOB Cash Credit and SBI FBTL, the Company has made the default in the payment of dues, which has now been regularized.”

We further submit that, as on date:

- The loan availed from State Bank of India has been fully paid. Copy of No-Dues attached.*
- The loans availed from Reliance Home Finance Ltd. Copy of No-Dues attached.*
- The delay in repayment of interest/principal of DMI Finance Pvt Ltd, stands regularize and the account is standard.*
- The reconciliation with PNB Housing Finance Ltd has been done and the matter stands resolved.*

- (i) *It has been observed that the company is selectively disclosing favourable events such as withdrawal of Possession notice vide restoration notice dated August 12, 2020. For the notices of default issued by PNBHFL, the Company while claiming that the notices were erroneous, has not provided any details of the faults in the notices received.*
- (ii) *The Company has not clearly acknowledged the defaults as provided by PNBHFL. The Company has claimed that issue with PNBHFL is being resolved amicably. However, no such information has been provided by PNBHFL in its reply. Further, the debt resolution notwithstanding the regulatory provisions cast duty on the Company to provide all the details of loan default in specified format and in specified time.*
- (iii) *The Company, pursuant to the default and also on becoming aware of the notice from PNBHFL should have made a disclosure of the material event with respect to the company to Stock Exchanges. It is observed from the replies of exchange and the company that the company had failed to make such disclosure in time. A partial disclosure was made on June 01, 2020 with delay of more than 3 months. No specific details of the default were provided in the said disclosure. The Company has not made disclosures with regards to all the defaults as mentioned in its annual report and as submitted to SEBI in its reply. It is observed from the reply of PNBHFL that the Company still has not regularized the loan accounts and that the defaults are continuing despite its audit committee taking cognizance and recording that it should be regularized at the earliest. The Company has not made the disclosures in required format despite receiving specific queries from SEBI in this regard. The Company has been providing inadequate replies. The disclosures by the Company are partial disclosures without specific details of default and are delayed. The disclosures are also not in the*

format specified in the SEBI circular on disclosure of defaults by listed entities.

(iv) In addition to this, the Company has not made any disclosures to the exchanges regarding the defaults of credit facilities from DMI Finance Pvt Ltd, IOB Cash Credit, Reliance Home Finance Ltd and SBI FBTL. The Annual report of Vipul Ltd for FY 2019-20 contained the default disclosures in the Independent Auditors Report section (Copy of the Independent Auditors Report was enclosed with the SCN). These defaults ranged from 16 days to 183 days and even more, till the defaults were regularized. However, according to SEBI circular and LODR Regulations, any event of default by a listed entity, is a material event and has to be disclosed to the stock exchanges by listed entity within 24 hours of default and also quarterly disclosure has to be made under the SEBI circular.

6.7 The company had failed to disclose event of default with PNBHFL within the time stipulated in LODR regulations and SEBI circular and in the format specified. It is observed that the company has subsequently made a partial disclosure with regard to default with PNBHFL with a delay of more than 3 months. However, the company did not provide details of the default. The Company has failed to disclose various defaults including that with SBI and DMI Finance Pvt Ltd and defaults related to IOB cash credit and Reliance Home Finance as disclosed in Annual report of FY 2019-20. These defaults ranged from a period of 45 to 183 days and should have been disclosed immediately.

6.8 In view of the above, by failing to disclose that it had defaulted in payment of interest/repayment of secured loan to PNBHFL (Lender) and the notice served by the lender u/s 13(2) of the SARFAESI Act, Noticee has allegedly violated regulation 30(1) read with Regulation 30(2) and (6) of LODR Regulations and with Schedule III part A Para A of the LODR

Regulations. The Noticee has also allegedly violated Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of SEBI LODR Regulations by failing to disclose the defaults in the required format.”

7. The Company furnished the reply to the SCN vide letters dated May 10, 2022 and September 19, 2022 which is summarised as under:

7.1 Reply furnished by the Company vide letter dated May 10, 2022:

“The Company was sanctioned Construction Finance loans of Rs. 695 Crore & Corporate Term Loan of Rs. 177.20 Crore and a sum of Rs. 404.20 Crore was disbursed by the Lender PNB Housing Finance Ltd. The Company was diligently making repayment of the loan and in this regard had already paid to PNB Housing Finance Ltd, a total amount of Rs. 111.64 Crores towards interest repayment and a total amount of Rs. 51.04 Crores towards principal repayment against referred loans and it was only on account of huge stress in the real estate sector severely affecting the cash flow of the Company which made it difficult for the Company to service the debt. Such inability, was due to reasons beyond the control of the answering Respondents.

Further, we would like to submit that the Company had received notice dated February 11, 2020 by PNB Housing Finance Ltd (Lender) in which the lender had informed the Company regarding alleged defaults by the Company and others. The said notice contained gross misinformation about the sold and unsold stocks of the project for which financial assistance was obtained from them. You would appreciate that the reporting of the erroneous notice to the stock exchange would have adversely affected the company's esteemed stakeholders. The Company duly acknowledging its responsibility that the notice was erroneous/ defective and the matter has been taken up with the authorities through legal recourse.

It's a matter of record that the Company has made the requisite disclosure under Regulation 30 of SEBI (LODR) Regulations, 2015 to stock exchanges through its letter Ref. No. VIPUL/SEC/FY20-21/ dated June 01, 2020 that the Company was in active negotiation with the Lenders in view of cash strapped situation marked coupled with vicious pandemic COVID 19, which has further deteriorated the situation (Disclosure Attached). The action of lender was part of regulatory action since the Company has availed financial assistance for development of the project by creation of mortgage of the same.

It may further be noted that PNB Housing Finance Ltd in terms of the orders of the Hon'ble High Court reposed the rights of the property mortgaged to them to the Company vide a separate communication dated 12.08.2020. The said correspondence was duly filed/ submitted with the stock exchange vide letter dated 12.08.2020. (Disclosure Attached)

Further, we would like to submit that the Company has also made the requisite disclosure under Regulation 30 of SEBI (LODR) Regulations, 2015 to stock exchanges through its letter Ref. No. VIPUL/SEC/FY20-21/ dated August 12, 2020 that the possession notice issued by PNB Housing Finance Ltd has been withdrawn and the constructive/ symbolic possession so taken stands restored as submitted hereinabove.

It is stated that the status of other loans availed where at the delay in repayment has occurred. In this regard we would like to submit that as on date:

- The loan availed from State Bank of India has been fully paid.*
- The delay in repayment of interest/principal of DMI Finance Pvt Ltd stands regularized and the account is standard.*

In view of the above you will appreciate that the delay in furnishing the information in respect of the notices issued by the lender PNBHFL, if any, has either been due to the force majeure conditions due to vicious pandemic

and was not intentional or the same contained gross mistakes which were duly taken up with them. The necessary disclosure/replies have duly been submitted to ensure compliance of the requisitions of the listing agreement.

Further, we would like to submit that the Company has not made any other default in respect of non-payment of the interest or principal amount in full on the date when the debt has become due and payable against any other Bank or Finance institutions covered under circular SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019. So there is no need make disclosure in compliance of SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019.

It's a matter of record that the Company has made the requisite disclosure under Regulation 30 of SEBI (LODR) Regulations, 2015 to stock exchanges through its letter Ref. No. VIPUL/SEC/FY20-21/2020 dated March 01, 2021 that the Company has received No Objection Letter issued by PNB Housing Finance Ltd (PNBHFL) for signing a Joint Venture Agreement with M/ s Tulip Infratech Private Limited, for takeover of all development rights to carry out all developments activities in relation to residential project namely "Aarohan Residences" at Golf Course Road, sector-53, Gurugram, Haryana ('Project').

In view of the above you will appreciate that the delay, if-any, has only been due to the force majeure conditions and not intentional or otherwise. The necessary disclosure/ replies have duly been submitted to ensure compliance of the requisitions of the listing agreement.”

7.2 Reply furnished by the Company vide letter dated September 19, 2022:

“We would like to once again submit that the notice dated 11.022020 was grossly erroneous and defective in respect of the contents of the same, hence the same was not construed as material information rather it was a wrong and incorrect notice issued to us. Resultantly the erroneous and

defective notice was withdrawn by PNB Housing Finance Ltd by letter dated 12.08.2020, is a conclusive proof for the same.

The details of loans availed and status of defaults as desired by you are detailed hereunder:

Table No. 3

As on 31st Dec 2020

Sr. No.	Type of disclosure	Details	Details	Details
1	Name of the Listed entity	Vipul Limited	Vipul Limited	Vipul Limited
2	Date of making the disclosure	-	-	-
3	Nature of obligation	Term Loan	Corporate Loan	Term Loan
4	Name of the Lender(s)	State Bank of India	DMI finance Pvt Ltd	PNBHFL
5	Date of default	30-Sep-20	30-Nov-20	30-Sep-19
6	Current default amount (break-up of principal and interest in INR crore)	3.10 crs	0.53 crs	183.35 crs
7	Details of the obligation (total principal amount in INR crore, tenure, interest rate, secured / unsecured etc.			
	Principal	2.86 crs	0.37 crs	126.36 crs
	Interest	0.24 crs	0.16 crs	56.81 crs
	ROI	13.40%	17.00%	14.5%-15.85%
	secured / unsecured etc	Secured	Secured	Secured
8	Total amount of outstanding borrowings from Banks / financial institutions (in INR crore)	3.46 crs	20.46 crs	412.96 crs
9	Total financial indebtedness of the listed entity including short-term and long-term debt (in INR crore)	Rs. 620.60 Cr		

We further submit that, as on date:

- The loan availed from State Bank of India has been fully paid.
- The loans availed from Reliance Home Finance Ltd has been fully paid.

- *The delay in repayment of interest/ principal of DMI Finance Pvt Ltd, stands regularize and the account is standard.*
- *The loan from PNB Housing Finance Ltd has been has been fully paid.*

It is a matter of record that entire series of events narrated above happened during the period when entire nation was passing through a very tough period of Covid-19 and realizing the same the immunity was extended by SEBI to corporates in compliances as a relief to the badly affected industries.”

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN and material available on record. I have also perused the submissions made by the Noticee in this regard. The issues that arise for consideration in the present case are as follows:
 - I. Whether the Noticee has violated the provisions of the Regulation 30(1) read with Regulation 30(2) and (6) of LODR Regulations and read with Para A of Part A of Schedule III of the LODR Regulations, and Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of LODR Regulations?
 - II. Does the violations, if any, attract monetary penalty under Section 23E of the SCRA, 1956?
 - III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23-J of the SCRA, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

Issue I. Whether the Noticee has violated the provisions of the Regulation 30(1) read with Regulation 30(2) and (6) of LODR Regulations and read with Para A of Part A of Schedule III of the LODR Regulations, and Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of LODR Regulations?

9. Before proceeding forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

Regulation 30 of LODR Regulations

Disclosure of events or information.

30. (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

.....

(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:

Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein.

.....

Provision 6 of Para A of Part A of Schedule III reads as under:

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

.....

6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.

.....

Further, as per **SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019** it is mandated as under:

Para 3 B - Timing of disclosures:

“To begin with, listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks /financial institutions which continues beyond 30 days. Such disclosure shall be made promptly, but not later than 24 hours from the 30th day of such default”.

The said circular also mandated that:

C2.Disclosures specified in the table below shall be made by listed entities, if on the last date of any quarter:

a. Any loan including revolving facilities like cash credit from banks / financial institutions where the default continues beyond 30 days

.....

The above disclosure shall be made within 7 days from the end of each quarter.

.....

5. Disclosures as applicable in terms of this circular, including quarterly disclosure, shall be made beginning January 01, 2020 in the format specified in Paras3 (C1) and 3 (C2) above.

10. I note from the SCN that the Company had defaulted against the loans of PNBHFL from February 2019, however, it failed to disclose the event of default with PNBHFL within the time stipulated in LODR regulations and SEBI circular and in the specified format. In addition to this, the Company had not made all the disclosures to the exchanges regarding the notices received by it under SARFAESI Act w.r.t. defaults on loans of PNBHFL as indicated in table no. 2 above. It is observed that the company had subsequently made a partial disclosure with regard to default with PNBHFL with a delay of more than 3 months, however, the company did not provide specific details of the default. The disclosures were also not in the format specified in the SEBI circular on

disclosure of defaults by listed entities. The company had selectively disclosed the favourable events such as withdrawal of possession notice dated May 22, 2020 vide restoration notice dated August 12, 2020.

11. In response to the above allegations, the Company is silent about not making disclosures regarding the default of PNBHFL's loans from February 2019. In respect of other allegations, the Company submitted that the PNBHFL's notice dated February 11, 2020 contained gross misinformation about the sold and unsold stocks of the project for which financial assistance was obtained from PNBHFL. Hence, the same was not construed as material information rather it was a wrong and incorrect notice issued to it. The reporting of the erroneous notice to the stock exchange would have adversely affected the Company's esteemed stakeholders. As the notice was erroneous/ defective, the Company duly acknowledging its responsibility taken up the matter with the authorities through legal recourse. The Company has made the requisite disclosure under Regulation 30 of LODR Regulations to stock exchanges through its letter dated June 01, 2020 that the Company was in active negotiation with the Lenders in view of cash strapped situation coupled with vicious pandemic COVID 19, which has further deteriorated the situation. The delay in furnishing the information in respect of the notices issued by the lender PNBHFL, if any, has been due to the force majeure conditions due to vicious pandemic and was not intentional. The necessary disclosure/replies have duly been submitted to ensure compliance of the requisitions of the listing agreement. During hearing Noticee further submitted that the incidental non-compliances in disclosures were absolutely non-intentional and has neither benefitted any one nor incurred losses to anyone. The main reason for non-disclosure was the shortage of staff during the pandemic period and indulging of compliance team in litigations due to the defective notices.
12. I note that company submitted that the main reason for non-disclosure was the shortage of staff during the pandemic period and indulging of compliance team in litigations due to the defective notices. The company has stated that they

have paid Rs. 161.68 crores towards interest and principal repayment to PNBHFL, however due to huge stress in the real estate sector it was difficulty for the company to service the debt and such inability was due to reasons beyond the control of the company. Thus, I find that company has acknowledged that there were defaults and disclosures were not made by Noticee. The submission of Noticee that disclosures were not made due to the shortage of staff during the pandemic period and indulging of compliance team in litigations, cannot be accepted as it is the duty of the company to comply with the SEBI regulations/ circulars.

13. Further I find the explanation provided by the company that it did not want to adversely affect the company's stakeholders by disclosing the PNBHFL's notice dated February 11, 2020 as it allegedly contained gross misinformation about the sold and unsold stocks of the project for which financial assistance was obtained from PNBHFL, is unacceptable as it was a material information and had to be disclosed to the Stock Exchanges. As per LODR Regulation any default by listed entity shall be disclosed without any application of the guidelines for materiality. The LODR Regulation also stipulates that material events to be disclosed as soon as reasonably possible and not later than twenty four hours from the occurrence of event. The Company could have made the disclosures to the exchanges w.r.t. SARFAESI notices along with its clarifications or comments regarding the errors / defects in the notices. As there is no exemption from disclosure to the listed companies under the LODR Regulation, the justification of Noticee is not acceptable.
14. The Company's contention of force majeure conditions due to pandemic is not sustainable as the SARFAESI notice was served to the Company on February 11, 2020, which was much before the lockdown was implemented in the country.
15. The Company has stated that they have made the requisite disclosure under LODR Regulations vide their letter dated June 1, 2020 to the stock exchanges,

however I note that this was only a partial disclosure indicating that it was undergoing negotiation with the lenders but did not provide specific details of the default in the said disclosure. This was done with delay of more than 3 months. Further, I find that the company has made disclosures about the withdrawal of possession notice vide restoration notice dated August 12, 2020. Thus, I find that the company has been selective about the disclosures made to the stock exchanges wherein favorable events have been disclosed but other events disclosures were partial and delayed without specific details of the default. Further, I find that the Company had not made the disclosures in the format specified in the SEBI circular, despite receiving specific queries from SEBI in this regard. Therefore, I hold that the Company has failed to disclose the event of default with PNBHFL within the time stipulated in the LODR regulations and SEBI circular and as per the format specified therein and therefore the Company has violated the provisions of the Regulation 30(1) read with Regulation 30(2) and (6) of LODR Regulations and read with Para A of Part A of Schedule III of the LODR Regulations, and Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of LODR Regulations.

16. The SCN further alleges that the Company has not disclosed the defaults to the stock exchanges as mentioned in the annual report for FY 2019-20 (which contained the default disclosure in the Independent Auditors Section). I find from the disclosure in the Independent Auditors report for the annual report for FY 2019-20 that the company has defaulted in the repayment of dues of certain banks and financial institutions as detailed below:

Table No. 4

Table No. 4 Name of Bank/Financial Institution	Amount of Default (Rs. in Lakhs)	Period of Default (in days)	Regularised on
<i>DMI Finance Pvt Ltd 1</i>	<i>49.92</i>	<i>45</i>	<i>27/07/2020</i>
<i>DMI Finance Pvt Ltd 2</i>	<i>53.47</i>	<i>45</i>	<i>27/07/2020</i>
<i>PNB Housin Finance Ltd 1</i>	<i>1293.44</i>	<i>183</i>	<i>Not regularised as on 31/07/2020</i>
<i>PNB Housin Finance Ltd 2</i>	<i>1760.82</i>	<i>183</i>	<i>Not regularised as on 31/07/2020</i>

Table No. 4 Name of Bank/Financial Institution	Amount of Default (Rs. in Lakhs)	Period of Default (in days)	Regularised on
<i>PNB Housin Finance Ltd 3</i>	<i>2043.12</i>	<i>183</i>	<i>Not regularised as on 31/07/2020</i>
<i>IOB Cash Credit</i>	<i>102.88</i>	<i>70</i>	<i>Not regularised as on 31/07/2020</i>
<i>Reliance Home Finance Ltd 1</i>	<i>53.00</i>	<i>71</i>	<i>Not regularised as on 31/07/2020</i>
<i>Reliance Home Finance Ltd 2</i>	<i>197.57</i>	<i>112</i>	<i>Not regularised as on 31/07/2020</i>
<i>Reliance Home Finance Ltd 3</i>	<i>1.22</i>	<i>16</i>	<i>Not regularised as on 31/07/2020</i>
<i>SBI FBTL</i>	<i>145.28</i>	<i>60</i>	<i>Not regularised as on 31/07/2020</i>

17. On perusal of the minutes of the meeting of the Audit Committee held on July 31, 2020 which was sent by the company to SEBI (during the SEBI examination) along with its reply dated June 29, 2021, I find that the Audit Committee was apprised about the above mentioned defaults along with their present status as on July 31, 2020. I find from minutes that the Committee noted that the Company was in active negotiation with the Lenders for repayments of dues and opined that stock exchanges be informed once the reconciliation is done. Thus, it is clear that the Company was aware of the defaults and deliberately concealed the material information and did not disclose it to the stock exchanges. I see from the above table that the defaults ranged from 16 days to 183 days and even more in some instances as they were not regularized till the date of the table. I also note that the Company vide reply dated February 22 and 26, 2021 to SEBI during the SEBI examination had acknowledged defaults in payments with regard to loans availed from State Bank of India, PNBHFL and DMI Finance Pvt Ltd.

18. In response to the above stated allegations in the SCN, I find that the Company has stated that either the loans have been repaid or delay in repayment has been regularized. It has further stated that the Company has not made any other default in respect of non-payment of the interest or principal amount against any other bank or financial institutions. Company has also stated that

the delay, if any, has only been due to the force majeure conditions and not intentional or otherwise.

19. As per the SEBI circular the Company was required to make disclosure of all defaults which continued beyond 30 days, within 24 hours from the 30th day of such default. Considering the above, I hold that Company has not made disclosures to the exchanges with regards to the defaults as mentioned in its annual report for FY 2019-20 viz from DMI Finance Pvt Ltd, PNBHFL, IOB Cash Credit, Reliance Home Finance Ltd and SBI FBTL. These defaults ranged from 16 days to 183 days and even more, till the defaults were regularized. Therefore, I hold that the Noticee failed to disclose the material information to the exchanges and not complied with the SEBI circular and LODR Regulations.
20. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, I hold that the Noticee has violated the Regulation 30(1) read with Regulation 30(2) and (6) of LODR Regulations and with Para A of Part A of Schedule III of LODR Regulations, and Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of LODR Regulations, by failing to disclose the defaults and material events to the exchanges.

Issue II. Does the violations, if any, attract monetary penalty under Section 23E of the SCRA, 1956?

21. I note that the provisions of Regulation 30(1) read with Regulation 30(2) and (6) of LODR Regulations and with Para A of Part A of Schedule III of LODR Regulations, and Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of LODR Regulations, are meant to ensure timely dissemination of material to enable investors to make well-informed investment decisions and, timely, adequate and accurate disclosure of information on an ongoing basis and need of uniformity in disclosures made by listed entities to ensure compliance in letter and spirit. I note that true, fair, adequate and timely disclosures by the company form one of the basic tenets of governance in the

listed companies and are essential for maintaining the integrity of the securities market. Timely disclosures of the details of the abovementioned material events is of significant importance as such disclosures also enable the regulators to monitor such a material events. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision.

22. In this regard, reliance is placed upon the judgment of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI** (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further, in the matter of Appeal No. 66 of 2003, **Milan Mahendra Securities Pvt. Ltd. vs. SEBI** – the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*
23. Default in repayment of loans and SARFAESI notice with regard to loan default is material and price sensitive information and disclosure of such material events is mandatory under the provisions of the LODR Regulations and SEBI Circular. Therefore, if a person fails to comply with the said provisions of the LODR Regulations and SEBI Circular, he is liable for penalty under section 23E of the SCRA, 1956. As the violation of provisions of Regulation 30(1) read with Regulation 30(2) and (6) of LODR Regulations and with Para A of Part A of Schedule III of LODR Regulations, and Para 3(B), C(2) and 5 of the SEBI Circular read with Regulation 30 of LODR Regulations, by the Noticee has been

established, I find that Noticee is liable for monetary penalty under section 23E of the SCRA, 1956.

24. The contents of the said provisions of law is reproduced herein below:

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 or real estate investment trust or infrastructure investment trust or alternative investment 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.

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 23-J of the SCRA, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

25. While determining the quantum of penalty, it is important to consider the factors stipulated in section 23-J of the SCRA, 1956 which reads as under:-

Factors to be taken into account while adjudging quantum of penalty.

23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:-

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

[Explanation.- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.]

26. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the non-compliance of the summonses is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee. I also note that no prior default of the Noticee are available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. The Noticee has committed violations by not disclosing material events / information with regard to material events as found hereinabove. The conduct of the Noticee in not making the disclosures of the material event with respect to the Company to the Stock Exchanges, making the partial disclosures without specific details of defaults and delayed disclosures and providing of inadequate replies to SEBI, and therefore, not complying with the provisions of the LODR Regulations and SEBI Circular cannot be taken lightly. The violations by the Noticee are serious considering and have a detrimental impact on the market integrity and therefore, should be dealt with sternly by imposing monetary penalty as effective deterrence.

27. Further, Noticee has contended that non-compliances has neither benefitted any one nor incurred losses to anyone. Here, I find it pertinent to refer to the judgment of ***Komal Nahata v. Securities and Exchange Board of India*** (Appeal No. 5 of 2014 dated January 27, 2014) held that- *“Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure.”*. It is pertinent to note that, the provisions of 15 J are similar to the provisions of 23J.
28. The fact to be taken into consideration is that, Noticee have made payments to the creditors and was in active negotiation with the lenders to show its bonafide towards payment of loans, and as on date the Noticee has submitted that, the loans have been paid to the full extent to the creditors or loan accounts has been regularised.
29. However, I am of the view that the Noticee being a listed Company is expected to carry out its conduct with proper skill, care and diligence and make material disclosures on time as per the relevant regulations. However, it is noted that such repeated and continuing nondisclosures by the Noticee has defeated the regulatory purpose. Further, despite a communication from SEBI regarding disclosure of its loan defaults, the Noticee failed to disclose the complete details of loan defaults and the disclosures made were partial and also not done in the specified format for the purpose. These transgressions of the Noticee cannot be viewed leniently. Accordingly, I deem it appropriate to impose suitable penalty on the Noticee, which shall act as a deterrent to the Noticee.

ORDER

30. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 23-I of the SCRA, 1956 read with Rule 5 of the SCR Adjudication Rules, I hereby impose the monetary penalty

upon the Noticee of ₹ 5,00,000/- (Rupees five lakhs only) under section 23E of the SCRA, 1956*. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

*SEBI has appealed the order of Hon'ble SAT in the matter of **Suzlon Energy Ltd. Vs. SEBI**, in order to ascertain whether penalty can be imposed under Section 23E of SCRA, 1956 for violations of provisions of Listing Agreement and the same is pending before the Hon'ble Supreme Court. Accordingly, the enforcement of this order w.r.t. penalty imposed under Section 23E of SCRA, 1956 shall be subject to the outcome of the appeal filed by SEBI before the Hon'ble Supreme Court on July 19, 2022.

31. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

32. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

33. 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.
34. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai

Date: November 18, 2022

ASHA SHETTY

ADJUDICATING OFFICER