BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AN/SM/2023-24/27899-27900

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

In respect of:

Noticee 1	**Milestone Capital Advisors Private Limited** (SEBI Registration No. INP000002643 / PAN: AAJCS1377C)
Noticee 2	**Ms. Rubi Arya** (PAN: AAVPA0654P)

In the matter of

Milestone Capital Advisors Private Limited

A. BRIEF BACKGROUND:

1. Securities and Exchange Board of India (hereinafter also '**SEBI',** in short) conducted inspection of Milestone Capital Advisors Private Limited, SEBI Registered Portfolio Manager, (hereinafter also **'PMS-Milestone' / 'Milestone' / 'PMS' / 'Noticee 1' / N1**, in short) for the period FY 2019-20 (hereinafter also 'Relevant Period' / 'Inspection Period' / 'IP', in short), to look into various compliance requirements including investor service / complaints, KYC compliance, on-boarding of clients, fees / charges, conditions of grant of registration and Anti Money Laundering (AML) guidelines issued by SEBI from time to time etc.

2. The findings of inspection were communicated by SEBI to PMS-Milestone vide SEBI letter dated September 28, 2021. PMS-Milestone *vide* emails dated October 14, 2021 and December 06, 2021 submitted its response to the findings of Inspection.

3. Pursuant to inspection and based on the findings of the inspection and examination of replies of PMS- Milestone by SEBI, the following was *inter alia* observed and /or alleged and accordingly adjudication proceedings u/s 15HB of **SEBI Act, 1992** were initiated against (i) Milestone Capital Advisors Private Limited and (ii) Mrs. Rubi Arya (hereinafter referred to as '**Noticee 2' / 'N2'** in short), its Principal Officer -cum-Compliance Officer, (**hereinafter collectively also referred to as 'Noticees'** in short**)** for alleged violation of following provisions, as detailed hereunder:

Noticee 1	i. Regulation 23 (2) of SEBI (Portfolio Managers) Regulation, 2020 r/w Regulation 15(1A) of SEBI (Portfolio Managers) Regulation, 1993. ii. Regulation 26 of SEBI (Portfolio Managers) Regulation, 2020. iii. Regulation 31(1) of SEBI (Portfolio Managers) Regulations, 2020. iv. Regulation 34(1) of SEBI (Portfolio Managers) Regulations, 2020. v. SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated Nov 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010.
Noticee 2	i. Regulation 2 (1) (p) read with 34 (1) of SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993.

SEBI (Portfolio Managers) Regulation, 2020 / SEBI (Portfolio Managers) Regulation, 1993 also referred to as 'SEBI Portfolio Managers Regulations / Portfolio Managers Regulations / PMS Regulations / PM Regulations, in short.
SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated Nov 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010 also referred to as 'SEBI Circulars', in short.

B. APPOINTMENT OF ADJUDICATING OFFICER:

4. Upon being satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid alleged violations of various provisions of SEBI (Portfolio Managers) Regulations and SEBI Circular by the Noitcees, as alleged and also detailed above, SEBI, in exercise of powers under Section 19 of the SEBI Act, read with Sub-section (1) of Section 15-I of the SEBI Act, and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("***Adjudication Rules***") appointed Ms. Maninder Cheema, Chief General Manager, SEBI as the Adjudicating Officer ("**AO**") to inquire into and adjudicate upon the aforesaid alleged violations against the Noticees. Pursuant to transfer of Ms. Maninder Cheema, SEBI appointed Dr. Anitha Anoop, Chief General Manager, SEBI as AO in the instant matter. Subsequently,

pursuant to transfer of Dr. Anitha Anoop, SEBI vide communique dated September 05, 2022 had appointed the undersigned as AO in the instant matter.

C. SHOW CAUSE NOTICE, REPLIES, HEARING:

5. A Common Show Cause Notice No. SEBI/HO/EAD-5/AN/SM/64737/1/2022 and SEBI/HO/EAD-5/AN/SM/64740/1-3/2022 dated December 29, 2022 (hereinafter collectively also ***'SCN' / 'SCN dated December 29, 2022'*** in short) was issued to Noticee 1 and Noticee 2 respectively, in terms of Section 15-I of the SEBI Act, 1992, Rule 4 of SEBI Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty, if any, under section 15HB of SEBI Act, 1992 be not imposed on the Noticees.

6. Briefly stated, the following was inter alia alleged in the SCN dated December 29, 2022 in respect of the Noticees:

"…..

In respect of Noticee 1:

4.1. PMS-Milestone is a discretionary portfolio manager. It failed to keep minimum investment per client i.e. funds or securities worth equal to or more than twenty-five lakhs rupees upon partial redemption of contribution in Milestone Real Estate High Yield Debt Series – I by the issuer directly to the investors banks accounts.

In this regard, the following was inter alia observed by SEBI:
PMS-Milestone failed to keep minimum investment per client i.e. funds or securities worth less than twenty-five lakhs rupees thereby violating provisions of regulation 23 (2) of SEBI (Portfolio Managers) Regulations, 2020 read with regulation 15(1A) of SEBI (Portfolio Managers) Regulations, 1993.

It was observed that the portfolio manager did not exercise its discretion and reinvest any of the accrued interest/coupon/redeemed contribution arising out of the disposal of the investments in either debt or equity instruments. The portfolio value was allowed to fall below the minimum value of 25 lakhs rupees.

In view thereof, it is alleged that Noticee 1 has violated Regulation 23 (2) of SEBI (Portfolio Managers) Regulation, 2020 r/w Regulation 15(1A) of SEBI (Portfolio Managers) Regulation, 1993.

4.2. PMS-Milestone failed to appoint a SEBI Registered custodian till date. Custodian is a person who provides custodial services like safekeeping of securities and providing services incidental thereto including maintaining accounts of securities, collecting the benefits or rights accruing to the client in respect of securities, keeping the client informed of the actions taken or to be taken by the issuer of securities that may have a bearing on the benefits or rights accruing to the client, maintaining and reconciling records of the aforesaid services etc.

In this regard, the following was inter alia observed by SEBI:
PMS-Milestone failed to appoint a SEBI registered custodian till date thereby violating Regulation 26 of Portfolio Managers Regulations, 2020.

In view thereof, it is alleged that Noticee 1 has violated Regulation 26 of SEBI (Portfolio Managers) Regulation, 2020.

4.3. PMS-Milestone failed to provide information in quarterly report to the client in the stipulated manner.

Quarterly reports provided to the clients for the quarter ended September, 2020 and December, 2020 did not provide information pertaining to composition and the value of the portfolio, description of securities and goods, number of securities, value of each security held in the portfolio, units of goods, value of goods, cash balance and aggregate value of the portfolio as on the date of report, beneficial interest received during that period in the form of interest, dividend, bonus shares, rights shares, expenses incurred in managing the portfolio of the client, details of risk foreseen by portfolio manager and the risk relating to the securities recommended by the portfolio manager for investment or disinvestment and details of commission paid to distributor, default in payment of coupons or any other default in payments in the underlying debt security and downgrading to default rating by the rating agencies, if any, and details of commission paid to distributor (Details of quarterly report provided to clients is enclosed as Annexure-7).

In this regard, it was inter alia observed by SEBI that the entity viz., Noticee 1 has accepted and has submitted that going forward, it shall provide quarterly reports to clients in the stipulated manner.

In view thereof, it is alleged that Noticee 1 has violated Regulation 31(1) of SEBI (Portfolio Managers) Regulations, 2020.

4.4. PMS-Milestone failed to assign the role of compliance officer to person other than the Principal Officer.

PMS-Milestone has appointed Ms. Ruby Arya as compliance officer as well as Principal Officer (Appointment of Ms. Ruby Arya as compliance officer as well as Principal Officer is enclosed as ***Annexure-8****).*
In this regard, it was inter alia observed by SEBI that PMS-Milestone failed to assign the role of compliance officer to a person other than the principal officer appointed in terms of Regulation 7(2)(d) during inspection period. Pursuant to the inspection findings, the Noticee 1 has now appointed a compliance officer in compliance with Regulation 34(1) of Portfolio Managers Regulations, 2020 w.e.f. October 10, 2021 with a delay of 22 months.

In view thereof, it is alleged that Noticee 1 has violated Regulation 34(1) of SEBI (Portfolio Managers) Regulations, 2020.

4.5. PMS-Milestone failed to conduct an internal audit by a practicing CA or CS during financial year 2019-20 and also failed to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance.

In this regard, it was inter alia observed by SEBI that PMS-Milestone failed to conduct an internal audit by a practicing CA or CS during financial year 2019-20 (Statement of PMS-Milestone is enclosed ***Annexure-9****) so as to judge the quality of internal procedures being followed by the portfolio manager and failed to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance thereby violating SEBI Circular IMD/PMS/CIR/1/21727/03 dated November 18, 2003 r/w IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010. Pursuant to inspection findings, PMS-Milestone has stated that they have appointed Bakliwal & Co., an independent CA to conduct the internal audit and submit compliance report to SEBI on half yearly basis. (Non-compliance of half yearly report to SEBI is enclosed as* ***Annexure-10****)*

In view thereof, it is alleged that Noticee 1 has violated SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated Nov 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010.

In respect of Noticee 2:

4.6. Mrs. Rubi Arya, who is the Principal Officer -cum- compliance officer of during the relevant period has failed to ensure compliance with the following: failure to keep minimum investment per client, failure to appoint a SEBI Registered custodian, failure to provide information in quarterly report to the client in the stipulated manner, failure to conduct an internal audit and also failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance. Thus, Mrs. Rubi Arya has failed to perform the responsibilities of Principal Officer and Compliance Officer as specified in the PMS Regulations.

In this regard, following was inter alia observed by SEBI:
As per the Regulation 2 (1) of SEBI (Portfolio Managers) Regulations, 2020:

(p) "principal officer" means an employee of the portfolio manager who has been designated as such by the portfolio manager and is responsible for: -

(i) the decisions made by the portfolio manager for the management or administration of portfolio of securities or the funds of the client, as the case may be; and
(ii) all other operations of the portfolio manager.

Further, as per 34 (1) of SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993, every portfolio manager shall appoint a compliance officer, who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances and the compliance officer shall immediately and independently report to SEBI , any non-compliance observed by him.

It was observed that one of the director's viz., Mrs. Rubi Arya was appointed as a Principal Officer from 09/11/2018. During the inspection period, she was also performing the role of compliance officer. As it has clearly been defined under the Regulations, Principal Officer is responsible for the operations of the portfolio manager and decisions made by the portfolio manager for the management or administration of portfolio of securities or the funds of the client. Further, the responsibility of complying with the provisions of the SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993 and SEBI Circulars issued thereunder is of the Compliance Officer.

Mrs. Rubi Arya, who is the Principal Officer -cum- compliance officer of during the relevant period has failed to ensure compliance with the following: failure to keep minimum investment per client, failure to appoint a SEBI Registered custodian, failure to provide information in quarterly report to the client in the stipulated manner, failure to conduct an internal audit and also failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance. Thus, Mrs. Rubi Arya is in violation of 2 (1) (p) read with 34 (1) of SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993, as she failed to perform the responsibilities of Principal Officer and Compliance Officer as assigned in the PMS Regulations.

In view thereof, it is alleged that Noticee 2 has vviolated Regulation 2 (1) (p) read with 34 (1) of SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993.

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7. The SCN dated December 29, 2022 was issued to the Noticees by Speed Post Acknowledgement Due (SPAD) and also through Email dated December 29, 2022, inter alia advising the Noticees to submit their respective replies to the SCN, if any, within fourteen days of receipt of the SCN.

8. The receipt of SCN was acknowledged by Noticee 1 and Noticee 2 vide email dated January 09, 2023. Vide their emails dated January 09, 2023 and January 23, 2023, Noticees inter alia sought inspection and also requested for grant of additional period of three weeks post completion of the inspection to file reply /replies to the SCN. Vide email dated January 24, 2023, Noticees were given an opportunity of inspection of relied upon documents on February 01, 2023. However, vide their email dated January 30, 2023, Noticees inter alia requested to reschedule the inspection at any other convenient date. The opportunity of inspection was rescheduled to February 03, 2023 and same was communicated to the Noticees vide email dated February 01, 2023. On the scheduled date of inspection, common Authorised Representative (AR) of the Noticees availed the inspection of relied upon documents on February 03, 2023, however, qualifications were made as regards documents pertaining to SEBI's consideration of response to findings of inspection report. Accordingly, the same was provided to the Noticees vide email dated March 03, 2023.

   An opportunity of hearing was afforded to the Noticees on February 21, 2023. However, vide their email dated February 17, 2023, Noticees sought adjournment, citing difficulty on the part of their counsel. Having regard to the request of the Noticees, the hearing was rescheduled to February 27, 2023. Subsequently, vide email dated February 27, 2023, hearing was rescheduled to March 09, 2023. However, owing to non confirmation of details /timeliness with regard to hearing, the hearing was re-scheduled to March 10, 2023.

9. On the scheduled date of hearing on March 10, 2023, the Noticees appeared through their common Authorised Representative (AR) for the hearing held through online mode viz., video conferencing. During the hearing, Noticees relied upon and reiterated the submissions made by them *vide* letter /email dated February 27, 2023 and inter alia sought time for making additional submissions and accordingly time till March 15, 2023 was allowed for the same. Noticees made their common additional submissions to the SCN vide letter /email dated March 15, 2023.

10. The key submissions /additional submissions made by the Noticees *vide* letter dated February 27, 2023 and March 15, 2023 respectively, as their replies to the SCN, are brought out as hereunder:

Submissions made by the Noticees *vide* letter dated February 27, 2023:

"…..

1. *We write to you on behalf of our clients, the Noticees, namely Milestone Capital Advisors Private Limited: Portfolio Manager (Registration No. INP000002643) ("Noticee No. 1" / "PMS"), being the Portfolio Manager and Mrs. Ruby Arya, Principal Officer and erstwhile Compliance Officer ("Noticee No. 2") in reference to the captioned SCN issued under Section 15HB of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") read with Rule 4(1) of the SEBI (Procedure of Holding Inquiry and Imposing Penalties) Rules, 1995.*

2. *At the outset, all allegations levelled against the Noticees in the SCN are emphatically denied as being baseless and devoid of any merit. We do not accept or admit anything stated in the SCN except where the same is expressly admitted by us in this reply. The allegations levelled vide the SCN are clearly incoherent, untenable and unsustainable. It is emphasized that the premise(s) based on which the allegations have been levelled are flawed and incorrect. Even assuming, while not admitting, that the premise is not flawed, any proposition that the Noticees are in violation of the SEBI Act or the SEBI (Portfolio Managers) Regulations, 2020 ("PM Regulations 2020") and the Circulars issued thereunder is wholly untenable, unsustainable and are incapable of being supported by law or facts. Nothing stated in the SCN shall be deemed to be admitted merely on account of a specific non-traverse and unless the same is specifically admitted herein.*

3. *The SCN alleges violation of four charges against Noticee 1, namely (i) Regulation 23(2) of the PM Regulations read with Regulation 15(1A) of SEBI (Portfolio Managers) Regulation, 1993 ("PM Regulations 1993"); (ii) Regulation 26 of PM Regulations 2020; (iii) Regulation 31(1) PM Regulations 2020; (iv) Regulation 34(1) of PM Regulations 2020 and SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated November 18, 2003 concerning "Improvement in Corporate Governance" ("SEBI Corporate Governance Circular") read with SEBI Circular IMD/DOF–1/PMS/Cir–1/2010 dated March 15, 2010 concerning "Half Yearly Reporting by Portfolio Managers" ("SEBI Half Yearly Reporting Circular"). The SCN further alleges Noticee 2 for the violation of Regulation 2(1)(p) read with Regulation 34(1) of PM Regulations 2020 read with Regulation 23A of PM Regulations 1993 which are vehemently denied on the grounds set out. The SCN goes on to require the Noticees to show cause as to why penalty under Section 15HB of the SEBI Act should not be imposed on the Noticees on account of such alleged violations.*

A. Background

4. *Prior to proceeding with our detailed reply to the SCN, we would like to apprise you of the true, complete and correct facts relevant for the matter:*

4.1. *Formed in 2007, Noticee No. 1 is a privately held alternative investment advisory firm catering to various institutions, family offices, government organizations as well as high net worth individuals in India and overseas. Noticee No.1 has a demonstrated history of value creation for its investors whilst maintaining high standards of corporate governance. In the same vein, Noticee No. 2 as the Principal Officer and erstwhile Compliance Officer of the PMS has been responsible for devising its investment strategy and been instrumental in the overall growth of the firm. Notably, the Noticees have never received any such notice in the 13 years since the formation of Noticee No. 1.*

4.2. *SEBI conducted an inspection of Noticee No. 1 for the period 2019-2020 basis which it levelled allegations which are outlined below:*

4.3. *In Respect of Noticee 1:*

4.3.1. *The SCN states that Noticee No. 1 as a discretionary portfolio manager, by not adhering to the investment objectives of the PMS agreement, failed to keep minimum investment per client i.e., funds or securities worth equal to or more than twenty-five lakhs rupees thereby allegedly violating provisions of Regulation 23(2) of PM Regulations 2020 read with Regulation 15(1A) of PM Regulations 1993.*

4.3.2. *The SCN further alleges that Noticee No. 1 failed to appoint a SEBI registered custodian resulting in the alleged violation of Regulation 26 of PM Regulations 2020. It is also alleged in the SCN that the PMS failed to provide information in quarterly report to its clients for the quarter ended in September 2020 and December 2020 resulting in the alleged violation of Regulation 31(1) of PM Regulations 2020.*

4.3.3. *The SCN further states that Noticee No. 1 failed to assign the role of compliance officer to a person other than the Principal Officer resulting in the alleged violation of Regulation 34(1) of PM Regulations 2020. The SCN also alleges that the PMS failed to conduct an internal audit by a practicing CA or CS during the financial year 2019-20 and also failed to submit the half yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance resulting in the alleged violation of SEBI Corporate Governance Circular read with SEBI Half Yearly Reporting Circular.*

4.4. *In Respect of Noticee 2:*

4.4.1. *The SCN states that Noticee 2 as a the Principal Officer-cum-Compliance Officer during the relevant period failed to ensure compliance with the following: failure to keep minimum investment per client, failure to appoint a SEBI registered custodian, failure to provide information in quarterly report to the client in the prescribed manner, failure to conduct an internal audit and also failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance thereby failing to perform the responsibilities of Principal Officer-cum-Compliance Officer as specified in the PMS Regulations resulting in the alleged violation of Regulation 2(1)(p) read with Regulation 34(1) of PM Regulations 2020 read with Regulation 23A of PM Regulations 1993.*

B. Preliminary Submission

5. *Before proceeding further with our reply to the SCN, we would like to make the following preliminary submission, which is as follows:*

Object of inspection is not to impose penalty

5.1. *It is humbly submitted that 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 investors. In this regard, reference is drawn to the decision of the Hon'ble Securities Appellate Tribunal's ("SAT") order in UPSE Securities Limited v. SEBI (Appeal No. 109 of 2011, decided on July 25, 2011) whereby the Hon'ble SAT had ruled as under:*

"5.…the object of carrying out inspection of books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity / deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity."

5.2. *Further, in the matter of Religare Securities Limited v. SEBI (Appeal No. 23 of 2011, decided on June 16, 2011), the Hon'ble SAT has held that the purpose of this routine inspection is to highlight the irregularities in the system followed by the intermediaries and recommend changes therein; the intent should not be to initiate any kind of punitive action. The relevant portion of SAT's order is set out below for ease of reference:*

"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot

lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant..."

5.3. *Further, recently, the Hon'ble SAT in IDBI Trusteeship Services Limited v. SEBI [Appeal No. 186 of 2023] has observed that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. Relevant portion of aforesaid SAT order is set out below for ease of reference:*

"We may also point out that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. The purpose of inspection is to advise the entity to cure the lapse that have been found. If any serious lapse is discovered, then penalty action can be taken."

5.4. *It is accordingly submitted that the SCN ought to be withdrawn on this count alone.*

C. Submissions on Merits

6. *The following submissions are made, each of which are mutually exclusive and without prejudice to each other:*

6.1. *Allegation A: Failure to keep minimum investment per client:*

6.1.1. *It is SEBI's allegation that Noticee No. 1 failed to keep the minimum investment per client i.e., funds or securities worth less than twenty-five lakh rupees. Accordingly, SEBI has alleged violation of Regulation 23(2) of PM Regulations 2020 read with Regulation 15(1A) of PM Regulations 1993.*

6.1.2. *In this regard, it is submitted at the outset that SEBI has failed to appreciate that Noticee No. 1 had accepted minimum contribution amount of INR twenty-five lakhs or more from its investors. However, in August 2018, Milestone Real Estate High Yield Debt Series I did a partial return of capital along with income due to which the outstanding contribution from the investor was reduced from the minimum requirement of INR twenty-five lakhs. As already stated in thee response dated March 24, 2022, Noticee No.1 is in the process of exiting from its investments and winding up without any fresh top ups. In view of the fact that the investments are in the form of NCDs, the same will have to be wound up as and when repayments happen.*

6.1.3. *In view of the above, the allegation that the Noticee failed to keep the minimum investment per client i.e., funds or securities worth less than twenty-five lakh rupees is devoid of any merits and deserves being withdrawn. Especially given that retaining investors' monies only to strictly comply with black letter law would have been in fact prejudicial to investors' interest. Such technical violations have to be tested on facts to determine whether such actions are detrimental for the investors.*

6.2. *Allegation B: Failure to appoint SEBI Registered Custodian:*

6.2.1. *It is SEBI's allegation that Noticee No. 1 failed to appoint a SEBI registered custodian resulting in the alleged violation of Regulation 26 of PM Regulations 2020.*

6.2.2. *In this regard, it is reiterated that Noticee No. 1 has appointed Orbis Financial Corporation Limited (SEBI Registration No. IN/CUS/020) as a custodian to comply with Regulation 26 of PM Regulations 2020. The custodian agreement between the Noticee No. 1 and Orbis Financial Corporation Limited is annexed and marked hereto as "Exhibit – A". In light of the foregoing, it is submitted that any non-compliance on part of the Noticee No. 1 was venial at best which too stands rectified. Thus, there exist no violation in this regard, and consequently the allegation levelled by SEBI to this end is infructuous and ought to be withdrawn.*

6.3. *Allegation C: Failure to provide information in quarterly report to the client in stipulated manner:*

6.3.1. *It is SEBI's allegation that the quarterly reports provided to the clients for the quarter ended September 2020 and December 2020 did not provide information in the stipulated manner thereby violating Regulation 31(1) of PM Regulations 2020.*

6.3.2. *In this regard, it is submitted that during the year 2019-20, since the investments made by Noticee No. 1 were under litigation and no repayments were made, there was no change in the composition and the value of the portfolio, description and number of securities. Further, there were no transactions undertaken during the year, beneficial interest received, expenses incurred, risk foreseen by Noticee No. 1 and commission paid to distributor. Noticee No. 1, however, provided quarterly updates to its clients.*

6.3.3. *To ensure timely dissemination of information, Noticee No. 1 has started providing quarterly reports to its investors as stipulated. The latest quarterly report is annexed and marked hereto as "Exhibit – B". In light of the foregoing, it is submitted that any non-compliance on part of the Noticee No. 1 was technical at best which too stands rectified. Thus, there exists no violation in this regard, and consequently the allegation levelled by SEBI to this end is infructuous and ought to be withdrawn.*

6.4. *Allegation D: Failure to assign the role of compliance officer to person other than the Principal Officer:*

6.4.1. *It is SEBI's allegation that Noticee No. 1 appointed Noticee No. 2 i.e., Ms. Rubi Arya as compliance officer as well as the principal officer in derogation of Regulation 34(1) of PM Regulations 2020.*

6.4.2. *In this regard, it is submitted that the Noticee in order to comply with Regulation 34(1) of PM Regulations 2020 has appointed Mr. Mihir Parikh, CA as compliance officer for Noticee No. 1 w.e.f. October 10, 2021. The appointment letter of Mr. Mihir Parikh is annexed and marked hereto as "Exhibit – C".*

6.4.3. *Interestingly, the SCN itself records under paragraph 4.4 that the Noticee has duly complied with the regulatory requirement, yet it goes ahead and levels allegations against the Noticee for non-compliance with the regulatory framework. It is humbly submitted that the Noticee No.1 has duly complied with the regulatory framework and thus there exist no violation in this regard, and consequently the allegation levelled by SEBI to this end is infructuous and ought to be withdrawn.*

6.5. *<u>Allegation E: Failure to conduct internal audit by a practicing CA or CS during financial year 2019-20 and failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance:</u>*

6.5.1. *It is SEBI's allegation that Noticee No. 1 failed to conduct internal audit by a practicing CA or CS during financial year 2019-20 and failed to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance. Accordingly, SEBI has alleged the violation of SEBI Corporate Governance Circular and SEBI Half Yearly Reporting Circular.*

6.5.2. *In this regard it is submitted that Noticee No. 1 has ensured that they have complied with the regulatory obligations. Notably, with a view to streamline the process of regulatory compliance, Noticee No. 1 has appointed Bakliwal & Co., an independent CA to conduct internal audit and submit the half yearly reports to SEBI on a half yearly basis. Given that the Noticee has rectified the alleged breach and incorporated a system in place to ensure regulatory compliance going forward, the aforesaid charge is non-est and deserves being withdrawn.*

6.6. *<u>Cause of action does not survive and consequently, no liability ought to be imposed</u>*

6.6.1. *It is humbly submitted that the allegations pertaining to failure to keep minimum investment per client, failure to appoint a SEBI registered custodian, failure to provide information in quarterly report to the client in the prescribed manner, failure to conduct an internal audit and failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance against the Noticees are only academic at this juncture given that necessary rectifications have already been implemented. Consequently, SEBI's allegation, at the time of issuing its SCN, that Noticee No. 2 as the Principal Officer-cum-Compliance Officer failed to perform the responsibilities of Principal Officer-cum-Compliance Officer as specified in the PMS Regulations resulting in the alleged violation of Regulation 2(1)(p) read with Regulation 34(1) of PM Regulations 2020 read with Regulation 23A of PM Regulations 1993 is rendered infructuous.*

6.6.2. *Further given the alleged non-compliances were procedural irregularities, if any, which have not affected the interests of the investors, the SCN ought to be withdrawn in light of the structural changes implemented by the Noticees.*

6.7. *<u>Without Prejudice to the above, the alleged violations are at best merely technical and venial in nature</u>*

Without prejudice to the submissions, it is submitted that the SCN seeks to penalize the Noticee for technical violations that no longer exists. In view of the same, reliance is placed on the Hon'ble Securities Appellate Tribunal's order in P.G Electroplast Limited v. SEBI [Appeal No.281 of 2017], whereby it was observed that in cases of venial / technical violations, an authority, exercising its discretion under Section 15J of the SEBI Act would be justified in refusing to impose any penalty.

6.8. *<u>Facts of the present case do not merit imposition of penalty</u>*

6.8.1. *In light of the fact that alleged non-compliances were procedural irregularities at best, which have not affected the interests of the investors, the alleged violations at best are technical or venial breach, no gain has been made by the Noticees, no loss has been caused to public investors as a consequence of the same, and the Noticees had no mala fide intent, the facts of the matter do not merit imposition of penalty. In this regard, reliance is placed on Ld. WTM's Order In the matter of acquisition of shares of Refex Refrigerants Limited dated February 02, 2017, whereby considering the aforesaid factors, the Ld. WTM disposed the proceedings without any adverse directions against the notice therein observing as under:*

"13. On an overall assessment of the facts and circumstances of the case, I am inclined to arrive at the following conclusions:

- *that there is a violation of regulation 11(2) of the Takeover regulations, 1997 by the Noticee;*
- *that the violation is un-intentional and not for consolidation*
- *that the violation is <u>technical and venial in nature</u>; and*

- *that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation.*

14. In view of the above, in exercise of powers conferred upon me under section 11B of the SEBI Act, 1992, I do not find this to be a fit case warranting a direction as proposed in the show cause notice dated February 26, 2016 and the show cause notice stands disposed accordingly."

6.8.2. *In the instant matter, the Noticees have subsequently complied with the regulatory mandate. Thus, any non-compliance for a short period of time, resulting in some technical violations, ought to be looked at with leniency.*

D. Prayer

7. *In light of the submission made hereinabove, it is thus prayed that no penalty under Section 15HB 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. Reliance is placed on the Hon'ble Securities Appellate Tribunal's order in P.G Electroplast Limited v. SEBI [Appeal No.281 of 2017] whereby it was observed that in cases of venial / technical violations, an authority, exercising its discretion under Section 15J of the SEBI Act would be justified in refusing to impose any penalty:*

"Penalty can be imposed for failure to carry out a statutory obligation under the SEBI's Act. Factors contemplated under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act."

8. *It is also submitted that the doctrine of doubtful penalisation is squarely applicable to the present case in light of the submissions made above, and therefore no penalty be imposed against Noticees. Reference is drawn to the decision of the Hon'ble Supreme Court in the case of SEBI v. Sunil Krishna Khaitan (Civil Appeal No. 8249 OF 2013), the relevant extracts of which is reproduced below:*

"…We also feel that the principle of doubtful penalisation would be applicable in the present case. Way back in 1955, this Court in Tolaram Relumal and Another v. State of Bombay had held that it is a well settled rule of construction of penal statutes that if two views and reasonable constructions can be put on a provision, the court must lean in favour of construction which exempts the subject from penalty rather than one which imposes penalty………Reference was thereafter made to Francis Bennion's Statutory Interpretation which observes that the principle of doubtful penalisation, often limited to criminal statutes, in fact, extends to any form of detriment. The jurist has opined that it is a principle of legal policy that a person should not be penalised except under clear law."

(Emphasis Supplied)

9. *Thus, it is prayed that no penalty should be imposed on the Noticees as a result of the alleged violations in relation to charges levelled against them in the SCN.*

10. *Without prejudice to anything stated hereinabove, it is submitted that in case SEBI decides to levy any penalty on Noticees it must take into account factors specified in section 15J of the SEBI Act. The wordings of section 15J are as follows:*

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

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

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

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

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

11. *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings in the SCN do not allege that Noticees have not made any disproportionate gain or gained any unfair advantage on account of the alleged violations. With regard to Clause (b):- "the amount of loss caused to an investor or group of investors as a result of the default": It is submitted that there is no document on record to suggest that any loss whatsoever has been caused to any investor as a*

result of the allegations levelled in the SCN, further, the same has also not been alleged in the SCN. With regard to Clause (c):- "the repetitive nature of the default." it is submitted that the alleged violations, if any were not repetitive and thus the same were in isolation, and hence there is no question of repetitive nature of the default.

12. *Further, the Supreme Court of India in Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari, (2019) 5 SCC 90, held that the provisions of Clauses (a), (b) and (c) of Section 15-J are only illustrative in nature and have to be taken into account whenever such circumstances exist. The Supreme Court further held that factors other than those enumerated in Clauses (a), (b) and (c) of Section 15-J can also be considered by the Adjudicating Officer. Therefore, in light of the submissions made out by us hereinabove, including without prejudice that the alleged violations were, taken at the highest only technical/venial in nature, the SCN be revoked and no penalty be imposed on the Noticees.*

…."

.

Additional submissions made by the Noticees *vide* letter dated March 15, 2023 are as below:

"….

1. *These written submissions are an aide-memoire to the submissions made by the Counsel appearing for the Noticees at the hearing held on March 10, 2023 in connection with the captioned SCN. These submissions must be read with the Reply dated February 28, 2023 ("Reply") filed by us on behalf of the Noticees. Capitalised terms used herein and not defined, shall have the meaning ascribed to them in the Reply.*

2. *At the outset it is submitted all allegations contained in the SCN, which emanate from observations contained in the SEBI Inspection Report dated September 28, 2021, have been remedied by the Noticees. Further, taken at the highest, the non-compliances, if any, were non-repetitive and mere technical violations that did not lead to any loss to investors or any undue gains to the Noticees. Furthermore, there is nothing on record to establish that any of the violations alleged in the SCN were deliberate, continual and repetitious in nature, so as to merit initiation of adjudication proceedings against the Noticees. It is an established position that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. Given the aforesaid, issuance of the instant SCN and initiation of adjudication proceedings against the Noticees is not only unduly harsh, excessive and unwarranted but also in departure from SEBI's own established internal policies on this subject, including the Enforcement Manual dated February 24, 2020 (as amended on August 03, 2021) which provides following guidelines while dealing with first time violations:*

"2.1.1. As a matter of policy, <u>the violations that can be remedied by corrective measures or first time violations</u> (other than the cases where there is no ill-gotten gain or fraudulent and unfair trade practice affecting the market integrity or causing widespread losses to investors or money mobilisation by unregistered Collective Investment Scheme (CIS) or Deemed Public Issues (DPI) entities, administrative actions (soft actions) such as issuing administrative action) such as issuing administrative warning letters, deficiency/caution letters, advice letters and expedited settlement proceedings (as a newly proposed administrative action) for late filings, delayed compliance, etc. in accordance with the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014

2.1.2 Minor violations by intermediaries observed during inspection may predominantly be dealt with by administrative actions as per the general guidelines in Para 2.1.1. If violations are continued or repeated even after administrative actions, adjudication proceedings may be considered. In the cases where such violations are continued or repeated even after initiation of adjudication/imposition of penalties, the action under enquiry regulations such as suspension or cancellation of certificate of registration, etc. may be considered".
(Emphasis Supplied)

3. *It further submitted that no administrative actions have been initiated by SEBI in respect of the inspection and thus these allegations enumerated in the SCN cannot be sustained as the basis for initiation of the proceedings (being an administrative warning and a failure thereafter to rectify the violations) does not exist. In fact, to the contrary, the alleged non-compliances highlighted by SEBI in their inspection have been rectified and communicated to SEBI much prior to the issuance of the SCN which seems to have been completely overlooked. In any event, there is no allegation in SCN concerning violation of any administrative actions taken by SEBI, basis which the adjudication proceedings had to be initiated.*

4. *Reference is also drawn to the Order of the Ld. Whole Time Member of SEBI in the matter of KB Capital Markets Private Limited, Portfolio Manager whereby in similar factual matrix, proceedings were initiated pursuant to an inspection of the portfolio manager therein, the Ld. Whole Time Member observed that considering the totality of the facts involved therein, it was not appropriate to interfere with the recommended penalty, and that a penalty of warning would meet the ends of justice in the matter. Relevant extract of the said order is reproduced hereunder for ease of reference:*

"7. As an intermediary, the noticee has a duty to comply with various statutory requirements issued by SEBI from time to time. He is inter alia required to maintain high standards of promptitude and fairness while conducting his business. The noticee could not satisfactorily controvert the findings of the Enquiry Officer. Once the default is established, the penalty must follow. <u>It is only the quantum of penalty that is discretionary. In the present case, the penalty recommended is the minimum prescribed and therefore, in the totality of the facts of the case, I do not consider it appropriate to interfere with the recommended penalty. According to me, a penalty of warning would meet the ends of justice in the matter. Accordingly, I dispose of the present enquiry proceedings, as ordered herein under</u>."

(Emphasis Supplied)

5. *Submissions of the PMS to SEBI were not considered prior to issuance of SCN which rendering the SCN defective and incorrect:*

5.1. *Basis SEBI's inspection of the PMS for the inspection period between April 01, 2019 to March 31, 2020 conducted on September 28, 2021, the SCN alleges that the Noticees have contravened provisions of the PM Regulations. The SCN had been issued by SEBI on December 29, 2022. Post conduct of inspection, the Noticees had tendered various submissions to SEBI in respect of the observations listed in the SEBI Inspection Report, which render infructuous the allegations levelled in the SCN:*

(a) Response dated October 14, 2021 (enclosed as Annexure 1 hereto): providing its explanations as well as details of the actions taken by the PMS pursuant to the observations contained in the Inspection Report.
(b) Response dated March 24, 2022 (enclosed as Annexure 2 hereto): providing SEBI the details of balance compliance measures undertaken by the PMS.
(c) Response letters dated March 29, 2022 (enclosed as Annexure 3 hereto): providing copies of the reports of half-yearly internal audit conducted by M/s Bakliwal & Co.

5.2. *Considering the above, it seems that the SCN dated December 29, 2022 seems to have been issued by SEBI basis an incomplete appreciation of the submissions made by the PMS and in turn explains the deviation from the normal process required to be followed by SEBI. Insofar as the SCN incorrectly contains the following allegations:*

(a) *That the PMS failed to appoint a custodian: Whereas, vide the letter to SEBI dated March 24, 2022, factum of appointment of M/s Orbis Financial Corporation Limited as custodian was informed to SEBI.*
(b) *That the PMS failed to keep minimum investment per client: Whereas, the PMS had accepted minimum contribution amount of INR 25 lakhs or more from the investors. However, in August 2018 Milestone Real Estate High Yield Debt Series I did a partial return of capital along with income due to which the outstanding contribution from the investor was reduced from INR 25 Lakhs. It was further informed to SEBI vide letter dated March 24, 2022 that the PMS is in the process of exiting from its investments and winding up without any fresh top ups. Since the investments are in the form of NCDs, the same will have to be wound up as and when repayments happen. Given the aforesaid, retaining investors' monies with the PMS solely to meet requirement with the black letter of law would have in fact been detrimental to the interest of investors of the PMS and the underlying spirit of the regulations.*
(c) *That the PMS failed to appoint a compliance officer: In light of the SEBI observation, the PMS had immediately appointed a compliance officer and informed SEBI regarding the same vide its letter dated October 21, 2021.*
(d) *That the PMS failed to conduct internal audit: Whereas, the PMS has appointed M/s Bakliwal & Co, an independent CA firm to conduct internal audit and submit compliance report to SEBI on half yearly basis. After its appointment, Bakliwal & Co has been submitting the periodic internal reports to SEBI from time to time. The aforesaid was submitted to SEBI vide letters dated March 29, 2022.*

6. *Additional Submissions in respect of the allegations in the SCN:*

6.1. *Allegation A: <u>Failure to keep minimum investment per client</u>: It must additionally be noted that:*

(a) The requirement of minimum investment amount of rupees twenty-five lakhs per client under Regulation 15(1A) of the PM Regulations was adhered to by the PMS.
(b) Regulation 15(1A) of the PM Regulations 1993 stipulates- "the portfolio manager shall not accept from the client, funds or securities worth less that twenty-five lac rupees." The obligation under Regulation 15(1A) of the PM Regulations to not accept funds or securities of clients worth less than INR 25 Lakhs is only limited to the time of onboarding the client / accepting the first single lump-sum investment amount and not on the portfolio manager's ability to return funds in the usual course of portfolio management. Therefore, the requirement of Regulation 15(1A) is only limited to 'acceptance' of funds or securities at the inception of the relationship between the portfolio manager and the client or while accepting further amounts. It does not impose any restriction upon the portfolio manager to ensure that the minimum investment amount is maintained at the time of returning the funds from time to time to the respective clients when it is being done at the discretion of the portfolio manager who is in the process of closing down the PMS. In the present case, the PMS received from each client a sum of not less than INR 25 Lakhs at the time of on-boarding the client/ receiving first single lump-sum investment amount. No further contribution has been elicited from investors, rather only monies were returned to the investors of the PMS in order to best serve their interests.
(c) Further, it is noted that Paragraph 3(a) of the SEBI Circular No.: Cir. /IMD/DF/16/2010 stipulates- "To ensure compliance with regulation 15(1A) of SEBI (Portfolio Managers) Regulations, 1993, it is clarified that the first single lump-sum investment amount received as funds or securities from clients should not be less than 5 Lakh".
(d) Therefore, it is submitted that the PMS is not in breach of the minimum investment amount requirement under Regulation 15(1A) of the PMS Regulations.
(e) This requirement is to be considered in light of the peculiar fact in this case that the PMS is focussed on real estate backed securities and considering the nature of the investments it was not easy to find short terms investments and

return of partial investments was in the best interest of the investors. The actions of the Noticees have always been to protect the interest of the investors especially in the light of the spirit of the applicable regulations.

6.2. *Allegation B: <u>Failure to appoint SEBI registered custodian</u>: It has been incorrectly noted in the SCN that the PMS has failed to appoint a SEBI registered custodian till date. It is submitted that:*

(a) *The PMS has appointed Orbis Financial Corporation Limited (SEBI Registration No. IN/CUS/020) ("Orbis") as its custodian to comply with Regulation 26 of PM Regulations 2020 pursuant to execution of a custodial services agreement dated March 21, 2022.*

(b) *Intimation regarding appointment of Orbis as the custodian for the PMS was provided to SEBI vide letter dated March 24, 2022 (See Annexure 2).*

(c) *Thus, SEBI's allegation that the PMS had failed to appoint a SEBI registered custodian till date and accordingly is in violation of Regulation 26 of the PM Regulations 2020 deserves being withdrawn.*

6.3. *Allegation C: <u>Failure to provide information in quarterly report to the client in stipulated manner</u>: We reiterate the submissions contained in our reply in this relation.*

6.4. *Allegation D: <u>Failure to assign the role of compliance officer to a person other than Principal Officer</u>:*

(a) *It is submitted that the PMS has already appointed Mr. Mihir Parikh as a compliance officer and had accordingly informed SEBI of the same vide its letter dated October 10, 2022. Accordingly, SEBI's allegation that the PMS failed to comply with Regulation 34(1) of the PMS Regulations is rendered non-est and deserves being withdrawn.*

6.5. *Allegation E: <u>Failure to conduct internal audit</u>:*

(a) *Copies of reports concerning half-yearly internal audit conducted by M/s Bakliwal & Co have been submitted to SEBI vide the PMS's letters dated March 29, 2022 (Annexure C hereto). Accordingly, SEBI's allegation that the PMS violated SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated November 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010 is rendered not-est and deserves being withdrawn.*

7. *Allegations contained in the SCN do not deserve imposition of penalty:*

7.1. *It is reiterated that all allegations contained in the SCN which emanate from observations contained in the SEBI Inspection Report dated September 28, 2021 have been remedied by the Noticees. Further, taken at the highest, they were non-repetitive and mere technical violations which did not lead to any loss to investors or undue gains to the Noticees. There is nothing on record to establish that any of the violations alleged in the SCN were deliberate, continual and repetitious in nature, so as to merit initiation of adjudication proceedings against the Noticees. It is trite to reiterate that every that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. Given the aforesaid, issuance of the instant SCN and initiation of adjudication proceedings against the Noticees is not only unduly harsh, excessive and unwarranted but also in departure from SEBI's own established internal policies on this subject, as per which issuance of administrative warning letter / deficiency / caution letter, advice letter would have sufficed.*

7.2. *Reference is drawn to the judgment of the Hon'ble Supreme Court of India in Hindustan Steel Ltd. v. State of Orissa (1969 (2) SCC 627), wherein the Court pronounced as follows:*

"Under the Act penalty may be imposed for failure to register as a dealer-Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. <u>Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances</u>. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

(Emphasis Supplied)

8. *<u>Cause of action in the instant matter is stale</u>: The subject matter of instant SCN is an inspection conducted by SEBI on September 28, 2021, for the period between April 01, 2019 to March 31, 2020. It is respectfully submitted that much water has flown under the bridge since the conduct of inspection by SEBI, as the observations contained in the SEBI Inspection Report have been proactively rectified / complied with. As a consequence, four years after the conclusion of period of inspection, it would be a travesty to penalise the Noticees especially when no non-compliance observed in the SEBI Inspection Report survives.*

9. *<u>SEBI has not provided inspection of relevant documents</u>: SEBI has not provided the complete action matrix in the instant matter. Relevant portions of the said document have been redacted by SEBI, thus disabling us from obtaining a complete understanding of the deliberation undertaken by SEBI in issuing the instant SCN and is in violation of the principles established by the Hon'ble Supreme Court in a catena of cases. For example, pg. 1, para 1 of the document concerning "notes approving action matrix" seems to suggest that issuance of administrative warning was*

recommended in the matter, however, the subsequent contents of para 1 have been redacted by SEBI. This is grave considering the nature of issues involved in the matter, taken at the highest merited issuance of an administrative warning only.

10. *In light of the foregoing, it is submitted that the proceedings against the Noticees are liable to be dropped without any adverse order or penalty. The SCN deserves being disposed of and the Noticees ought to be exonerated of the allegations contained in the SCN. Especially given that (i) the PMS is in the process of exiting from its investments and winding up without any fresh top ups, and (ii) the outstanding contribution from investors in the PMS is minimal ~INR 6 crore. Without prejudice to the aforesaid, considering that the deficiencies noted in the SEBI Inspection Report have been remedied much prior to the date of issuance of the SCN, it is prayed that a lenient view be taken in the matter, and the SCN be disposed of without imposition of any penalty on the Noticees.*

….” .

D. CONSIDERATION OF ISSUES AND FINDINGS

11. The following issues arise for consideration in the present matter:

ISSUE I: Whether Noticees had violated the stated provisions of SEBI Portfolio Managers Regulations and SEBI Circulars as alleged in the SCN and as also brought out under Para 3 above?

ISSUE II: Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992?

ISSUE III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

12. Before proceeding with the matter on merits, it would be pertinent to first deal with the preliminary contention /submissions of the Noticees.

12.1 It had inter alia been contented by the Noticees 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 investors'.* In this regard Noticees have cited following orders of Hon'ble Securities Appellate Tribunal's ("SAT") viz., UPSE Securities Limited v. SEBI (Appeal No. 109 of 2011, decided on July 25, 2011), Religare Securities Limited v. SEBI (Appeal No. 23 of 2011, decided on June 16, 2011) and IDBI Trusteeship Services Limited v. SEBI (Appeal No. 186 of 2023).

12.2 Another preliminary technical contention raised by the Noticees was that "….no administrative actions have been initiated by SEBI in respect of the inspection and thus these allegations enumerated in the SCN cannot be sustained as the basis for initiation of the proceedings (being an administrative warning and a failure thereafter to rectify the violations) does not exist…..", "….all allegations contained in the SCN, which emanate from observations contained in the SEBI Inspection Report dated September 28, 2021, have been remedied by the Noticees. Further, taken at the highest, the non-compliances, if any, were non-repetitive and mere technical violations that did not lead to any loss to investors or any undue gains to the Noticees. Furthermore, there is nothing on record to establish that any of the violations alleged in the SCN were deliberate, continual and repetitious in nature, so as to merit initiation of adjudication proceedings against the Noticees…."

12.3 In this regard, it is noted that the alleged violations by the Noticees are of the extant applicable provisions of law as are otherwise applicable to that entire category of the intermediary and not just about minor procedural aspects specific to the Noticees. In this regard, I note from the material available on record that as per SEBI, the violations committed by PMS-Milestone were fundamental to its operations as a portfolio manager and protecting the interest of investors. I also note from the text of judgement submitted /cited by the Noticees themselves that Hon'ble SAT in IDBI Trusteeship Services Limited v. SEBI [Appeal No. 186 of 2023] had inter alia held that, 'if any serious lapse is discovered, then penalty action can be taken'. Further, in this regard, whether an alleged violation is merely procedural in nature or is grave depends upon the facts and circumstance of each case.

12.4 The Noticees have contended that there is nothing on record to establish that any of the violations alleged in the SCN were deliberate, continual and repetitious in nature, so as to merit initiation of adjudication proceedings against the Noticees. In this regard, it would be relevant to state that whether administrative actions are to be taken or adjudication proceedings is to be conducted in a matter depends on the facts and circumstances of each case. I also note that, initiation of adjudication proceedings under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of such exercise, inspection and findings thereof in instant case, and just because the alleged violations are contended to be merely technical and /or first time violations cannot be the sole ground to vitiate initiation of the proceedings in particular when such violations may be of extant provisions of law. I note that the subject matter of instant proceedings are as per the communique of appointment of AO, duly approved by the competent authority.

12.5 With regard to the above contention reference was also drawn by Noticees to the Order of the Ld. Whole Time Member of SEBI in the matter of KB Capital Markets Private Limited, Portfolio Manager. In this regard, it is noted that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. Noticees have merely cited WTM order of SEBI and mentioned about the order. However, the Noticees have neither demonstrated as to how the cited order was applicable in the instant matter nor have they demonstrated as to what are the relied upon findings in the respective order which have a bearing on the alleged violations against Noticees. In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit and accordingly the contention of the Noticees in this regard cannot be accepted.

12.6 It is matter of record that Noticee 1 was /is an intermediary registered with SEBI and that Noticee 2 was the Principal Officer-cum-Compliance Officer of the Noticee 1 during relevant period and going by the nature /class of intermediary and the role and duties of the compliance officer as casted by virtue of extant provisions of law, any non-compliance of the regulatory requirements, particularly those relating to aspects involved in the instant matter cannot just be snubbed merely on the ground of the same being claimed to be technical and /or first time violations as contended by the Noticees as such a situation, in my opinion, would akin to a compromise with the orderly functioning of the securities market besides setting a contrite precedent. The contention of Noticees that the stated violations were merely technical and did not lead to any loss to investors or any undue gains to the Noticees itself cannot be a ground to do away with the obligations otherwise cast upon the Noticees per extant applicable provisions of law and accordingly the contentions of the Noticees in this regard are devoid of merit and hence cannot be accepted.

12.7 It is noted that in the instant matter the alleged violations by the Noticees pertained to crucial aspects relating to minimum investment by clients, appointment of custodian, periodical information to clients, role of compliance officer and obligations cast upon it by virtue of extant provisions of law, internal audit by practising CA or CS and submission of half-yearly report to the regulator, which seem to have been interleaved in the law governing the related market /constituents inter alia with the objective of orderly functioning of the securities market and its constituents and for protection of the interest of investors and would therefore, in my opinion, not qualify to fall in the bucket of trivial or minor aspects as such and accordingly the contentions raised by the Noticees, in this regard, cannot be accepted.

12.8 It has been contended that *"SEBI has not provided the complete action matrix in the instant matter. Relevant portions of the said document have been redacted by SEBI, thus disabling us from obtaining a complete understanding of the deliberation undertaken by SEBI in issuing the instant SCN and is in violation of the principles established by the Hon'ble Supreme Court in a catena of cases. For example, pg. 1, para 1 of the document concerning "notes approving action matrix" seems to suggest that issuance of administrative warning was recommended in the matter, however, the subsequent contents of para 1 have been redacted by SEBI. This is grave considering the nature of issues involved in the matter, taken at the highest merited issuance of an administrative warning only."*

12.9 In this regard, it is noted that the submissions of the Noticees are without any specific details as such and hence generic in nature as it has not been specifically brought out as to which principles of which judgement of Hon'ble Supreme Court have been violated by SEBI. Without specific details and without demonstration of applicability and prejudice caused, if any, the submissions of the Noticees would remain mere assertions. As regards contention relating to complete action matrix, it is noted that all violations as alleged and the charging provisions in respect thereof in the instant matter had been duly covered in the SCN dated December 29, 2022. Accordingly, Noticee's submissions in this regard are devoid of merit and cannot be accepted.

12.10 Noticees have also submitted that the SCN dated December 29, 2022 seems to have been issued by SEBI based on incomplete appreciation of the submissions made by the PMS to SEBI in respect of the observations listed in the SEBI Inspection Report, insofar as the SCN incorrectly contains the stated allegations.

12.11 In this regard, it is noted that the SCN was issued based on conclusion of the matter by SEBI after taking into consideration the response of Noticees on the observations of the inspection. It appears that the Noticees have attempted to plead contending that since explanations as well as details of the actions taken by the PMS with regard to the alleged violations, had been provided by them to SEBI, accordingly the violations no longer existed as on date of issuance of SCN. In this regard, it is a matter of record that alleged violations were regarding the non-compliance of cited provisions of the PMS regulations and the SEBI circular as observed by SEBI during their inspection covering the stated period of inspection. Since the Noticees allegedly failed to comply with the provisions of PMS Regulations and SEBI Circulars during the relevant period, therefore, the Noticees had been alleged to have violated the stated provisions as cited in the SCN and as also brought out under Para 3 above. In short, the submissions of the Noticees are contrary to the factual position that alleged violation of the Noticees pertained to period covered under inspection. Considering this in backdrop of the fact that alleged violations by the Noticee would not qualify to fall in the bucket of trivial or minor aspects as such, as also dealt with earlier, the contentions of the Noticees, in this regard, are out of context and hence devoid of merit and accordingly cannot be accepted.

12.12 It has been contended by the Noticees that *“Cause of action in the instant matter is stale: The subject matter of instant SCN is an inspection conducted by SEBI on September 28, 2021, for the period between April 01, 2019 to March 31, 2020. It is respectfully submitted that much water has flown under the bridge since the conduct of inspection by SEBI, as the observations contained in the SEBI Inspection Report have been proactively rectified / complied with. As a consequence, four years after the conclusion of period of inspection, it would be a travesty to penalise the Noticees especially when no non-compliance observed in the* SEBI *Inspection Report survives.”*

12.13 In this regard, it would be relevant to state that whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. I also note that, initiation of adjudication proceedings under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of such exercise, which is the inspection carried out by SEBI in instant case, and just because the alleged violations were committed in a distant past cannot be the sole ground to vitiate initiation of the proceedings.

Further, in this regard, I note from material available on record that in the instant matter the period covered under inspection was from April 01, 2019 to March 31, 2020 and the proposed inspection was carried out during September 2021 as an off-site inspection carried out by SEBI by seeking information /data through emails /letters / tele-calls etc., having regard to the then prevailing pandemic situation due to Covid-19, following which inspection report was forwarded by SEBI to PMS-Milestone during September 2021 followed by replies of the PMS-Milestone to SEBI and the adjudicating officer in the matter was appointed on March 31, 2022. Ms. Maninder Cheema, Chief General Manager, SEBI was appointed as the Adjudicating Officer (“AO”) to inquire into and adjudicate upon the aforesaid alleged violations against the Noticees. Pursuant to transfer of Ms. Maninder Cheema, SEBI appointed Dr. Anitha Anoop, Chief General Manager, SEBI as AO in the instant matter. Subsequently, pursuant to transfer of Dr. Anitha Anoop, SEBI vide communique dated September 05, 2022 had appointed the undersigned as AO in the instant matter and the Show Cause Notice in the matter was issued during December 2022. Hence, I note that there is no considerable delay in issuance of the SCN in the instant proceedings.

I also note that no limitation is prescribed in SEBI Act or Regulations for issuance of SCN or for completion of the Adjudication proceedings. Further in this regard, reliance is placed on the order passed by Hon'ble SAT in the matter of Metex Marketing Pvt. Ltd. vs.SEBI (order dated June 4, 2019) wherein Hon'ble SAT had inter alia held as follows, *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation"*.

In view thereof, in my opinion, the contentions of the Noticees in this regard are devoid of merit and cannot be accepted.

13. I now proceed to deal with the matter on merits with respect to the allegations made against the Noticees vide SCN dated December 29, 2022.

ISSUE I: Whether Noticees had violated the stated provisions of SEBI Portfolio Managers Regulations and SEBI Circulars as alleged in the SCN and as also brought out under Para 3 above?

Here it would be pertinent to draw reference to the relevant provisions alleged to have been violated, which are reproduced as under:

REGULATION 15(1A) OF SEBI (PORTFOLIO MANAGERS) REGULATION, 1993.

15. General responsibilities of a Portfolio Manager. –

"….

[1][(1A) The portfolio manager shall not accept from the client, funds or securities worth less than [2][twenty-five lacs] rupees.]

[3][Provided that the minimum investment amount per client shall be applicable for new clients and fresh investments by existing clients:
Provided further that existing investments of clients, as on date of notification of Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2012, may continue as such till maturity of the investment.]
…."

REGULATION 23(2), 26, 31(1), 34(1) OF SEBI (PORTFOLIO MANAGERS) REGULATION, 2020

"….

23. General responsibilities of a Portfolio Manager.

"….

(2) The portfolio manager shall not accept from the client, funds or securities worth less than fifty lakh rupees:

Provided that the minimum investment amount per client shall be applicable for new clients and fresh investments by existing clients:

[35][Provided further that subject to appropriate disclosures in the disclosure document and the terms agreed between the client and the portfolio manager, the requirement of minimum investment amount per client shall not apply to an accredited investor:]

…."

"….

26. Appointment of custodian.

26. Every portfolio manager shall appoint a custodian in respect of securities managed or administered by it:

Provided that this regulation shall not apply to a portfolio manager who provides only advisory services[44][:]

…."

31. Reports to be furnished to the client.

"….

(1) The portfolio manager shall furnish periodically a report to the client, as agreed in the contract, but not exceeding a period of three months and as and when required by the client and such report shall contain the following details, namely: -

(a) the composition and the value of the portfolio, description of securities and goods, number of securities, value of each security held in the portfolio, units of goods, value of goods, cash balance and aggregate value of the portfolio as on the date of report;
(b) transactions undertaken during the period of report including date of transaction and details of purchases and sales;
(c) beneficial interest received during that period in the form of interest, dividend, bonus shares, rights shares, etc;
(d) expenses incurred in managing the portfolio of the client;
(e) details of risk foreseen by the portfolio manager and the risk relating to the securities recommended by the portfolio manager for investment or disinvestment;
(f) default in payment of coupons or any other default in payments in the underlying debt security and downgrading to default rating by the rating agencies, if any;
(g) details of commission paid to distributor(s) for the particular client.

…."

34. Appointment of compliance officer.

"….

34. (1) Every portfolio manager shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances:

Provided that the role of compliance officer shall not be assigned to the principal officer appointed in terms of clause (d) of sub-regulation (2) of regulation 7 or the employee of the portfolio manager appointed in terms of clause (e) of sub-regulation (2) of regulation 7 46[:]

…."

SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated Nov 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010

SEBI CIRCULAR IMD/PMS/CIR/1/21727/03 DATED NOVEMBER 18, 2003

"….

Boards of the portfolio managers should review the compliance of regulations in their periodical meetings. They should develop a system of getting quarterly reports of compliance of SEBI Regulations and Guidelines and also that due diligence has been exercised by their officials in their operations and that the interests of investors are protected. Such reports may be placed before the Boards by the compliance officers. Boards of the portfolio managers should also review redressal of investors' grievances. Any deficiency letters or warning letters issued to the portfolio managers by SEBI should also be placed before the Boards of the portfolio managers.

There shall be internal audit by a practicing CA or CS so as to judge the quality of internal procedures being followed by the portfolio manager. The report of the internal audit shall be submitted to the Board of the portfolio manager.

Compliance of the above guidelines may please be disclosed to SEBI while submitting the half yearly report. The report is to be submitted twice a year, as on 31st of March and 30th of September. The report should reach SEBI within thirty days of the period to which it relates."

…."

SEBI CIRCULAR IMD/DOF-1/PMS/CIR-1/2010 DATED 15/03/2010

"….

"All portfolio managers are advised to submit the half yearly report to SEBI in the revised format within 30 days after the end of respective period ended 30/9 & 31/3 of each year."

…."

"….

REGULATION 2 (1) (P) READ WITH 34 (1) OF SEBI (PORTFOLIO MANAGERS) REGULATIONS, 2020

(p) "principal officer" means an employee of the portfolio manager who has been designated as such by the portfolio manager and is responsible for: -

(i) the decisions made by the portfolio manager for the management or administration of portfolio of securities or the funds of the client, as the case may be; and

(ii) all other operations of the portfolio manager.

…."

REGULATION 23A OF SEBI (PORTFOLIO MANAGERS) REGULATIONS, 1993

"….

*[72][**23A. Appointment of compliance officer**. ―(1) Every portfolio manager shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances.*

(2) The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.]

…."

14. **Noticee 1:**

14.1 **In the SCN, it was inter alia alleged that Noticee 1 had violated Regulation 23 (2) of SEBI (Portfolio Managers) Regulation, 2020 r/w Regulation 15(1A) of SEBI (Portfolio Managers) Regulation, 1993.**

In this regard, following had been submitted by the Noticees, *"at the outset that SEBI has failed to appreciate that Noticee No. 1 had accepted minimum contribution amount of INR twenty-five lakhs or more from its investors. However,* *in August 2018, Milestone Real Estate High Yield Debt Series I did a partial return of capital along with income due to which the outstanding contribution from the investor was reduced from the minimum requirement of INR twenty-five lakhs. As already stated in thee response dated March 24, 2022, Noticee No.1 is in the process of exiting from its investments and winding up without any fresh top ups. In view of the fact that the investments are in the form of NCDs, the same will have to be wound up as and when repayments happen."*

"In view of the above, the allegation that the Noticee failed to keep the minimum investment per client i.e., funds or securities worth less than twenty-five lakh rupees is devoid of any merits and deserves being withdrawn. Especially given that retaining investors' monies only to strictly comply with black letter law would have been in fact prejudicial to investors' interest. Such technical violations have to be tested on facts to determine whether such actions are detrimental for the investors..

(a) The requirement of minimum investment amount of rupees twenty-five lakhs per client under Regulation 15(1A) of the PM Regulations was adhered to by the PMS.

(b) Regulation 15(1A) of the PM Regulations 1993 stipulates- "the portfolio manager shall not accept from the client, funds or securities worth less that twenty-five lac rupees." The obligation under Regulation 15(1A) of the PM Regulations to not accept funds or securities of clients worth less than INR 25 Lakhs is only limited to the time of onboarding the client / accepting the first single lump-sum investment amount and not on the portfolio manager's ability to return funds in the usual course of portfolio management. Therefore, the requirement of Regulation 15(1A) is only limited to 'acceptance' of funds or securities at the inception of the relationship between the portfolio manager and the client or while accepting further amounts. It does not impose any restriction upon the portfolio manager to ensure that the minimum investment amount is maintained at the time of returning the funds from time to time to the respective clients when it is being done at the discretion of the portfolio manager who is in the process of closing down the PMS. In the present case, the PMS received from each client a sum of not less than INR 25 Lakhs at the time of on-boarding the client/ receiving first single lump-sum investment amount. No further

contribution has been elicited from investors, rather only monies were returned to the investors of the PMS in order to best serve their interests.

(c) *Further, it is noted that Paragraph 3(a) of the SEBI Circular No.: Cir. /IMD/DF/16/2010 stipulates- "To ensure compliance with regulation 15(1A) of SEBI (Portfolio Managers) Regulations, 1993, it is clarified that the first single lump-sum investment amount received as funds or securities from clients should not be less than 5 Lakh".*

(d) *Therefore, it is submitted that the PMS is not in breach of the minimum investment amount requirement under Regulation 15(1A) of the PMS Regulations.*

(e) *This requirement is to be considered in light of the peculiar fact in this case that the PMS is focussed on real estate backed securities and considering the nature of the investments it was not easy to find short terms investments and return of partial investments was in the best interest of the investors. The actions of the Noticees have always been to protect the interest of the investors especially in the light of the spirit of the applicable regulations.*

".

14.1.1 In this regard, it is noted that SEBI had inter alia observed that there were twelve clients in respect of whom the outstanding contribution had fallen below Rs. Twenty Five Lakhs and that the terms and conditions of PMS agreement provided for redemption of investments in form of periodic partial repayments. Further, it was observed from the email dated August 13, 2018 that Milestone-PMS was aware of the partial redemption by the issuer. However, the Portfolio Manager did not exercise its discretion as provided in Clause 6 of the Discretionary PMS agreement and did not make any effort to reinvest the money arising out of disposal of the portfolio investments and instead remained inactive on the partial redemption of investments to the investors and as a result of the aforesaid partial return, outstanding contribution per client fell below twenty-five lakhs rupees as on March 31, 2020.

14.1.2 In this regard, it is noted that Noticee 1 had itself as part of its reply to the SCN, inter alia submitted that in August 2018, Milestone Real Estate High Yield Debt

Series I did a partial return of capital along with income due to which the outstanding contribution from the investor /client was reduced from the minimum requirement of Rs. Twenty-Five Lakhs. In short, that the contribution per client fell below twenty five lakhs rupees as on March 31, 2020 has not been disputed by the Noticees.

14.1.3 It has however been contended that the obligation under Regulation 15(1A) of the PM Regulations to not accept funds or securities of clients worth less than Rs. Twenty Five Lakhs is only limited to the time of onboarding the client /accepting the first single lump-sum investment amount. In this regard, it has also been contended that regulation does not impose any restriction upon the portfolio manager to ensure that the minimum investment amount is maintained at the time of returning the funds from time to time to the respective clients.

14.1.4 In this regard, I note that as per provisions of Regulation 15(1A) of Portfolio Managers Regulations, 1993, a portfolio manager shall not accept from client, funds or securities worth less than twenty five lakh rupees and the text of the said regulation does not provide for any such requirement that the said threshold of Rs. Twenty Five Lakhs applies only at the time of onboarding. As regards contention relating to Paragraph 3(a) of the SEBI Circular No.: Cir. /IMD/DF/16/2010 dated November 02, 2010, the same ought to be read having regard to Para 2(a) of the said circular which reads as follows, *'… 2. SEBI has come across lack of uniformity in practice relating to following issues pertaining to portfolio managers: a) There have been instances of portfolio managers accepting funds or securities less than `5lakh from clients and opening client accounts on the basis of the client's commitment that `5lakh would be brought in soon. Also there have been instances of committed amounts being higher than the prescribed minimum of `5lakh while the initial amount collected from the client could be below `5lakh…'.* Accordingly read in totality, the cited SEBI Circular in my opinion appears to clarify the position with regard to clients not be on boarded with minimum value being less than the specified threshold and /or based on clients commitment to meet the specified threshold by bringing in the required amount in due course and not about withdrawal of portfolio.

Therefore, as per PMS Regulations, the minimum value of funds or securities per client cannot be less than Rupees Twenty Five Lakhs, which also implies that it shall also be maintained throughout. This is further bolstered when seen in light of the Frequently Asked Questions (FAQ) - Portfolio Managers dated October 28, 2020 issued by SEBI whereby with regard to the aspect of, '*Is Partial withdrawal of Portfolio permitted, for the existing clients of Portfolio Managers?* ', it had been distinctly clarified that, '*The client may withdraw partial amounts from his portfolio, in accordance with the terms of the agreement between the client and the Portfolio Manager. However, the value of investment in the portfolio after such withdrawal shall not be less than the applicable minimum investment amount*.'.

14.1.5 Further in this regard, I note that PMS Regulations do not provide for any specific exemption as such from minimum investment amount requirement w.r.t., redeeming clients' funds beyond the minimum amount of rupees twenty-five lakhs. In my opinion, if the portfolio manager were to be allowed to redeem beyond the threshold of minimum funds or securities to be accepted then such interpretation would not be in the spirit of PMS regulations. Just to cite as an example**,** if the Noticees contentions in this regard, were to be accepted, it would be akin to a situation whereby a Portfolio Manager may initially on-board clients with the minimum threshold, Rs. 25 lakhs in instant matter and thereafter based on any private arrangement or any other reason, may return the funds /securities to the client(s) and allow the value per client to be even as low as Rs. One Only and take defence that as the minimum value viz., Rs. 25 lakhs per client(s) had been received initially i.e., on first day of on boarding, there would not be any violations of the PMS Regulations, even though the value of investment per client may go down the very next day itself, owing to redemptions /return by PMS. In my opinion this cannot be the purpose of the said regulation as it would be against the spirit of PMS regulations.

14.1.6 Additionally, in this regard I note that Clause 6.1 and Clause 1.4 of Noticee 1's Discretionary Portfolio Management Services Agreement (hereinafter also referred to as "**the Agreement**"), read as under:

"

…
6. CAPITAL COMMITMENT AND REINVESTMENT
6.1 The client agrees to invest an aggregate amount as specified in the Term sheet annexed to this Agreement as being the capital Commitment. The Capital Commitment of the Client shall be minimum of Indian Rupees 25,00,000 (INR Twenty Five Lakh only)…
…
"
"
…
1. DEFINITIONS
…
*1.4 "**Capital Commitment**" means the aggregate amount agreed by the Client to be invested through the Portfolio Manager under this Agreement, subject to a minimum sum of Indian Rupees 25,00,000/- (INR Twenty Five Lakh only)….*
…
"

Going by the above text of Noticee 1's agreement with its clients, it is noted that the agreement itself requires that the minimum aggregate investment amount of the clients with the PMS-Milestone would have to be INR 25 Lakhs and therefore, clients had to be invested with a minimum of INR 25 Lakhs investment amount with the Noticee 1 at all times, and there were no exceptions which allow the investment amounts to go below INR 25 Lakhs due to any/partial return of capital.

14.1.7 I note from the material available on record that, PMS-Milestone provided only discretionary PMS to its clients. In this regard, it would be relevant to mention that in discretionary portfolio management service, the portfolio manager individually and independently manages the funds and securities of each of its client in accordance with the objectives of the client. Since the investments under discretionary PMS were managed by Noticee 1, it was the responsibility of Noticee 1 to ensure that the minimum investment value of clients does not fall below the required minimum as per provisions of Regulation 23 (2) of SEBI (Portfolio Managers) Regulation, 2020 r/w Regulation 15(1A) of SEBI (Portfolio Managers) Regulation, 1993. The contention that regulation does not impose any restriction upon the portfolio manager to ensure that the minimum investment amount is maintained at the time of returning the funds from time to time to the respective clients, is, therefore, in my opinion and as also dealt with in the foregoing, is devoid of merit and accordingly cannot be accepted.

14.1.8 In view thereof, I hold that allegation levelled against Noticee 1 that it has violated provisions of Regulation 23(2) of SEBI (Portfolio Managers) Regulation, 2020 r/w Regulation 15(1A) of SEBI (Portfolio Managers) Regulation, 1993, stands established.

14.2 **In the SCN, it was inter alia alleged that Noticee 1 had violated Regulation 26 of SEBI (Portfolio Managers) Regulation, 2020.**

In this regard, relevant text of Regulation 26 of PM Regulations, 2020 is reproduced as under:

> ***26. Appointment of custodian.***
>
> *"….*
>
> *26. Every portfolio manager shall appoint a custodian in respect of securities managed or administered by it:*
>
> *….*
>
> *".*

14.2.1 In this regard, it is noted from the material available on record that during the inspection by SEBI, Noticee 1 had submitted to SEBI that it had appointed CAMS as its Custodian. However, it was observed by SEBI that CAMS was not a SEBI registered custodian, under Section 12 of SEBI Act, 1992.

14.2.2 Further in this regard, I also note from material available on record that Noticee 1 vide its email dated October 14, 2021 as part of its reply to the findings of inspection of Milestone PMS had inter alia submitted that PMS-Milestone will soon appoint a SEBI registered custodian to comply with the Regulation 26 of Portfolio Managers Regulations, 2020 and has already initiated discussion for the same.

14.2.3 Further in this regard, I note that Noticee as part of its reply to the SCN had inter alia submitted that *"…In this regard, it is reiterated that Noticee No. 1 has appointed Orbis Financial Corporation Limited (SEBI Registration No. IN/CUS/020) as a custodian to comply with Regulation 26 of PM Regulations 2020. The custodian agreement between the Noticee No. 1 and Orbis Financial Corporation Limited is annexed and marked hereto as "Exhibit – A". In light of the foregoing, it is submitted that any non-compliance on part of the Noticee No. 1 was venial at best which too stands rectified. Thus, there exist no violation in this regard, and consequently the allegation levelled by SEBI to this end is infructuous and ought to be withdrawn….*

> *"…..*
> *(b) Intimation regarding appointment of Orbis as the custodian for the PMS was provided to SEBI vide letter dated March 24, 2022 (See Annexure 2).*
> *(c) Thus, SEBI's allegation that the PMS had failed to appoint a SEBI registered custodian till date and accordingly is in violation of Regulation 26 of the PM Regulations 2020 deserves being withdrawn."*
> *….."*

14.2.4 From the material available on record, it is noted that Noticee 1 had inter alia submitted that any non-compliance on part of the Noticee No. 1 was venial at best which too stands rectified. While I note that the submissions in itself are in the nature of admission, I also note from material available on record that custodian is one who provides custodial services like safekeeping of securities and providing services incidental thereto including maintaining accounts of securities, collecting the benefits or rights accruing to the client in respect of securities, keeping the client informed of the actions taken or to be taken by the issuer of securities that may have a bearing on the benefits or rights accruing to the client, maintaining and reconciling records of the aforesaid services etc., and having regard to the role played by a custodian and the fact that the same was a regulatory requirement as per the extant applicable provisions of law, any violation in this regard of not having appointed a custodian, cannot, in my opinion, be considered venial, as such and accordingly the contentions of the Noticee 1 in this regard are devoid of merit and hence not acceptable.

14.2.5 I note from the submissions of the Noticees as reply to the SCN dated February 27, 2023, and March 15, 2023 that Noticee 1 had inter alia submitted having appointed Orbis Financial Corporation Limited as its Custodian. It is noted from Exibit- A and Annexure 2 of said submissions that appointment of Orbis Financial Corporation Limited (SEBI Registration No. IN/CUS/020) took place vide Custodial Services Agreement dated March 21, 2022 and the said appointment was intimated to SEBI vide email dated March 23, 2022.

In view thereof, I hold that the allegation levelled against Noticee 1 that it had violated Regulation 26 of SEBI (Portfolio Managers) Regulation, 2020, stands established.

14.3 **In the SCN, it was inter alia alleged that Noticee 1 had violated Regulation 31(1) of SEBI (Portfolio Managers) Regulations, 2020.**

In this regard, relevant text of Regulation 31(1) of PM Regulations, 2020 is reproduced as under:

"

Reports to be furnished to the client.

31. (1) The portfolio manager shall furnish periodically a report to the client, as agreed in the contract, but not exceeding a period of three months and as and when required by the client and such report shall contain the following details, namely: -

(a) the composition and the value of the portfolio, description of securities and goods, number of securities, value of each security held in the portfolio, units of goods, value of goods, cash balance and aggregate value of the portfolio as on the date of report;

(b) transactions undertaken during the period of report including date of transaction and details of purchases and sales;

(c) beneficial interest received during that period in the form of interest, dividend, bonus shares, rights shares, etc;

(d) expenses incurred in managing the portfolio of the client;

(e) details of risk foreseen by the portfolio manager and the risk relating to the securities recommended by the portfolio manager for investment or disinvestment;

(f) default in payment of coupons or any other default in payments in the underlying debt security and downgrading to default rating by the rating agencies, if any;

(g) details of commission paid to distributor(s) for the particular client.

".

14.3.1 In this regard, from the material available on record, it is noted that Noticee 1 *had submitted to SEBI that, '…during the year 2019-20, there was no change in composition and value of the portfolio, description* and *number of securities. Further, there were no transaction undertaken during the year, beneficial interest received, expenses incurred, risk foreseen by the portfolio manager,* *default in payment of coupons, commission paid to distributor. However, PMS Milestone provides quarterly update to its client. Going forward, to comply with Regulations 31(1) of PMS Regulation, 2020 we shall provide quarterly reports to clients as stipulated…'.*

14.3.2 In this regard, it is noted that as part of its reply to the SCN, Noticees have broadly contended on similar lines and inter alia submitted, '… *during the year 2019-20, since the investments made by Noticee No. 1 were under litigation and no repayments were made, there was no change in the composition and the value of the portfolio, description and number of securities. Further, there were no transactions undertaken during the year, beneficial interest received, expenses incurred, risk foreseen by Noticee No. 1 and commission paid to distributor. Noticee No. 1, however, provided quarterly updates to its clients."*
"To ensure timely dissemination of information, Noticee No. 1 has started providing quarterly reports to its investors as stipulated. The latest quarterly report is annexed and marked hereto as "Exhibit – B…'. In light of the foregoing, it is submitted that any non-compliance on part of the Noticee No. 1 was technical at best which too stands rectified."

14.3.3 In this regard, as regards the contentions of the Noticee 1 that there were no transaction undertaken during the year and that non-compliance on part was technical at best, that there was no change too in my opinion would be an important information from perspective of a client of PMS and hence would qualify to be an important update and /or important information. This apart, I also note that extant provisions required Noticee 1 as a portfolio manager to furnish such report periodically to its clients and there is no specific exception as such allowing liberty to a portfolio manager of not furnishing such report to its clients. Accordingly, the contentions of the Noticee 1 in this regard are devoid of merit and hence not acceptable.

14.3.4 Further, in this regard, I also note that the submissions of the Noticee 1 are inter alia in the nature of admission in so far as it had submitted to SEBI that, 'going forward, to comply with Regulations 31(1) of PMS Regulation, 2020 we shall provide quarterly reports to clients as stipulated', and as reply to the SCN that it, 'has started providing quarterly reports to its investors as stipulated'.

14.3.5 In this regard, it is noted from the material available on record that in the quarterly reports /updates provided by Noticee 1 to its clients for the quarter ended September, 2020 and December, 2020, information as stipulated under Regulation 31(1) of PM Regulations was not provided to the clients.

14.3.6 In view thereof I hold that, by not providing information in quarterly report to its client in the stipulated manner, as required, the allegation levelled against Noticee 1 that it had violated Regulation 31(1) of SEBI (Portfolio Managers) Regulations, 2020 stands established.

14.4 **In the SCN, it was alleged that Noticee 1 had violated Regulation 34(1) of SEBI (Portfolio Managers) Regulations, 2020.**

In this regard, relevant text of Regulation 34(1) of PM Regulations, 2020 is reproduced as under:

> *"*
> ***Appointment of compliance officer.***
>
> *34. (1) Every portfolio manager shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances:*
>
> *Provided that the role of compliance officer shall not be assigned to the principal officer appointed in terms of clause (d) of sub-regulation (2) of regulation 7 or the employee of the portfolio manager appointed in terms of clause (e) of sub-regulation (2) of regulation 7 [46][:]*
> *".*

14.4.1 In this regard, it is noted from the material available on record, that as per the resolution passed by the Board of Directors of Noticee 1 in its meeting held on November 15, 2018, Ms. Rubi Arya was appointed as Principal Officer w.e.f. November 09, 2018 and as the Compliance Officer w.e.f. November 15, 2018. It had been observed during inspection by SEBI that PMS-Milestone had appointed Ms. Ruby Arya as compliance officer as well as Principal Officer and that by assigning the role of compliance officer to the principal officer, Noticee 1 had violated Regulation 34(1) of PMS Regulations, 2020.

14.4.2 In this regard, it is also noted from the material available on record, that pursuant to the findings of inspection sent by SEBI to Noticee 1, Noticee 1 vide its response dated October 14, 2021 had inter alia replied to SEBI that it had appointed Mr. Mihir Parikh, CA as compliance officer for Milestone PMS w.e.f. October 10, 2021.

14.4.3 Further, in this regard, I also note that Noticee 1 as its reply to the SCN had inter alia reiterated that it had appointed … CA as compliance officer for Noticee 1 wef October 10, 2021. However, while submitting so, Noticee 1 had inter alia also contented that, *… Interestingly, the SCN itself records under paragraph 4.4 that the Noticee has duly complied with the regulatory requirement, yet it goes ahead and levels allegations against the Noticee for non-compliance with the regulatory framework. It is humbly submitted that the Noticee No.1 has duly complied with the regulatory framework and thus there exist no violation in this regard, and consequently the allegation levelled by SEBI to this end is infructuous and ought to be withdrawn.'.* In this regard, I note that while inter alia making submissions which are in the nature of admission of the alleged violation viz., 'to comply with Regulation 34(1) of PMS Regulations, 2020, PMS Milestone has appointed …, CA as compliance officer, as also brought out above', Noticee 1 appears to have gratuitously inferred the contents of the SCN despite the fact that the alleged violation on part of Noticee in this regard related to the period covered under inspection i.e., related to past. In view thereof, I find that the contentions raised by the Noticees in this regard are devoid of merit.

14.4.4 In view thereof, I hold that the allegation levelled against Noticee 1 that it has violated provisions of Regulation 34(1), stands established.

14.5 **In the SCN, it was inter alia alleged that Noticee 1 had violated SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated Nov 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010.**

In this regard, relevant text of cited SEBI Circulars is reproduced as under:

SEBI Circular IMD/PMS/CIR/1/21727/03 dated November 18, 2003

"….

Boards of the portfolio managers should review the compliance of regulations in their periodical meetings. They should develop a system of getting quarterly reports of compliance of SEBI Regulations and Guidelines and also that due diligence has been exercised by their officials in their operations and that the interests of investors are protected. Such reports may be placed before the Boards by the compliance officers. Boards of the portfolio managers should also review redressal of investors' grievances. Any deficiency letters or warning letters issued to the portfolio managers by SEBI should also be placed before the Boards of the portfolio managers.

There shall be internal audit by a practicing CA or CS so as to judge the quality of internal procedures being followed by the portfolio manager. The report of the internal audit shall be submitted to the Board of the portfolio manager.

Compliance of the above guidelines may please be disclosed to SEBI while submitting the half yearly report. The report is to be submitted twice a year, as on 31st of March and 30th of September. The report should reach SEBI within thirty days of the period to which it relates."

…."

SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated 15/03/2010

"….

"All portfolio managers are advised to submit the half yearly report to SEBI in the revised format within 30 days after the end of respective period ended 30/9 & 31/3 of each year."

…."

14.5.1 In this regard, it is noted from the material available on record that it had been observed by SEBI that by not *conducting an internal audit by a practicing CA or CS so as to judge the quality of internal procedures being followed by the portfolio manager and by not submitting half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance, PMS-Milestone had violated SEBI Circular IMD/PMS/CIR/1/21727/03 dated November 18, 2003 r/w SEBI Circular No. IMD/DOF-1/PMS/Cir-1/2010 dated 15/03/2010.*

14.5.2 In this regard, Noticee 1 as part of its reply on the findings of inspection by SEBI had inter alia submitted to SEBI that, 'Milestone PMS has not conducted internal audit for FY 2019-20, however, we have made sure that we have complied to the SEBI compliance to the best of our knowledge. Henceforth, we have appointed … an independent CA to conduct the internal audit and submit compliance report to SEBI on half yearly basis.'.

14.5.3 In this regard, I also note that Noticee 1 as its reply to the SCN had inter alia submitted that "….*Noticee No. 1 has ensured that they have complied with the regulatory obligations. Notably, with a view to streamline the process of regulatory compliance, Noticee No. 1 has appointed … an independent CA to conduct internal audit and submit the half yearly reports to SEBI on a half yearly basis. Given that the Noticee has rectified the alleged breach and incorporated a system in place to ensure regulatory compliance going forward, the aforesaid charge is non-est and deserves being withdrawn."*

"Copies of reports concerning half-yearly internal audit conducted by M/s Bakliwal & Co have been submitted to SEBI vide the PMS's letters dated March 29, 2022 (Annexure C hereto). Accordingly, SEBI's allegation that the PMS violated SEBI Circular No. IMD/PMS/CIR/1/21727/03 dated November 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated March 15, 2010 is rendered not-est and deserves being withdrawn."

14.5.4 In this regard, I note that submission made by the Noticee inter alia indicating compliance post the inspection by SEBI are in the nature of admission. Besides, considering that as per the findings of the inspection by SEBI the alleged violation by the Noticee 1 in this regard related to the period covered under inspection, the contention raised by the Noticee that the charge levelled in this regard is non-est, is out of context and devoid of merit and hence not acceptable.

14.5.5 Based on the submission of Noticee 1 inter alia indicating, ' … henceforth, we have appointed …, an independent CA to conduct the internal audit and submit compliance report to SEBI on half yearly basis', and that, '… *Given that the Noticee has rectified the alleged breach and incorporated a system in place to ensure regulatory compliance going forward …',* I find that allegation levelled against Noticee 1 that it had violated provisions of SEBI Circular IMD/PMS/CIR/1/21727/03 dated November 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated 15/03/2010, stands established.

In view thereof, I hold that the allegation levelled against Noticee 1 that it had violated provisions of SEBI Circular IMD/PMS/CIR/1/21727/03 dated November 18, 2003 r/w SEBI Circular IMD/DOF-1/PMS/Cir-1/2010 dated 15/03/2010 stands established.

15. **Noticee 2:**

In the SCN, it was inter alia alleged that Noticee 2 had violated Regulation 2(1)(p) read with 34(1) of SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993.

In this regard, relevant text of cited provisions are reproduced as under:

Regulation 2 (1) (p) of SEBI (Portfolio Managers) Regulations, 2020
"…

Definitions.
2. (1) In these regulations, unless the context otherwise requires, ─
(p) "principal officer" means an employee of the portfolio manager who has been designated as such by the portfolio manager and is responsible for: -
(i) the decisions made by the portfolio manager for the management or administration of portfolio of securities or the funds of the client, as the case may be; and
(ii) all other operations of the portfolio manager.

Regulation 34(1) of SEBI (Portfolio Managers) Regulations, 2020
"
Appointment of compliance officer.
34. (1) Every portfolio manager shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances:
Provided that the role of compliance officer shall not be assigned to the principal officer appointed in terms of clause (d) of sub-regulation (2) of regulation 7 or the employee of the portfolio manager appointed in terms of clause (e) of sub-regulation (2) of regulation 7 [46][:]
[47][Provided further that in case of the Co-investment Portfolio Manager, the role of compliance officer may be assigned to the principal officer appointed in terms of clause (d) of sub-regulation (2) of regulation 7.]
"

Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993

"…
*[72][**23A. Appointment of compliance officer**. ─(1) Every portfolio manager shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances.*
(2) The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.]

…."

15.1 In this regard, it is noted from the material available on record that it had inter alia been observed by SEBI that Ms. Rubi Arya, who was the Principal Officer-cum-compliance officer during the relevant period had failed to ensure compliance with the following: failure to keep minimum investment per client, failure to appoint a SEBI Registered custodian, failure to provide information in quarterly report to the client in the stipulated manner, failure to conduct an internal audit and also failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance. Thus, Ms. Rubi Arya had failed to perform the responsibilities of Principal Officer and Compliance Officer as specified in the PMS Regulations.

15.2 In this regard in its reply to the SCN, Noticee 2 had inter alia submitted, *'It is humbly submitted that the allegations pertaining to failure to keep minimum investment per client, failure to appoint a SEBI registered custodian, failure to provide information in quarterly report to the client in the prescribed manner, failure to conduct an internal audit and failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance against the Noticees are only academic at this juncture given that necessary rectifications have already been implemented. Consequently, SEBI's allegation, at the time of issuing its SCN, that Noticee No. 2 as the Principal Officer-cum-Compliance Officer failed to perform the responsibilities of Principal Officer-cum-Compliance Officer as specified in the PMS Regulations resulting in the alleged violation of Regulation 2(1)(p) read with Regulation 34(1) of PM Regulations 2020 read with Regulation 23A of PM Regulations 1993 is rendered infructuous.'.*

15.3 In this regard, it is noted from the material available on record that it had been observed by SEBI that Ms. Rubi Arya was appointed as a Principal Officer from November 09, 2018 and as Compliance Officer wef November 15, 2018 and Mr Mihir Parikh replaced Ms. Ruby Arya as compliance officer on October 14, 2021 which shows that she was holding the position of compliance officer as well as principal Officer during the Inspection period (April 01 2019-March 31, 2020). As per PMS Regulations, Principal Officer is responsible for the operations of the portfolio manager and decisions made by the portfolio manager for the management or administration of portfolio of securities or the funds of the client. Further, the responsibility of complying with the provisions of the SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993 and SEBI Circulars issued thereunder is of the Compliance Officer. Further, as per 34 (1) of SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993, every portfolio manager shall appoint a compliance officer, who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc., issued by the Board or the Central Government and for redressal of investors' grievances and the compliance officer shall immediately and independently report to SEBI , any non-compliance observed by him.

15.4 In this regard, it is noted that the submissions of the Noticee 2 as reply to the SCN are in the nature of admissions in so far as it had been inter alia submitted that, 'allegations *(pertaining to failure to keep minimum investment per client, failure to appoint a SEBI registered custodian, failure to provide information in quarterly report to the client in the prescribed manner, failure to conduct an internal audit and failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance) against the Noticees are only academic at this juncture <u>given that necessary rectifications have already been implemented</u>.'. However,* I also note that while inter alia making said submissions which are in the nature of admission Noticee 2 appears to have gratuitously inferred the violations to be as of date of issuance of the SCN despite the fact that the alleged violations on part of Noticee 2 in this regard, related to the period covered under inspection i.e., related to past.

In view thereof, in particular submissions of the Noticees and having regard to the violations as established in the foregoing in respect of Noticee 1, I find that the allegation levelled against Noticee 2 that she had failed to ensure compliance with the following viz., failure to keep minimum investment per client, failure to appoint a SEBI Registered custodian, failure to provide information in quarterly report to the client in the stipulated manner, failure to conduct an internal audit and also failure to submit half-yearly report to SEBI regarding compliance of guidelines for improvement in corporate governance, stands established. Therefore, I hold that Noticee 2 had violated Regulation 2 (1) (p) read with 34 (1) of SEBI (Portfolio Managers) Regulations, 2020 read with Regulation 23A of SEBI (Portfolio Managers) Regulations, 1993.

ISSUE II: Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992?

16. It has been established in the preceding paragraphs that Noticees have violated the stated provisions of SEBI Portfolio Managers Regulation and SEBI Circulars.

17. In this regard, reliance is placed upon the order of the **Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006][5] SCC 361} –** wherein the Hon'ble Supreme Court of India held that, "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………...".

18. In view of the above, I conclude that the Noticees are liable for monetary penalty under the provisions of Section **15HB of the SEBI Act, 1992**, which reads as under:

"

……

Penalty for contravention where no separate penalty has been provided.

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

……

".

Note: for detailed /complete text/provisions etc., relevant Act may please be referred.

ISSUE III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

19. While determining the quantum of penalty under section 15HB of SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under-

> "….
>
> ***Factors to be taken into account while adjudging quantum of penalty***
>
> ***15J.*** *While adjudging quantum of penalty under section 15-I, or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:-*
>
> a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> b) *the amount of loss caused to an investor or group of investors as a result of the default;*
>
> c) *the repetitive nature of the default.*
>
> *…."*

20. In the instant case, I find that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticees as a result of the violations committed by the Noticees. There is nothing on record to show that the violations committed by the Noticees are repetitive in nature. However, I cannot ignore the fact that in a regulated securities market, provisions of law are mandated inter alia with the perspective of orderly functioning of the securities market and /or protection of interest of investors etc. In the present matter, Noticee 1 and Noticee 2 being SEBI Registered Portfolio Manager and Principal Officer /Compliance Officer respectively were required to comply with the extant applicable provisions of law which they failed to and such non-compliance and accordingly needs to be dealt with suitable penalty.

E. ORDER

21. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticees and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the SEBI Adjudication Rules,

1995, I hereby impose following penalty, as per Table below, on the Noticees for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticees in this case:

Name of Noticee	Penalty Under Section	Penalty Amount (Rs.)
Milestone Capital Advisors Private Limited (Noticee 1)	Section 15HB of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakhs only)
Ms. Ruby Arya (Noticee 2)	Section 15HB of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakhs only)

22. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW

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

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

PLACE: MUMBAI **AMAR NAVLANI**

DATE: June 30, 2023 **ADJUDICATING OFFICER**