BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/AK/RK/2025-26/31495-31500)

U/S 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 R/W RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 R/W RULE 4(1) OF SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005, IN RESPECT OF:

Noticee No.	Name of the Noticees	PAN
1	Suzlon Energy Limited	AADCS0472N
2	Tulsi R. Tanti	AARPT6363J
3	Vinod R. Tanti	AARPT6367N
4	Girish R. Tanti	ABFPT3310E
5	Kirti J. Vagadia	AAKPV2224M
6	Amit Agarwal	AADPA3646H

In the matter of Suzlon Energy Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ("**SEBI**") conducted an investigation in the matter of Suzlon Energy Limited ("**SEL/Noticee 1/Company**"), to ascertain any misrepresentation/ misstatement in the financial statements of Noticee 1, in violation of the provisions of SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**"), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") and Clauses of listing agreement. The period of investigation was from FY 2014-15 to FY 2019-20 and the first three quarters of FY 2020-21 (hereinafter referred to as the **"Investigation period" or "IP"**).

2. It was found that Noticee 1 and its officials, viz, Tulsi R. Tanti (**Noticee 2**), Vinod R. Tanti (**Noticee 3**), Girish R. Tanti (**Noticee 4**), Kirti J. Vagadia (**Noticee 5**) and Amit Agarwal (**Noticee 6**), (hereinafter jointly referred to as "**Noticees"**) had, prima facie, not complied with various provisions of SEBI Act, SCRA, PFUTP Regulations, LODR Regulations and clauses of listing agreement.

APPOINTMENT OF ADJUDICATING OFFICER

3. Upon being satisfied that there were sufficient grounds to inquire into and adjudicate upon the violations by the Noticees, SEBI appointed Ms. Geetha G as Adjudicating Officer (**AO**) u/s 15-I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"SEBI Adjudication Rules"**) and Section 23-I of SCRA r/w Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCR Rules**"), vide order dated May 05, 2022, to inquire into and adjudge u/s 15HA, 15HB of SEBI Act and u/s 23E of SCRA, as applicable, the alleged violations by the Noticees. Subsequently, undersigned, Shri Sahil Malik, Shri Biju S, Smt Asha Shetty were appointed as AO in the matter. Finally, pursuant to the transfer of matter, undersigned was once again appointed as AO, vide order dated November 22, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice dated November 09, 2022 (hereinafter referred to as "**SCN"**) was issued to the Noticees in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules r/w Section 15-I of the SEBI Act and Rule 4(1) of SCR Rules r/w Section 23-I of the SCRA, requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed under the provisions of Sections 15HA and 15HB of the SEBI Act and Section 23E of SCRA, as applicable, on the Noticees for the violations as stated in the SCN.

5. In the absence of any reply to the SCN, vide common hearing notice dated November 24, 2022, Noticees were given an opportunity of hearing in the matter on December 12, 2022. Vide the said hearing notice, Noticees were also granted an

opportunity to submit their reply in the matter before the date of hearing. In response, vide letter dated December 08, 2022, Noticees requested to adjourn the hearing in the matter and submitted that they were considering to opt for settlement in the matter. Vide email dated December 09, 2022, Noticees were informed that a rescheduled date would be communicated to them and hence, vide email dated December 21, 2022, a final opportunity of hearing was granted to the Noticees on January 05, 2023. Vide letter dated December 26, 2022, Noticees submitted their reply in the matter.

6. Noticees, vide email dated January 03, 2023 again requested to reschedule the hearing and submitted that they had filed a settlement application with SEBI in terms of SEBI (Settlement Proceedings) Regulations, 2018. The material available on record shows that said settlement application was rejected, and was conveyed to the Noticees, vide SEBI letter dated November 27, 2024. Subsequently, the instant proceedings were revived and a corrigendum to the SCN dated March 12, 2025, was issued to the Noticees, vide which change in the applicable provision from Section 23E of SCRA to Section 23H of SCRA was conveyed to the Noticees. Noticees requested for an opportunity to inspect the documents in the matter, vide email dated March 17, 2025. The said opportunity was granted to them, vide email dated March 19, 2025, and was duly availed by the Authorized Representative (AR) of the Noticees on March 21, 2025. Noticees were given an opportunity to submit additional reply in the matter, latest by March 28, 2025.

7. Vide email dated March 24, 2025, Noticees requested to be provided with the Annexures to the Forensic Audit Report (FAR) and sought extension of time to file reply in the matter. Acceding to the request, Noticees were provided with all the Annexures to the FAR and were granted time to make additional submission in the matter, latest by April 10, 2025. Vide email dated April 10, 2025, AR of the Noticees sought further extension of time to file additional reply in the matter, which was acceded to and an opportunity to submit reply by April 18, 2025 was given to the AR. AR of the Noticees submitted additional reply on behalf of the Noticees, vide email dated April 17, 2025.

8. Following were the observations, basis which allegation were made against the Noticees

8.1 <u>Transfer/demerger of Operation & Maintenance Business (OMS) from Noticee 1 to Suzlon Global Services Limited (SGSL) – Slump Sale leading to misstatement of financials and inflated net worth</u>

8.1.1 It was observed from the Forensic Audit report (FAR) and reply of Noticee 1 dated February 14, 2022, that on March 29, 2014, it had sold its OMS business to one of its subsidiaries viz. SGSL (a wholly-owned subsidiary of Noticee 1) as slump sale for a lump-sum consideration of ₹2,000 crores. The gain on sale of the division aggregating to ₹1,922.92 crores had been shown under exceptional items in FY 2013-14. It was further observed that Noticee 1 had received part of the sale consideration of ₹700 crores in its bank accounts during the period FY 2014-15 to 2016-17. On March 21, 2017, ₹150 crores were routed through bank accounts of SGSL and Noticee 1 multiple times to show the receipt of the sale proceeds to the extent of ₹900 crores. On March 23, 2017, similarly ₹100 crores were routed four times to show the receipt of ₹400 crores as the balance sale consideration. Hence, it was alleged that the circuitous entries worth ₹1,300 crores had led to misstatement in the standalone and consolidated Financial Statements.

8.1.2 It was further observed that as on March 31, 2013, SGSL had total assets, reserves and turnover of ₹0.04 crores, ₹(0.31) crores and Nil respectively. The said figures were ₹2,330.55 crores, ₹0.05 crores and Nil respectively for the FY 2013-14. It was observed that that total assets of ₹2,330.55 crores included assets of ₹2,000 crores received through OMS business purchase from Noticee 1 on March 29, 2014.

8.1.3 It was further observed that subsequently during FY 2015-16, entire equity stake in SGSL held by Noticee 1 was transferred to its another wholly owned subsidiary viz. Suzlon Structures Limited (SSL) for consideration of ₹927.83 Crores. The transfer resulted into gain of ₹829.78 crores for Noticee 1. In this regard, it was observed that Noticeee 1 had already booked profit of ₹1,922.92 crores on the transfer of OMS business to SGSL during FY 2013-14 and booked additional profit of ₹829.78 crores during FY 2015-16 on the same set of assets as stake in SGSL was transferred to SSL, which was another wholly-owned subsidiary of Noticee 1. Hence, it was observed that on the OMS business worth ₹77.08 crores, artificial profit of ₹1,922.92 crores and ₹829.78 crores was created in FY 13-14 and FY15-16 respectively.

8.1.4 It was further observed that in FY 2015-16, the net worth of Noticee 1 was ₹615.18 crores. Without the said additional profit of ₹829.78 crores, which was artificially generated through the stake sale, net worth of Noticee 1 for FY 2015-16 would have been negative ₹214.60 crores.

8.1.5 From the aforesaid, it was alleged that Noticee 1 had inflated its net worth twice by inflating valuation of same set of assets i.e. ₹1,922.92 crores during FY 2013-14 and ₹829.78 crores during FY 2015-16. It was further alleged that SGSL did not have any capability or funds to generate cash flow of ₹2,000 crores within 90 days from date of transaction, and the transaction was executed to artificially inflate net worth since Noticee 1 had received only ₹312 crores from SGSL during FY 2014-15 and a total of only ₹700 crores in its bank accounts during the period FY2014-15 to 2016-17.

8.1.6 It was observed that OMS sale resulted in additional profit of ₹1922.92 crores in the financial statements for FY 2013-14 at standalone basis and consolidated basis. It was further observed that net loss for the said year was ₹924.47 crores. Had this slump sale not been effected during the year then the loss would have had widen further to ₹2847.39 crores. Similarly, the net worth of Noticee 1 was shown as ₹2,663.96 crores, whereas its net worth would have been ₹741.04 crores without the said transaction.

8.1.7 It was observed that the net loss of Noticee 1 got further widened to ₹1,663.12 crores during next year i.e. FY 2014-15 and further Noticee 1 had issued 1,21,95,69,014 shares during FY 2014-15, and had raised ₹1,882 crores including share premium of ₹1,638 crores. The total premium out of the proceeds received was 87% of total proceeds and nominal value was only 13%, i.e. shares were issued at a premium of 6.71 times of nominal value of shares.

8.1.8 It was further observed that Noticee 1 had impaired assets to the tune of ₹6026 crores in the FY 2014-15, which had further eroded the net worth during FY 2014-15. Noticee 1 had to bring in additional equity investment of ₹1800 crores to keep its net worth positive. Had this slump sale was not done, its networth would have gone down to negative ₹3,555.92 crores in FY 14-15. The Net worth of Noticee 1 would have been negative ₹1,755.92 crores in place of ₹167 crores positive net worth even after giving effect to share capital infusion, which would have impacted its valuation and prevented it from booking premium in the subsequent issues, including loan restructuring.

8.1.9 From the aforesaid, it was alleged that the sale of OMS business was part of a modus operandi to artificially inflate the net worth of Noticee 1. It was observed that under the said modus operandi, the OMS sale was executed to create artificial profit of ₹1922.92 crores in the financial statements for FY 2013-14 of Noticee 1, which resulted in increase of net worth of Noticee 1 by ₹1922.92 crores as on March 31, 2014, whereas, the proceeds from SGSL were observed to have not been obtained within 90 days from the said sale of OMS business and SGSL had taken 3 years to pay partial sale proceeds worth ₹700 crores and remaining amount of ₹1,300 crores was routed multiple times between Noticee 1 and SGSL without any net inflow for Noticee 1 for the receivable sale proceeds for sale of OMS business.

8.1.10 It was also observed that, in the following year, Noticee 1 had impaired more than ₹6000 crores in its overseas subsidiaries. Hence, it was alleged that slump sale was a transaction intended to create artificial profit, enhance the net worth of Noticee 1, prior to the major impairment that was in the pipeline and the valuation artificially created out of the OMS sale was further used in FY2015-16 to book additional profit of ₹829.78 crores through a stake sale transaction with a wholly owned subsidiary. It was further alleged that the aforesaid transactions carried out during the period from FY 2013-14 to 2016-17 had led to misstatement in the standalone and consolidated Financial Statements and enabled Noticee 1 to raise funds by issuing equity shares based on its inflated net worth. Those issuance of shares included shares issued to one Mr. Dilip Shanghvi Family & Associates (₹1800 crores) in 2014-15 and banks as part of loan restructuring (₹393 crores).

8.1.11 From the aforesaid, it was alleged that Noticee 1 had executed transactions tantamounting to misrepresentation of its accounts/ financials statement. It was further alleged that Noticee 1 had failed to present true and fair financial statements, which misled the investors and induced to invest at huge premium on sale of shares by it.

8.1.12 It was further alleged that Noticee 1 had knowingly published /caused to publish financial results, financial statements, which it knew to be understating its loss and had disseminated those misleading financial statements to securities market investors. Had the real financial position of Noticee 1 not been withheld in the published financial statements, it was likely to have influenced the decision of investors dealing in securities.

8.2 Contingent liabilities w.r.t Stand-by Letter of Credit (SBLC) issued by State Bank of India (SBI), which secured loan credit facility availed by AE Rotor Holding B.V. (AERH) and contingent liability of USD 569.40 million as at 31st March, 2018 not shown in the Annual Report for FY 2017-18

8.2.1 It was observed that liability with respect to SBLC availed, and securities provided to secure loans availed by subsidiary, which included SBLC issued by SBI, vide which loan credit facility availed by AERH was secured, had been mentioned by Noticee 1 under Contingent liabilities in the annual report for FY 2016-17. However, it was observed that in the Annual Report for FY 2017-18, the same liability was disclosed under Notes to financial statements by treating the said SBLC as *"Insurance Contract"* under IndAS 104. Accordingly, though contingent liability of ₹4,050 crores with respect to SBLC had been shown by Noticee 1 till March 31, 2017, the same was not shown in FY 2017-18, despite no changes in the terms of the said SBLC.

8.2.2 From the above, it was observed that IndAS 104 is applicable where 2 parties are involved in an insurance contract viz. an insurer and a policyholder, whereas in the instant case, there were more than 2 parties viz. 1. Noticee 1 together with its three Indian subsidiaries and a joint venture; 2; Lenders; and

3. AERH. Noticee 1 together with its three Indian subsidiaries and a joint venture were obligors to lenders and had given security in connection with loan availed by AERH. In case of an event of default on payment by AERH, Noticee 1 had agreed to make payment to lenders. Subsequently, while providing the status of the said SBLC, it was observed that Noticee 1 had stated in its reply dated March 17, 2022 as mentioned, *"The SBLC was invoked during the month of October 2019. Pursuant to the invocation of SBLC, SBI had made payment of the dues to the Lenders of AERH. SBI and other Lenders have consequently treated the same as loan receivable from the Company."*

8.2.3 Hence, it was alleged that the said chain of events was in the nature of a financial guarantee wherein SBLC was invoked and payment was made by SBI, which in turn was to receive from Noticee 1, as Noticee 1 being guarantor for the said loan given to AERH. In view of the same, it was alleged that IndAS 104 was not applicable for said SBLC arrangement between Noticee 1 and lenders.

8.2.4 Thus, the accounting treatment by Noticee 1 by non-provisioning of SBLC, was allegedly not found to be in accordance with the applicable and notified Accounting Standard - IndAS 37.

8.3 Investment made in and loans given to SE Forge Limited

8.3.1 It was observed from the FAR and reply of Noticee 1 dated February 14, 2022, that it had impaired the investment in SE Forge Ltd (SEFL) worth ₹566 crores in FY 2013-14. Subsequently, it had revived SEFL and reversed the impairment of its investments in SEFL in FY 2014-15. However, subsequently SEFL again suffered losses during the period from FY 2017-18 to FY 2019-20 and was again impaired subsequently in FY 2018-19. Hence, it was alleged that the reversal of previous impairment in 2014-15 and the subsequent impairment in FY 18-19 resulted in overstating the financials of FY 2014-15, by ₹556 crores.

8.3.2 It was further observed that the total value of the investments in SEFL by Noticee 1 was at ₹1,044 crores as on March 31, 2016 and in FY 2018-2019, the management of Noticee 1 had carried out a valuation of the investments in SEFL. It was observed from the FAR that as per the valuation report submitted by M/s Hasmukh Shah & Co, LLP, the value of the equity investments of Noticee 1 in SEFL was valued at ₹490 crores as on March 31, 2019 and hence the investment was impaired to the extent of ₹560 crores in the FY 2018-19. In FY 2019-20, as per valuation report submitted by Ms. Milan Rupchandani on June 20, 2020, the revised fair value of these investments of Noticee 1 in SEFL was ₹291.13 crores. Hence, an additional amount of ₹194.27 crores was impaired as on March 31, 2020.

8.3.3 It was further observed that on March 31, 2015, Noticee 1 had infused ₹150 crore equity into SEFL of which ₹128 crores were immediately returned as repayment of loans and were written off. The capital infusion of ₹328 crores done in 2015-16 also followed the same pattern and were subsequently written off. In this regard, it was further observed from FAR that the circuitous entries worth ₹328 crores were routed multiple times between Noticee 1 and SEFL without any net inflow for Noticee 1 for the said loan paid to SEFL and only books entries are carried out to convert the said loan into equity. The said equity investment was subsequently impaired during FY 2018-19 and FY 2019-20.

8.4 Investment made in and loans given to Suzlon Gujarat Wind Park Limited

8.4.1 It was observed from FAR and reply of the Noticee 1 dated February 14, 2022 that the total investments by Noticee 1 in its wholly owned subsidiary Suzlon Gujarat Wind Park Limited (SGWPL) through equity and Preferential share capital was ₹245.92 crores. During FY 2015-16, fresh infusion of equity worth ₹1200 crores was made by Noticee 1 in SGWPL.

8.4.2 It was further observed that the funds so received were returned by SGWPL to Noticee 1 and adjusted against the outstanding loans. The fresh investments and repayments of ₹1200 crores were made through circuitous transactions in the bank accounts of SGWPL and Noticee 1. Noticee 1 had paid ₹1,200 crores through its bank account no. 31088688302 held with SBI to SGWPL account no 31083548143 on March 19, 2016. The payments were made through 16 circular entries of debits and credits on the same day in the bank accounts of Noticee 1 and SGWPL. The 16 circular entries of ₹75 crores each amounting to ₹1200 crores were considered as equity infusion in the books of accounts of Noticee 1. The credits from SGWPL in the bank accounts of Noticee 1 were considered as repayment of the outstanding loans receivable from SGWPL. Through these transactions, the outstanding loans receivable from SGWPL were reduced and the investments were increased, thus resulting in converting loans into equity. However, there were no net cash inflows or outflows from Noticee 1 or SGWPL. These investments of ₹1200 crores were non-existent due to circular entry as stated above.

8.4.3 It was further observed that these equity holdings worth ₹1200 crores were sold to another wholly owned subsidiary i.e. Suzlon Power Infrastructure Limited (SPIL) at ₹191.60 crores at a loss of ₹1054 crores on the sale transaction. SPIL discharged the sale consideration to Noticee 1 through issue of fresh share capital to Noticee 1 worth ₹191.60 crores (share swap). Hence, it is observed that no funds were used in sale of holdings in SGWPL to SPIL.

8.4.4 Hence, it is alleged that investments of ₹1200 crores are non-existent due to circular entry as stated above. Further, these investments of ₹1200 crores were sold away at a loss of ₹1054 crores in the same year.

8.4.5 It was observed that as per Ind AS 1, the objective of Financial Statements is to provide information about the financial position, financial performance and cash flows of an entity that is useful to a wide range of users in making economic decisions, whereas in the present case, there were no cash flows but Noticee 1 had booked huge losses due to circuitous entries and hence, it was alleged that it had misled the users of the Financial Statements as the investments of ₹1200 crores through circuitous bank entries had inflated the net worth of SGWPL and had effect on the consolidated Audited Balance Sheet of Noticee 1.

Based on the above, Noticees were alleged to have violated the following:

- Section 12A(a), (b) and (c) of SEBI Act; Regulation 3(b), (c) and (d) and Regulation 4(2) (f) and (r) r/w 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations; Regulations 4(1)(a), 4(1)(b), 4(1)(e), 17(8) r/w Part B of Schedule II and 48 of

LODR Regulations (for FY 2015-16 onwards); and Clause 41(I)(a) and para V of Clause 49 of the erstwhile Listing Agreement r/w Section 21 of SCRA for the FY 2013-14 by Noticee 1.

- Section 12A(a), (b) and (c) of the SEBI Act; Regulations 4(2) (f) and (r) r/w 2(1)(b) and 2(1)(c)(1) of PFUTP Regulations; Clause 41(I)(a) of the erstwhile Listing Agreement r/w Section 21 of SCRA for the period FY 2013-14; and Regulations 4(1)(a), 4(1)(b), 4(1)(e) and 48 of LODR Regulations r/w Section 27(2) of SEBI Act by Noticee 2-4.
- Section 12A(a), (b) and (c) of SEBI Act; Regulation 3(b), (c) and (d), 4(2) (f) and (r) r/w 2(1)(b) and 2(1)(c)(1) of PFUTP Regulations and Para V of Clause 49 of the erstwhile Listing Agreement r/w Section 21 of SCRA for the period FY 2015-16 and 17(8) r/w Part B of Schedule II of LODR Regulations for the period FY 2017-18; and Regulations 4(1)(a), 4(1)(b), 4(1)(e) and 48 of LODR Regulations r/w Section 27(2) of SEBI Act by Noticee 5.
- Section 12A(a), (b) and (c) of the SEBI Act; Regulation 3(b), (c) and (d), 4(2) (f) and (r) r/w 2(1)(b) and 2(1)(c)(1) of PFUTP Regulations r/w Section 27(2) of SEBI Act and Para V of Clause 49 of the erstwhile Listing Agreement r/w Section 21 of SCRA for the period FY 2013-14 by Noticee 6.

9. **Submission of Noticees**

9.1 Noticees submitted that the sale of OMS business was part of the asset monetization plan, to reduce debt and the sale was a purely business/commercial decision. It was planned to be a two- step process. The first step was to transfer the business to a Special Purpose Vehicle (SPV), which had a clean and debt free record to make the ultimate sale to the buyer easy and hassle free and the second step was to identify a buyer, who would acquire it at a fair value.

9.2 Instead of looking for third party buyers, which would have taken time, Senvion, a step down German Company of the Noticee 1 was identified as the potential buyer.

9.3 That in order to complete the first step, it was necessary to ascertain the fair value, since OMS was a running business consisting of more than 1,800 customers, 8,000 MW under service with over 2,100 employees as of March 2014, Grant Thornton, an external valuer was engaged by Noticee 1, which had valued the OMS business at Rs 2,000 crores, vide *valuation report dated March 27, 2014. Therefore, allegation in the SCN that the OMS Business was valued at Rs 77.08 Crore and an artificial profit of Rs 1922.92 was created in FY 2012-13, is baseless and untenable.*

9.4 *That Rs 77.08 Crore was the net book value of the assets of the OMS business transferred pursuant to the slump sale, forming part of the overall OMS business after deduction of current liability and provisions.*

9.5 *That the gross book value of the fixed assets and current assets of the OMS business as on the date of transfer was Rs 407.35 Crore and gross book value of the current liability and provision was Rs 330.27 Crore resulting in the net book value of Rs. 77.08 Crore.*

9.6 *That the working capital and fixed assets required to run the OMS business, which was basically a service business was nominal at that time and by its very nature an OMS business requires minimal inventory, plant & machinery or factories.*

9.7 *That the invoices raised on customers for OMS services are payable in advance or within few weeks from the time the invoice is raised, which leads to need for a very nominal working capital and fixed assets, even when there is sizeable revenue.*

9.8 *That the revenue, EBITDA and entire business of OMS is solely dependent upon the fleet of Wind Turbine Generators ("WTGs"), volume under service, longevity of the contracts with annual revenue escalation for servicing the WTGs sold earlier by Noticee 1 and periodic renewal of the same (which generally happens every 5 years), absence of competition, access to assured supply chain for the life of WTG (which is typically more than 20 years), know-how and skilled workforce. All of these factors were and continue to be in favour of the OMS business.*

9.9 *That Noticee 1 itself was and is the Original Equipment Manufacturer (OEM) of the WTGs under service by the OMS business. Thus, the valuation of the OMS business was and is dependent upon the ability to generate cash and not on the working capital and fixed assets required for running the business.*

9.10 *That any valuation exercise of a service-related business necessarily has to take into account the above factors to arrive at the correct value of such business. Valuation of a service-related business on only the tangible assets of such business would lead to a gross under valuation. The Revenue and EBIDTA of OMS business for subsequent 5 years (post the slump sale) is tabulated below, which substantiates that the value paid for the OMS* *business of Rs 2,000 Crore was very much justified and profit on the slump sale of INR 1,922.92 Crore was not inflated.*

Amount in Rs (Crores)

Particulars	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Revenue	838	904	961	1,116	1,236
EBITDA	324	259	334	442	537
EBITDA %	38.6%	28.6%	34.8%	39.6%	43.4%

9.11 *That Noticee 1 wanted to monetise its OMS business to reduce bank debt and to unlock shareholder value, as it was undergoing Corporate Debt Restructuring ("CDR"). Senvion, a cash rich German subsidiary of Noticee 1 was looking to expand globally and was considering acquiring OMS business from it. Senvion was also considering an IPO at the London Stock Exchange, which would have helped funding the acquisition of OMS business from Noticee 1.*

9.12 *That the sale to Senvion did not materialise, and SGSL was unable to pay back the full consideration within the stipulated time period of 90 days. Accordingly, in terms of agreement between Noticee 1 and SGSL dated June 30, 2014, Noticee 1 had recovered an interest of 11% on the outstanding sale amount thereafter, and no loss was caused to the shareholders.*

9.13 *That despite continuous efforts to monetise the OMS business, the outstanding sale consideration remained unpaid and therefore, the same was being reflected as a "business related receivable" in the books of Noticee 1, even though the amount remained unpaid for almost three (3) years.*

9.14 *That in order to ensure a better and more accurate representation of the outstanding sale consideration in the books of account of Noticee 1, a decision was taken to infuse funds to the tune of Rs 1,300 Crore in SGSL partly by subscribing to CCDs and partly by way of ICDs in FY 2016-17. These proceeds were thereafter used to discharge the outstanding sale consideration. Thus, the "business related receivable" was converted to loan receivable and CCDs in the financial statements of Noticee 1.*

9.15 *As the OMS Business was profitable, SGSL was able to make sizeable payment in respect of the OMS sale consideration from the cash flow generated from its business operations in FY 2014-15 and FY 2015-16. Subsequently, SGSL had fully repaid the loan availed by* *it from Noticee 1 in FY 2015-16 and FY 2016-17 along with the interest, purely from its own operating cash flow.*

9.16 *The transactions i.e. subscription to CCDs and granting of ICDs had no net effect in the financial statements of Noticee 1. Even if these transactions were not carried out, the total assets of Noticee 1 as on March 2017 and the liabilities of SGSL before and after the referred transaction would still have remained the same.*

9.17 *That no CCDs were issued by SGSL to Noticee 1 in FY 2014-15 and FY 2015-16. The CCDs were issued in FY 2016-17 and the same were duly reflected in the financial statements.*

9.18 *That the ICD's existence to SGSL was there since FY 2013-14 but the hike in ICDs was from FY 2016-17, post the decision to infuse sizeable ICD and the amount of CCDs got reflected in the financial statements for the first time in FY 2016-17 and there was significant increase in ICD in FY 2016-17 compared to the earlier period.*

9.19 *That even if the transactions i.e. subscription to CCDs and granting of ICDs was not carried out, the total assets of Noticee 1 as on March 2017 and total liabilities of SGSL before and after the referred transaction would still have remained. Hence, there was no net effect of the above transactions in the financial statements, and thus, it cannot be said that there were circuitous entries that led to the misstatement of financials.*

9.20 *That as there was no positive outcome in monetising the OMS business to a third party for a long time, it was planned that monetization through an IPO be attempted.*

9.21 *That the sale of shares held by Noticee 1 in SGSL to SSL was based on a valuation report by Grant Thornton dated March 28, 2016 and SSL was a subsidiary with a running business of its own, and operating profit.*

9.22 *That Noticee 1's sale of SGSL equity shares to SSL was a legitimate business decision with proper board approvals, independent valuation, and public disclosure and thus, there had been no misstatement in the financials of Noticee 1 and there was no effect on its consolidated financial statements.*

9.23 *That Noticee 1 had inflated its net worth twice by inflating valuation of same assets i.e. Rs 1992.92 Crore during FY 2013-14 (transfer of OMS Business to SGSL) and Rs 829.78 Crore (sale of shares by Noticee 1 in SGSL to SSL) during FY 2015-16 is baseless and untenable.*

9.24 *That the OMS business was not sold for the second time. In the first transaction (between Noticee 1 and SGSL in FY 2013-14), the OMS Business was sold by Noticee 1 to SGSL so as to transfer the OMS Business in a clean entity before it was eventually monetised and the second transaction occurred in 2015-16, and the valuation reflected the growth in the business in the two years since the first transaction.*

9.25 *Addition of new WTGs in the fleet under operations, resulted in increased revenue and EBITDA.*

9.26 *That the second transaction involved the sale of shares in SGSL by Noticee 1 to SSL, value of which went up on account of the above reasons and substantially represented by the actual cash profit earned during those two years of operation.*

9.27 *That the sale of shares was done as part of a strategy for an IPO, since SSL was the only entity available within the Suzlon group which was showing book profit after tax ("PAT"), long history of business operations and track record of book profit apart from positive cash flow and was likely to make the listing of the OMS Business feasible for retail investors while SGSL despite having cash profits, had negative book profits for the then previous three years, due to amortisation of goodwill in its books. Further, the lenders were insisting on regular basis that Noticee 1 should look for monetisation opportunities to reduce overall debt and that decision was a step solely in the direction of reducing the debt.*

9.28 *That SGSL did not qualify for subscription/purchase by retail investors on listing in terms of SEBI (Issue of Capital and Disclosure) Regulations, 2009. In order to protect the interests of shareholders and other stakeholders like lenders, a pre-listing restructuring of OMS Business was proposed in compliance with the applicable regulatory laws to unlock the true value of the OMS business. Hence, the shares held by Noticee 1 in SGSL were transferred to SSL. SGSL and SSL were merged and renamed as SGSL. This transfer was done to make the listing feasible and was in compliance with Section 26 of the SEBI (ICDR) Regulations, 2009 to make an IPO feasible and in the best interest of retail investors, as SSL was a profit making subsidiary of SEL.*

9.29 *That the consortium of lenders provided approval for transfer of shares in SGSL to SSL, to facilitate the listing so that the OMS business gets rightful value and the overall debt is reduced.*

9.30 That the transfer was essential with a view to enhance the success of fund -raising through listing of SGSL on the stock exchange.

9.31 Though SSL was profitable, it was not having sizeable and surplus funds with it so as to infuse the funds in its subsidiary, namely SGSL so as to help it retire the outstanding consideration of Noticee 1. In fact, it had discharged the consideration payable to Noticee 1 for acquiring SGSL shares by way of issuance of its equity shares.

9.32 That the monetisation of assets was for the benefit of the lenders, and all the transactions were known and approved by the lenders and the shareholders, and there was no artifice or device or scheme much less any manipulative or fraudulent transaction.

9.33 That SGSL had been merged with SEL i.e. when the Suzlon group became debt free in FY 2024, the need to monetize the OMS entity no longer existed, which led to the merger so that cash generated through the OMS Business could be used easily for the purpose of capital expenditure and working capital needs of the WTG manufacturing business of Noticee 1.

9.34 That an SBLC was issued by SBI in favour of the Security Agent, acting on behalf of the lenders of AE Rotor Holding B.V. ("AERH"), a step-down wholly owned subsidiary of Noticee 1, to secure a loan credit facility availed by AERH.

9.35 That the determination of the appropriateness of accounting treatment is not in the domain of SEBI.

9.36 That until March 2016, the standalone financial statements of Noticee 1 were prepared as per the Indian Generally Accepted Accounting Principles ("IGAAP") and therefore, SBLC was disclosed as 'contingent liabilities' in the Financial Statements and from April 1, 2016, onwards, Ind AS became applicable to Indian listed companies having net worth of more than Rs 500 Crores.

9.37 That in the first year of implementation of Ind AS, i.e. FY 2016-17, there was an ambiguity on part of the Noticee 1 regarding disclosure of financial guarantees as a contingent liability.

9.38 That division II of Schedule III to the Companies Act, 2013 states that there was no requirement to disclose financial guarantees as contingent liabilities, if not provided for and Paragraph 2 of the Ind AS 37 (Provisions, Contingent Liabilities and Contingent Assets) states that "this Standard does not apply to financial instruments (including guarantees) that are within the scope of Ind AS 109, Financial Instruments".

9.39 That in the first year of implementation of Ind AS, Noticee 1 had taken a conservative approach and disclosed the SBLC under Contingent Liabilities, on the lines of earlier years when the Financial Statements were prepared under IGAAP and this was done as a measure of abundant caution.

9.40 It was clarified by ICAI in its guidance note of July, 2017, wherein it was stated that financial guarantees should not be included as contingent liabilities, the Company formed an opinion that there was actually no need to disclose the financial guarantee under Contingent Liability at all and hence dropped the disclosure against Contingent Liability altogether for FY 2018. It therefore is a case of bona fide interpretation of the Accounting Standards, which does not amount to contravention of the law.

9.41 That post renewal of SBLC during FY 2017-18, there was an extension of the SBLC until March 2023 and Noticee 1 had elected to disclose the SBLC, as Insurance Contract under Ind AS 104 in FY 2017-18, as it satisfied the essentials of an insurance contract under Ind AS 104.

9.42 That the decision to disclose the SBLC as an Insurance Contract was taken after an extensive consideration and in consultation with the statutory auditors.

9.43 That Noticee 1 and the statutory auditors had exercised prudence in assessing and classifying the disclosure status of SBLC as per the newly applicable accounting principle under Ind AS.

9.44 That Noticee 1 had specifically disclosed in Note 3 under significant judgments in applying its accounting policy and Note 4 of the Standalone Financial Statements of FY 2017-18 that it had treated the SBLC as an insurance contract under Ind AS 104, which provideD enough clarity to the reader of the Financial Statement at the very beginning of the notes and the above disclosures in the financial statements were much more exhaustive compared to the disclosures forming part of contingent liability.

9.45 That at all times a true and complete representation and disclosure of the SBLC had been made in the financial statements by Noticee 1 and the LODR Regulations must be read harmoniously with provisions of Companies Act, 2013. The exercise of discretion in choosing between two Accounting Standards by the Noticee 1 and audited by the statutory auditors does not and cannot constitute a violation. This is more so particularly in the absence of any evidence of prejudice caused to retail investor or market sanctity being affected by reference to share price movements.

9.46 That the impairment and reversal of impairments were carried out by Noticee 1 considering the business environment and policy changes facing SEFL and every impairment/ reversal was made based on the existing circumstances at the relevant time and valuations were also carried out. Hence, it cannot be stated that there was any misstatement in the financials.

9.47 That the infusion of capital by Noticee 1 in SEFL was to support SEFL's business operation and debt servicing needs. Recognising that the funding requirement of SEFL was long term, Noticee 1 had decided to convert these loans into equity.

9.48 That Section 62(1)(c) of the Companies Act, 2013, allows for conversion of loans into equity through book entries. However, Section 269T, of the Income Tax Act requires that a loan must be repaid through an account payee cheque in the name of the lender or directly to the lender through banking channels. So, to comply with the said provision and avoid tax litigation, Noticee 1 had infused fresh equity into SEFL, which was then used to repay loans and advances.

9.49 That Noticee 1's Board had approved the capital infusion into SEFL and transaction was with WOS having no effect on consolidated statement.

9.50 That from FY 2012 to 2016, Noticee 1 had provided temporary loans to support SGWPL's operational requirements. However, in 2015-16, the working capital of SGWPL had increased and there was no near-term visibility of repayment by SGWPL. Considering the above, Noticee 1 had invested Rs 1,200 Crore on March 19, 2016, which enabled SGWPL to repay Rs 1,000 Crores to Noticee 1 and redeem Rs 200 Crore in preference shares issued to Noticee 1.

9.51 Noticee 1 had considered converting loans into equity in terms of Section 62(1)(c) of the Companies Act, 2013. However, in order to comply with the Section 269T of the IT Act and prevent potential tax litigation, Noticee 1 had ensured the transaction with SGWPL involved transfer of funds.

9.52 That the sale of equity holding by Noticee 1 in SGWPL to SPIL on March 29, 2016 was for consolidation of divisions and based on a valuation report dated March 18, 2016 from Resurgent India, which assessed SGWPL's equity value as Rs 1,008.40 Crore

9.53 That following Noticee 1's equity infusion of Rs 1,200 Crore on March 19, 2016, the fair value came to Rs 191.60 Crore, so Noticee 1 had transferred its 100% stake in SGWPL to

SPIL for Rs 191.60 Crore, which resulted in a gross loss of Rs 1,054.32 Crores and a net loss of Rs 808.40 Crores for Noticee 1.

9.54 *Had the outstanding debt not been effectively converted to equity, the outstanding debt would also have had to be written off at a loss.*

9.55 *That the transaction was effected with board approvals and stock exchange disclosures. Since the transaction had resulted in losses for Noticee 1, it cannot be said that the transaction was in any manner aimed at inflating Noticee 1's net worth or misrepresenting its financial position.*

9.56 *That the impugned transactions involving Noticee 1 were examined and audited by the statutory auditors during FY 2013-14 and the IP and there was no adverse reporting with respect to accounting or disclosure of the impugned transactions in the consolidated or standalone financial statements of Noticee 1.*

9.57 *Noticees placed reliance upon the Patna High Court Judgement in the matter of JMC Projects (India) Limited v. State of Bihar, 2022 SCC OnLine Pat 2058, Para 60 (, wherein it was held that consolidated financial statements are considered the primary financial documents for any economic entity.*

9.58 *That SEBI during the settlement proceedings concluded that there had been no non-compliances with respect to the accounting of the said transactions, neither in standalone financial statements nor in consolidated financial statements.*

9.59 *Noticees submitted that dealing in "securities" and "fraud" must be established to sustain allegations under the PFUTP Regulations and the scope of the PFUTP Regulations was clarified by the Supreme Court in SEBI v. Kanaiyalal Baldevbhai Patel, (2017) 15 SCC 1, wherein, it was observed that the object and purpose of the PFUTP Regulations was to curb market manipulations. Thus, an allegation of violation of the PFUTP Regulations depends on the occurrence of "market manipulation".*

9.60 *That in the instant case, no data has been provided in the SCN to demonstrate any market manipulation on the part of the Noticees.*

9.61 *That the elements of "dealing in securities" and "fraud" have not been satisfied in the present matter as Noticee 1 did not transact in any listed securities in respect of any of the aforesaid transactions.*

10. In the interest of natural justice, an opportunity of personal hearing was granted to the Noticees on April 29, 2025, vide hearing Notice dated April 21, 2025. However, the said hearing was adjourned to May 20, 2025, as per the request of the AR of the Noticees, vide email dated April 24, 2025. Further, AR of the Noticees, vide email dated May 09, 2025 requested to reschedule the hearing to May 22, 2025 and hence, vide email dated May 13, 2025, the said hearing was rescheduled to the date requested by the AR. The said hearing was attended to by the AR of the Noticees, wherein AR reiterated the submissions already made by the Noticees, vide their reply dated December 26, 2022 and additional reply dated April 17, 2025. AR of the Noticees sought time to make further submissions in the matter, which was acceded to. AR made further submissions, vide email dated May 30, 2025, which are included in paragraph 9 above.

11. Before moving forward, it is pertinent to look at relevant provisions, which are alleged to have been violated by the Noticees. The same are reproduced hereunder:

<u>Relevant Sections of SEBI Act</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

***12A**. No person shall directly or indirectly—*

(a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

(b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

(c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"*

Relevant provisions of SCRA

21. *Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

Relevant provisions of PFUTP Regulations:

2(1)(b) *"dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act."*

2(1)(c)(1) *"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

(1) *a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

(2) *a suggestion as to a fact which is not true by one who does not believe it to be true;*

(3) *an active concealment of a fact by a person having knowledge or belief of the fact;*

(4) *a promise made without any intention of performing it;*

(5) *a representation made in a reckless and careless manner whether it be true or false;*

(6) *any such act or omission as any other law specifically declares to be fraudulent,*

(7) *deceptive behaviour by a person depriving another of informed consent or full participation,*

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price."

*"**4(2)** Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:*

(f) *knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results,* *financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

(r) *knowingly planting false or misleading news which may induce sale or purchase of securities."*

"3. Prohibition of certain dealings in securities:*No person shall directly or indirectly—*

(b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

(c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

(d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."*

Relevant provisions of LODR Regulations

4(1) *The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*

(a) *Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.*

(b) *The listed entity shall implement the prescribed accounting standards in letter* ***and*** *spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor."*

(e) *The listed entity shall ensure that disseminations made under provisions of these* ***regulations*** *and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language."*

17(8) *The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II."*

Part B of Schedule II

"The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

B. *There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct."*

48 *The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.*

Relevant provisions of erstwhile Listing Agreement

41(I)(a) *The company shall be prepared the financial statements on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods"*

B Para V of clause 49

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person leading the finance function discharging that function shall certify to the Board that:

(a) *They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:*

(i) *these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;*

(ii) *these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations."*

CONSIDERATION OF ISSUES AND FINDINGS

12. I have gone through the submissions of the Noticees, facts, and material available on record. The issues that arise for consideration in the present case are:

ISSUE No. I: Whether Noticees have violated the provisions of SEBI Act, SCRA, PFUTP Regulations, LODR Regulations and Clauses of listing agreement, as alleged in the SCN?

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s 15HA and 15HB of SEBI Act, and Section 23H of SCRA, as applicable, upon Noticees?

ISSUE No. III: If so, what should be the monetary penalty, after taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the SEBI Adjudication Rules and Section 23J of the SCRA r/w Rule 5(2) of the SCR Rules?

13. I note that AR of the Noticees has provided a death certificate of Noticee 2, dated October 04, 2022, issued by Pune Municipal Corporation, which shows that Noticee 2 had expired on October 01, 2022. I note that in ***Girijanandini Vs Bijendra Narain*** (AIR 1967 SC 2110), Hon'ble Supreme Court held that in case of personal actions, i.e., *the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply.* Also, Hon'ble Securities Appellate Tribunal in ***Chandravadan J. Dalal vs. SEBI***(Appeal No. 35/2004 decided on June 15, 2005) held that, "*The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."* Hence, the instant proceedings are liable to be abated against Noticee 2, without going into the merits of the case qua him and the SCN dated November 09, 2022 issued against him is accordingly disposed of.

14. Before I proceed to deal with the issues on merits, I would like to first address the preliminary issue raised by the Noticees that the instant SCN had been issued with a significant delay. In this regard, I note from the material available on record that SEBI had conducted investigation in the matter based on a complaint dated December 12, 2019 against Noticee 1. As the allegation on the Noticee 1 was with respect to failure on its part to prepare the financial statements in accordance with the applicable and notified accounting standards, and various corporate actions, the same required in depth analysis and also appointment of Forensic Auditor. I note that the initiation of adjudication proceedings against the Noticees was approved by SEBI on March 31, 2022 and the SCN in the matter was issued to the Noticees on November 09, 2022. In response to which, Noticees had submitted their reply, vide letter dated December 26, 2022 and as already detailed in the pre-paragraphs, they had filed settlement application with SEBI, which was eventually rejected and communicated by SEBI to the Noticees on November 27, 2024.

15. In this regard, I note that in the matter of ***Pooja Vinay Jain vs SEBI*** [Appeal No. 152 of 2019 dated March 17, 2020], Hon'ble SAT has inter alia made the following observations–

"12. The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.

13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time. In the result, the following order:-

ORDER

14. The appeal is hereby dismissed without any order as to costs."

16. Based on the above, I note that no prejudice has been caused to the Noticees and hence their contention w.r.t delay is not tenable.

17. I now proceed to deal with the issues on merits as under;

ISSUE No. I: Whether Noticees have violated provisions of SEBI Act, SCRA, PFUTP Regulations, LODR Regulations and Clauses of listing agreement, as alleged in the SCN?

Findings

18. **Transfer/demerger of Operation & Maintenance Business (OMS) from Noticee 1 to SGSL**

18.1 I note from IR that Noticee 1 is a manufacturer and supplier of Wind Turbine Generators (WTGs) and its components, SGSL was engaged in operation and maintenance of WTGs and SSL was engaged in manufacturing of towers since 2004. Further, I note from the material available on record that another subsidiary of Noticee 1 viz, Senvion SE, (Senvion), a german subsidiary, is a manufacturer and distributor of wind energy turbines. With this background, I note from the minutes of meeting of the Board of Directors of Noticee 1 dated February 14, 2014, which mentioned that its board had decided to carve out the OMS business by sale to its own subsidiary for effective management. I note from the said minutes that the same was done as part of global practice, wherein companies carry on the operation maintenance services business as separate and distinct from the parent company.

18.2 Further, I note that para 2 of the said minutes mentioned that with the proposed transfer/ sale/ disposal, Noticee 1 would be able to organize its OMS vertical under a separate subsidiary with segmented service portfolio and separate management team to independently focus on growth and track financial performance, etc. Thus, from the above it is conspicuous that OMS business was sold as a part of internal restructuring plan of Noticee 1. Further, I note that Non-Disclosure Agreement dated January 23, 2014 was executed between Senvion and Noticee 1 for selling of OMS business to Senvion.However, the same did not materialize and thus, it was decided to sell the said OMS business to SGSL, wholly owned subsidiary of Noticee 1. I also note that due disclosure dated February 14, 2014 was made to the stock exchanges by Noticee 1 about the decision to sell OMS business to one of its subsidiaries.

18.3 In order to effect the slump sale of OMS business, I note that an approval dated February 14, 2014 and March 27, 2014 of the Board of Directors and shareholders respectively was taken by Noticee 1. Further, I note that a dislcosure dated February 14, 2014 was made by Noticee 1 to the stock exchanges, vide which it had informed that its board has approved to carve out the OMS divisions of the company by sale to one of the subsidiaries for its efficient management. I note that the valuation of Rs 2,000 crores of OMS business of Noticee 1, been sold to SGSL, was not random but was based on valuation report by one of the reputed experts i.e. Grant Thornton (GT). I note from page 6 of the said report that the value arrived by GT as on December 31, 2013 was in the range of Rs 2,000.9 Crores to Rs 2,428.1 Crores. Further, I note that on March 28, 2014, the Board of Directors of Noticee 1 had approved the transfer/ disposal of the OMS division of Noticee 1 by means of a slump sale to SGSL for a lump sum consideration of Rs 2,000 crores, in line with the abovementioned valuation. I note from the submission of Noticee 1 that a slump sale agreement dated March 28, 2014, was executed between Noticee 1 and SGSL and on March 29, 2014, the OMS business was transferred by Noticee 1 to SGSL.

18.4 I find that the Hon'ble National Company Law Tribunal ("NCLT"), Chennai Bench, in the matter of ***Medici Holdings Limited v. Photon Infotech Private Limited and ors***. [CP/53/2017, IA/210/2018 in CP/53 of 2017, IA/414/2019 in CP/53 of 2017, IA/227/2018 in CP/53 of 2017 and Comp. App(CA)/5/CHE/2022 in CP/53 of 2017] dated May 02, 2022, while deciding on a case related to oppression and mismanagement arising from the slump sale of the software business of the parent company to one of its subsidiaries, had held in its order that, *"Thus, it has already been established that the sale of the software by way of a slump sale by 1st Respondent Company to Respondent 5 was legal. Next in order to assess if the Board operated honestly, the imminent point which is required to be considered is that whether the valuation at which the software business was sold to Respondent 5 was done in a fair manner or not. The Board of Directors of the 1st Respondent Company, knowing fully the operational position of the 1st Respondent Company, arrived at a valuation of Rs. 40 Crore as the fair value of the software business. ... It is a well settled law that in the matter of commercial business, the Court or Tribunals should not second guess the commercial business judgement of the Board of Directors of a Company. Hence, this Tribunal is not inclined to interfere in the business decision as taken by Directors who are the ones with the most information about the operations of the 1st Respondent Company. Further in any case, the Petitioner has not made out a ground for this Tribunal to interfere in the business decision taken by the 1st Respondent Company..."*

18.5 In the instant case also, the value was arrived at by an independent expert and the decision to sell OMS business was approved by Board of Directors, which is vested with powers to take decisions in the best interest of company and its stakeholders and also the same was disseminated by way of disclosure to the stock exchanges.

18.6 As regards allegation of payment of sale consideration of Rs 2,000 crores through circuitous entries worth ₹1,300 crores, which allegedly led to misstatement in the standalone and consolidated Financial Statements, I note from copy of the slump sale agreement dated March 28, 2014 and another agreement dated June 30, 2014, provided by Noticee 1 that SGSL was required to discharge the sale consideration of Rs 2,000 crores within 90 days, failing which an interest to the tune of 11% was to be levied by Noticee 1 on it. In order to ascertain whether payment of Rs 2000 crores was made in full or not, I refer to para 5.1 of page 13 of the Forensic Audit report (FAR), which mentions that Noticee 1 had received part of the sale consideration amount of Rs 700 crores from SGSL during the period from 2014-15 to December 2016 through several transactions. Further, I note from FAR that the same were verified from the bank statements of Noticee 1.

18.7 From the above, I note that the Noticee 1 was unable to discharge the sale consideration of Rs 2000 crores within 90 days in terms of the slump sale agreement and there was an outstanding of Rs 1300 crores still to be paid by SGSL. In this regard, submission of Noticee 1 that it had decided to fund the outstanding sale consideration of Rs 1300 crores from the funds available within the Suzon group, and therefore, it had subscribed to the Compulsory Covertible Debentures (CCDs) of SGSL to the tune of Rs 400 crores and extended loan of Rs 900 Crores and the said amounts paid in multiple entries in the bank accounts of Noticee 1 did not violate any provisions of law, I note from FAR that loan of Rs 900 crores was disbursed to SGSL by Noticee 1 in 6 entires of Rs 150 crores each on March 21, 2017 into its SBI account number 00000033683165234 and subscription amount of CCD of Rs 400 crores, susbscribed by Noticee 1 was credited into the account of SGSL in 3 entries of Rs 100 crores on March 22, 2017 and 1 entry of Rs 100 crores on March 23, 2017. I also note that the entries as mentioned above were immediately reversed by SGSL on the same date as the date of credit by Noticee 1.

18.8 Further, I note from Section D on *Disclosure of significant transactions with related parties* on page 156 of the annual report of Noticee 1 for the financial year 2016-17 that Noticee 1 had duly disclosed the CCDs and Inter Corporate loan given to SGSL. I note from the said page that under *type of transaction* valuing Rs 400 crores with SGSL, Noticee 1 had shown it as *Purchase of CCDs*. Similarly, on the same page of the Annual report, under *type of transaction* valuing Rs 1465.90

crores with SGSL, Noticee 1 had shown it as *loans given.* Further, I note from Note no. 15 on Borrowings on page 46 of the *Notes to financial statements for the year ended March 31, 2017* of the audited financial statements of SGSL, an amount of Rs 1344.39 crores was being reflected as Current loans and advances. Thus, I note that Rs 1300 crores amount disbursed in the form of CCDs and loans by Noticee 1 to SGSL was utilized by SGSL in paying the remaining sale consideration of OMS business and the said transactions effected between Noticee 1 and SGSL had no effect on the consolidated statement of Noticee 1.

18.9 I note that there is no provision in Companies Act or LODR Regulations that bars granting of loans by a parent company to its subsidiary and repayment of the same in multiple trenches. Further, I note that Accounting Standard 1, which deals with the disclosure of significant accounting policies followed in preparing and presenting the financial statements does not prohibit parties to transactions from settling their accounts in multiple tranches. Thus, I note that by funding SGSL, Noticee 1 had converted a short term liability of SGSL (sale consideration) into a long term loan.

18.10 In addition to the aforementioned, I note from FAR that SGSL had paid the amount of Rs 700 crores through operating cash flows generated over period of time and further, I note from FAR that the amount of Rs 700 crores was utilized by Noticee 1 to service its debts and meeting the expenses. I also note that Noticee 1 had duly disclosed the transactions with SGSL as a Related Party Transactions (RPTs), which is evident from page 152 of the Annual report of Noticee 1 for the FY 2016-17. Thus, I note from the above that the circuitous transactions as alleged were nothing but the short term liability of Rs 1,300 crores of SGSL converted into long terms loans in the form of CCDs and ICDs.

18.11 As regards allegation of selling of entire equity stake of Noticee 1 in SGSL to SSL for a consideration of Rs 927.83 crores, resulting into a gain of Rs 829.78 crores, I note from reply of Noticee 1 that the sale of shares of SGSL to SSL was approved by its board as SSL was also a wholly owned subsidiary of Noticee 1, which was having a positive net worth, had long history of business operations, profit track record, and could make listing successful, which was possible with better valuations. I note from copy of resolution dated March 29, 2014 of Noticee

1, wherein it was resolved by its board to approve the divestment of its entire investment in SGSL to SSL on or before March 31, 2016 at a price of Rs 94.63 per equity share, a value determined by GT by issue of shares of Rs 10 each of SSL, issued at a premium of Rs 917.83 per share. Further, I note from the copy of the resolution dated March 29, 2016 passed by the Board of Directors of SSL, wherein it was mentioned that in terms of the approval of the shareholders at the Extra Ordinary General Meeting of SSL held on January 11, 2016 and consequent approval of the board at its meeting held on January 28, 2016, SSL would acquire equity shareholding of SGSL on or before March 30, 2016 and discharge the consideration towards purchase of shares to Noticee 1, through issue of fresh equity shares of Rs 10 each of SSL at a premium of Rs 917.83 per share and to Suzlon Wind international Limited and SB Blades Limited through cash; both for a purchase value being determined by an independent valuer, which was arrived at Rs 94.63 per equity share of SGSL.

18.12 I also note that a disclosure dated March 29, 2016 was made by Noticee 1 to the stock exchanges, which read as under:

"2. Transfer of entire 98% equity shareholding in Suzlon Global Dervices Limited(SGSL) to Suzlon Structures Limited (SSL), another wholly owned subsidiary of the company.

The operation, maintenance and services (OMS) business was separated from SEL to achieve a strategic and operational focus on the business and development of a qualitative enterprise and a sector leader for OMS operations. The business has gathered required critical mass and has good ans sustainable operating margins, since separation from SEL. Thus, with a view to rationalize the OMS business to optimize future fund raise or capital raise activities, this transfer has been approved."

18.13 I also note from page 32 of the valuation report dated March 28, 2016 of GT, who was appointed by Noticee 1 to obtain a fair value of SGSL that following was stated:

"We therefore estimate the fairvalue of Equity of Suzlon Global Services Limited as per DCF method at INR 9,467.7 Mn as on the caluation date, based on the methodologies described in this report and subject to the limitations stated in this report and our engagement letter."

18.14 I note from the order of Hon'ble SAT in the matter of ***Rakesh Agarwal vs. SEBI***, [(2004) 49 SCL 351 (SAT)], wherein while assessing whether the appellant was guilty of insider trading or not, it was noted by SAT that the actions of the appellant were motivated by the need to secure a joint venture partner for his company, which were in the best interests of the company and all its shareholders. It was reiterated that any action taken, that led to the appellant's benefit was only incidental and not driven by the intent for unfair personal gain. Therefore, the Hon'ble SAT held that while the actions of the appellant may not be in technical compliance, the intent of such actions was to further the best interests of the company. The Hon'ble SAT held, *"154. In the instant case it is clear that the Appellant was frantically trying to get a joint venture partner to strengthen the company, when the particular industry was facing problems. The partner was Bayer. It put stiff condition of holding 51% capital in the company. The Appellant's intention in acquiring the share was to facilitate the entry of Bayer for the betterment of the company and its other shareholders, employees etc. The object was not to gain unfair personal gain. It is true that in the process the shares which he purchased at a lower price fetched a higher price when offered in the public offer. But this gain was only incidental, and certainly not by cheating others. If the Appellant's intention was to make money in the process, he could have cornered much more shares and profited considerably. His bonafide is evident from the fact that he had instructed Mr. Kedia to buy even 1,20,000 shares @ Rs.80/- when the public offer response was not that warm, so as to meet the deficiency, if any, in obtaining 20% shares by Bayer in the public offer.*

155. From the facts of the case, it is clear that the Appellant was acting in the interest of the company and to protect the interest of the company shares were purchased and, therefore the Appellant cannot be considered to have violated the prohibition contained in regulation 3(i). The fact that the Appellant in the process of tendering the shares in the public offer, tendered the shares at a price higher than the rate at which he purchased the same cannot be viewed as an action to gain unfair advantage over other shareholders. The gain was incidental to the main objective of enhancing the interest of A B S. He was already in management of the control of the company. It is too presumptuous to say that he had traded in the securities to protect his interest. He has not retained his managerial position at the cost of any other person."

18.15 Thus, I note that stake sale of shares of Noticee 1 in SGSL to SSL and corresponding acquiring of shares of SSL by Noticee 1 was a share swap, was apparently carried out in the interest of the Noticee 1 and its entire group , which was duly approved by the Board of Directors of Noticee 1, wherein fair value to sell and acquire stakes were arrived at by engaging expert independent valuers and requisite disclosures were also made to the stock exchanges and therefore, allegation that Noticee 1 misrepresented financials by generating profits of Rs 1922.92 crores through the circuitious entries by selling OMS business and Rs 829.78 crores by selling equity stake is not forthcoming and accordingly, further allegations of negative networth and widening of losses due to the alleged transactions also do not stand.

18.16 As regards allegation of issuance of 1,21,95,69,014 equity shares by Noticee 1 during FY 2014-15 for an aggregate amount of Rs 1,882 crores, comprising Rs 244 crores towards equity share capital and Rs 1,638 crores towards securities premium, I note from the material available on record that no specific provisions of LODR Regulations was alleged to have been violated owing to the above said issuance of shares.

18.17 As regards, allegation of impairment of assets to the tune of Rs 6,026 crores by Noticee 1 allegedly resulting in erosion of its networth and corresponding submission of the Noticee 1 that impairment was done owing to the poor prospects of business and reduction in volumes in the wind industry due to changes in policy, such as, government's withdrawal of the accelerated depreciation benefit and expiry of the gross based incentive scheme of the government, I note from page 16 of FAR with respect to the impairment of assets in SEFL, which reads as under;

SEFL went into Corporate Debt Restructuring (CDR) in September 2012 and was incurring huge losses and going concern issues, SEL had impaired the investments worth Rs 566 crores in the FY 2013-14. Subsequently due to improved cash flows on sale of Senvion, fresh equity by Shangvi group, SEL had revived the SEFL and hence reversed the impairment of its investments in SEFL. SEFL made profit in 2016-17 after exiting CDR, however, subsequently due to adverse wind market condition the company *agains suffered losses during FY 17-18 to FY 19-20. The reversal of impairments are done in compliance with the accounting standards*

18.18 Further, I note from FAR that the impairment to the tune of Rs 566.96 crores and subsequent reversal was based on a valuation report by Duff & Phelps dated May 26, 2015. Similarly, impairments to the tune of Rs 560 Crores and Rs 194.27 Crores in FY 2018-19 and FY 2019-20 were carried out based on the valuation report of Hasmukh Shah & Co. LLP and Milan Rupchandani dated May 29, 2019 and June 26, 2020 respectively. Further, I note that the forensic auditor has categorically mentioned at point (d) and (i) of para 6.3 on page 21 of FAR that the reversal of impairment was in accordance with the clauses 941-100 of Ind AS 28 and hence impairment was considered in representing true and fair view of financials and no non-compliance was found with the applicable accounting standards.

18.19 Similalry, w.r.t impairments in SGWPL, I note that page 24 of FAR, mentions that based on the impairment indicators and in compliance with Accounting Standard 28 as applicable to the Noticee 1, its management had obtained valuation report from an external valuer and accordingly impairment in investment of Rs 245.9 crores in 2015 and impairment in ICD to the tune of Rs 1155.44 crores in 2018-19 and Rs 363.30 crores in 2019-20 based on the valuation report of Hasmukh Shah & Co LLP & Milan Rupchandani dated May 29, 2019 and June 26, 2020 respectively was made and ultimately FAR concluded at point (f) of para 7.4 of page 27 that the impairment was made in accordance with the applicable accounting standards, duly supported by valuation report.

18.20 I note from paragraph 19 of Accounting Standard 13, which governs the accounting principles related to diminution, i.e., impairments in the investments, which in the instant case was done by Noticee 1 during FY 2012-2013 to FY 2015-2016. The said paragraph states, "*Where there is a decline, other than temporary, in the carrying amounts of long- term investments, the resultant reduction in the carrying amount is charged to the profit and loss statement. The reduction in carrying amount is reversed when there is a rise in the value of the investment, or if the reasons for the reduction no longer exist".* Similarly, I note from para 94 of Ind AS 36, which is applicable in the instant case, which reads as under:

"*An enterprise should assess at each balance sheet date whether there is any indication that an impairment loss recognised for an asset in prior accounting periods may no longer exist or may have decreased. If any such indication exists, the enterprise should estimate the recoverable amount of that asset*".

18.21 From the above, I note that an entity (Noticee 1 in the instant case) was required to assess at the end of each reporting period whether there was any indication that an asset might be impaired. If any such indication existed, Noticee 1 was required to estimate the recoverable amount of the asset. If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset is to be reduced to its recoverable amount. Thus, that reduction is an impairment loss. Also, I note that Noticee 1 was required to assess if there was any indication that an impairment loss recognised in prior periods for an asset may no longer existed or might have decreased. If any such indication existed, Noticee 1 was required to estimate the recoverable amount of that asset. Thus, an impairment loss recognised in prior periods for an asset is then reversed if there has been a change in the estimates used to determine the asset's recoverable amount since the last impairment loss was recognized and if this is the case, the carrying amount of the asset is required to be increased to its recoverable amount. That increase is a reversal of an impairment loss.

18.22 Further, I note that both write off and impairment involve recognising decrease in asset value and an asset is eliminated from the books in the case of a write off, while on the other hand, impairment adjusts the value of the assets to reflect their diminished worth and the same is required to be reversed pursuant to change in conditions that effect the value of the asset.

18.23 Thus, in view of the foregoing, I note that FAR didn't point out any anomaly w.r.t the impairment of the assets and its subsequent reversal done by the Noticee 1. Further, I note that the same was within the ambit of the relevant accounting standards and was a decision taken by its management in the best interest of its shareholders as already established above.

18.24 Thus, in light of the above, I do not find any merit in allegation of mis-representation in financials of the Noticee 1.

19. **Contingent liabilities w.r.t Stand-by Letter of Credit (SBLC) issued by State Bank of India (SBI), which secured loan credit facility availed by AE Rotor Holding B.V. (AERH) and contingent liability of USD 569.40 million as at 31st March, 2018 not shown in the Annual Report for FY 2017-18**

19.1 With respect to allegation on Noticee 1 of non-compliance of applicable and notified accounting standrads by non-provisioning of SBLC and corressponding submission of the Noticee 1 as mentioned above, I find pertinent to refer to the relevant extracts of Ind AS, viz. Ind AS 37, IndAS 104 and Ind AS 109:

A. *The relevant extract of definition of 'contingent liability, as defined under 'IndAS 37* - *Provisions, Contingent Liabilities and Contingent Assets', is reproduced as under:*

"A contingent liability is:

"(a) a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or

(b) a present obligation that arises from past events but is not recognised because:

(i)it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or

(ii) the amount of the obligation cannot be measured with sufficient reliability."

B. *Relevant extracts from IndAS 104 are as under:*

"……2 An entity shall apply this IndAS to:

(a) insurance contracts (including reinsurance contracts) that it issues and reinsurance contracts that it holds.

(b) financial instruments that it issues with a discretionary participation feature (see paragraph 35). Ind AS 107, Financial Instruments: Disclosures, requires disclosure about financial instruments, including financial instruments that contain such features."

As per Appendix A of IndAS 104, insurance contract is defined as "A contract under which one party (the insurer) accepts significant insurance risk from another party (the policyholder) by agreeing to compensate the policyholder if a specified uncertain future event (the insured event) adversely affects the policyholder. (See Appendix B for guidance on this definition.)"; Insurer is defined as "The party that has an obligation under an insurance contract to compensate a policyholder if an insured event occurs."

And policyholder is defined as "A party that has a right to compensation under an insurance contract if an insured event occurs."

Ind AS 109 –Definition of Financial guranatee

A contract that requires the issuer to make specified payments toreimburse the holder for a loss it incurs because a specifieddebtor fails to make payment when due in accordance with theoriginal or modified terms of a debt instrument.

19.2 From the above provisions, I note that Noticee 1 was required to mention the liability of Rs 4,050 crores with respect to SBLC under Ind AS 109 and not under Ind AS 104 for the FYs 2016-17 and 2017-18, as the said liability was a type of financial guarantee, wherein Noticee 1 was required to pay to SBI in the event of invocation of the SBLC. Further, I note that Ind AS 37 categorically mentions exception to what is already covered under other accounting standards, which in the instant case SBLC, being a financial guarantee, was covered under Ind AS 109 and thus, the liability w.r.t SBLC was not required to be disclosed under contingent liability nor under insurance contract for both the years, rather, it should have been accounted under Ind AS 109. Further, it is on record that Noticee 1 had disclosed the said liability as Contingent liability for the FY 2016-17 and had also mentioned the same in Note 6 to the standalone financial statements for the said year. I also note that the said liability was disclosed in Note 3 of the standalone financial statements for the FY 2017-18 as Insurance Contract under Ind AS 104. The relevant extracts of which are mentioned hereinbelow:

Notes to financial statements for the year ended March 31, 2017

6. *Suzlon Energy Limited and its identified domestic subsidiaries (collectively 'the Group') and Suzlon Generators Limited, a jointly controlled entity ('SGL') are obligors under the Onshore Stand by letter of credit ('SBLC') Facility Agreement and have provided security under the 'Offshore SBLC Facility Agreement in connections with a SBLC issued by State Bank of India of USD 655 Million 122 SUZLON ENERGY LTD., ANNUAL REPORT 201 -1 6 7 123 for securing the credit facility and covered bonds availed by AE Rotor Holding B.V. (AERH), a step-down wholly owned subsidiary of the Company. The Group has classified the Onshore facility availed amounting to USD 538 million as a financial guarantee contract. AERH has a borrowing of USD 626 million as* *at March 31, 2017, which is due for repayment in March 2018, as per original schedule. The Group has obtained No Objection Certificate from the SBLC lenders as well as approval from Reserve Bank of India for extension of SBLC from April 2018 to April 2023. The Group believes that based on the strength of extended SBLC, the outstanding borrowing of AERH can be extended/refinanced by the existing lenders or by new lenders. AERH and its subsidiaries are engaged in dealing of WTGs in international markets and the cash-flows generated from these business activities will be used for serving the finance cost as well as towards part repayment of outstanding debt of AERH. The ability of AERH to repay the outstanding debt is primarily dependent on generation of cash-flows from business operations in overseas market. The Company management believes that AERH has reasonable business forecast over the next few years and estimates that AERH will be able to refinance the outstanding debt, if required and meet the debt obligations as and when they fall due and hence they believe that the financial guarantee obligation of USD 538 million is not required to be recognised in financial statements and it* ***has been disclosed as contingent liability***

Notes to financial statements for the year ended March 31, 2018

3. Significant accounting judgements, estimates and assumptions

The preparation of the Company's financial statements requires management to make judgements, estimates and assumptions that affect the reported amounts of revenues, expenses, assets and liabilities, and the accompanying disclosures, and the disclosure of contingent liabilities. Uncertainty about these assumptions and estimates could result in outcomes that require a material adjustment to the carrying amount of assets or liabilities affected in future periods.

a. Significant judgements in applying the Company's accounting policy

In the process of applying the Company's accounting policies, management has made the following judgements, which have the most significant effect on the amounts recognised in the financial statements:

Guarantee classified as an insurance contract

The Company, together with its three Indian subsidiaries and a joint venture are obligors to the State Bank of India and other Indian lenders and have given security in connection with loan availed by AE Rotor Holding B.V. ('AERH'), The Netherlands, a step down *wholly owned subsidiary of the Company. The Company has treated the said guarantee as an insurance contract under Ind AS 104. Please refer to Note 4 for further details.*

19.3 Thus, I note that for both the years, there was adequate disclosure but not under the relevant accounting standards. Since, adequate disclosures were made to investors, which is the primary objective to enable investors to take informed decision, I am inclined to take lenient view on this issue.

20. **Findings w.r.t investments made in and loans given to SE Forge Limited**

20.1 As regards allegation w.r.t. impairment of investment in SEFL, I note that the same has already been dealt with in the pre-paragraphs. I also note from para 6.3(a) of page 21 of FAR, wherein it has been concluded that due to the incapability of management of SEFL to source funds, Noticee 1 had done the imparments of its investments in SEFL in 2014-15 and the same was in compliance with applicable accounting standards and backed by independent valuation as and when the impairments were made or reversed. Further, as regards allegation of infusion of Rs 150 crores and writing off of Rs 128 crores, which was returned by SEFL to Noticee 1, I note from the Revenue and EBITDA in the audited financial statements of SEFL from FY 2016-17 to FY 2018-19 that there was a significant reduction in the said values, which as per submission of the Noticee 1 was owing to the challenges been faced by the wind industry worldwide. The deductions in the said values during the FYs 2017-2019 is tabulated below:

Amount in Crores:

Particulars	FY 2017	FY 2018	FY 2019
Revenue	491	360	357
EBITDA	151	70	39
EBITDA %	31%	20%	11%

20.2 Owing to the above deduction in the values, I note from submission of the Noticee 1 that as SEFL needed more funds to meet its business operations and financial commitments (debt servicing) during FY 2015-16, Noticee 1 had infused Rs 150 crores and during FY 2015-16 had infused Rs 328 crores into SEFL. In this regard, I note from FAR that SEFL had returned Rs 128 crores to Noticee 1 after receipt of funds from Noticee 1 and similarly, I note that the amount of Rs 328 crores was also returned by Noticee 1 after infusion of the same as mentioned above. In this regard, I note that the infusion of capital in SEFL was duly authorised by the Board and approved by the shareholders and disclosures to the stock exchanges were also made. Further, I note from page 113 of the Annual report of Noticee 1 for the FY 2015-16 that a requisite disclosure w.r.t purchase of equity shares of SEFL to the tune of Rs 328 crores was duly disclosed in the said report, which shows that the investors were made aware of the infusion.

20.3 Further, I note from para 6.3(f) of FAR, wherein it has been concluded that if the loans and advances were not converted into equity, ICDs amounting to Rs 355 crores would have been shown as loans given to subsidiary and interest would have been charged on it as income in the books of Noticee 1. I note from FAR that there was no effect on impairments in loans or investments and the said conversion had resulted in improved networth and debt to equity ratio and that no fresh borrowings were made based on those improved financials. Thus, from the above, I note that FAR has not concluded violation of any provision of accounting standards or LODR Regulations owing to the conversion of loans into equity.

20.4 Further, I note that the decision to infuse the capital was backed by board approval and requisite disclosures were made to the stock exchanges. Further, as regards allegation of conversion of loans into equity, I note that there is no law that bars a company to convert the loans into equity. I also note that, the said transactions were with wholly owned subsidiary, which had no effect on consolidated statement.

20.5 Thus, I do not find any irregularity w.r.t the transactions as alleged.

21. **Findings w.r.t investments made in and loans given to SGWPL**

21.1 As regards allegation of equity infusion of Rs 1200 crores in SGWPL by Noticee 1 and returning and adjustment of the said funds by SGWPL to Noticee 1 through 16 circular entries of Rs 75 Crores each, I note that the issue of lending by a parent company and subsequent repayment by a subsidiary has been dealt with in the pre-paragraphs and as already established above, the said mechanism of lending and repayment is not barred under any law and was a decision taken by the management of Noticee 1.

21.2 Further, I note from submission of the Noticee 1 that from FY 2012 to 2016, it had provided temporary loans to support SGWPL's operational requirements. However, in 2015-16, the working capital of SGWPL had increased and there was no near-term visibility of repayment by SGWPL. Thus, in order to overcome the situation, it had invested Rs 1,200 Crores on March 19, 2016. In this regard, I note from page 113 of the Annual report for the FY 2015-16, Noticee 1 had shown Rs 1,200 crores as purchase of equity shares of SGWPL for the year ended on March 31, 2016 and similarly, I note from the cash flow statement of SGWPL for the year ended on 2015-16, SGWPL had shown Rs 1200 crores as amount w.r.t issue of equity shares under cash flow from financing activities. I also note from page 115 of the Annual report of Noticee 1 that it had shown an outstanding amount of Rs 676.35 crores as at March 31, 2016. Thus, both the Noticee 1 and SGWPL had made adequate disclosures in their respective financial reports. Further, as already discussed above, lending by Noticee 1 and repayment by SGWPL was within the ambit of law not barred in Companies Act and LODR Regulations.

21.3 As regards allegation of selling equity holdings worth Rs 1200 crores to SPIL at Rs 191.60 crores at a loss of ₹1054 crores on the sale transaction, I note from the copy of resolution dated March 29, 2016, passed by the Board of Directors of Noticee 1 that the sale of equity holding by Noticee 1 in SGWPL to SPIL was for consolidation of divisions and based on a valuation report dated March 18, 2016 from Resurgent India, which had assessed SGWPL's equity value as negative Rs 1,008.40 Crore. Thus, I note that the value arrived of Rs 191.60 crores was based on the valuation from an expert independent valuer and not decided by Noticee 1 on its own.

21.4 Further, I note from point 7.4 (b) at page 26 of FAR that FAR has concluded that there were no cash flows and Noticee 1 had booked huge losses due to roundtripping entries and hence had misled the users of financial statements. It further concluded that the investments of Rs 1200 crores through circuitous entries had inflated the networth of SGWPL and had effect on the consolidated

Audited Balance sheet of Noticee 1 and that these circuitous transactions had effect of misstatement of facts and were not depicting the true and fair view of the financial affairs of Noticee 1 and were in violations of the Ind AS 1 and Schedule II, Part B of Regulation 17(8) of LODR Regulations.

21.5 With respect to the above, I note that while alleging violation of Regulation 17(8) of LODR Regulations and Ind AS 1, which provides for Certification by CEO and CFO that the financial statements represent true and fair view of the affairs of a company and preparing and presenting general purpose financial statements in accordance with Ind AS by company respectively, it has not been informed how true and fair view has not been presented despite adequate disclosures.

21.6 Further, I note that Noticee 1 in its disclosure to the stock exchanges dated March 29, 2016 had mentioned that its board had approved the following as mentioned below:

"Transfer of equity shareholding in Suzlon Gujarat Wind Park Limited (SGWPL), a wholly owned subsidiary of the company, to Suzlon Power Infrastructure Limited (SPIL), another wholly owned subsidiary of the company. Pursuant to this transfer, SGWPL would become a wholly owned subsidiary of SPIL and would continue to be s step-down wholly owned subsidiary of the company"

21.7 Thus, from the above, I note that the transactions were effected with board approvals dated March 29, 2016 of both the companies i.e. Noticee 1 and SPIL and disclosures dated March 29, 2016 were made in this regard to NSE and BSE. Further, as detailed above, the mechanism of converting loans into equity and repayment of borrowings by subsidiary to its parent company is not barred under any law and Noticee 1 had undertaken those decisions with approval of the board and had disseminated the same to the stakeholders.

21.8 In view of the foregoing, I do not find merit in the allegations.

22. I note from the certification of statement of impact of non-compliances in connection with the Standalone financial statements for the FYs 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 dated March 21, 2024, issued by SARC & Associates (Chartered Accountants), provided by the Noticees, that no non-compliance with respect to the alleged transactions in the standalone financial

statements was observed. To sum it all up, I note that the action by the Noticees i.e the company and its management, were taken after due approvals and adequate disclosure to the shareholders was made in order to enable the investors to take informed decisions regarding their investments.

23. In this regard, I find relevant at this juncture to refer to the order of Honb'le SAT in the matter of ***D-Link (India) Limited v. SEBI,*** wherein it was observed that SEBI cannot interfere with the business decisions taken by the company unless its affects the securities market, the relevant extract is as under;

"8…. As already observed, this is a reasonable explanation furnished by the company and we cannot lose sight of the fact that the company and its board of directors are the best judges of the interest of their shareholders, and it was primarily a business decision which the company took and neither the Board nor we can substitute our own views for theirs. We wonder how the Board is concerned whether the company increases the investor wealth of its shareholders through the buy-back process or by making investments in infrastructure. This is not a matter which affects the securities market. The Board is primarily a market regulator, and its duty is to ensure that the market remains a safe place for the investors to invest. It cannot interfere with the business decisions taken by the company so long as they do not prejudicially affect the securities market."

24. Similalry, Honb'le Apex Court in the matter of ***S.A. Builders Ltd. v. Commissioner of Income Tax,*** held that authority cannot assume the role of businessman, the relevant extract is as under;

"36. We agree with the view taken by the Delhi High Court in CIT v. Dalmia Cement (B) Ltd. that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximise its profit. The Income Tax Authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own viewpoint but that of a prudent businessman. As already stated above, we have to see the transfer of the

borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

25. Further, I note that the importance of Consolidated statements was highlighted by the Honb'le Patna High Court in the matter of ***JMC Projects (India) Limited v. State of Bihar***, which reads as under;

"*With respect to the aforesaid issue regarding qualifying the criteria laid down in Clause 4.5 (D) of the NIT, this Court finds that reference has been made by the learned counsel for the petitioner to Section 129 of the Companies Act, 2013, which also stipulates that all the listed and unlisted companies, having one or more subsidiaries, including associate companies and joint ventures must compulsorily prepare the consolidated financial statements and the said concept of Consolidated Financial Statement was brought with an objective of achieving the true and fair view of reporting the position of the company for the financial year, since the consolidated financial statements are generally considered as primary financial statements from an economic entity perspective, whereas the standalone financial statement projects only the position of the company in its individual performance and does not provide the true and fair view to the shareholders about the overall performance of the company with its subsidiaries. In fact Accounting Standard-110 also provides that consolidated financial statement is required to be mandatorily compiled in preparation of financial statement and accounting policies. The petitioner is stated to be having 4 (four) 100% subsidiaries and has associates with 49.57 % holding, hence, in the case of holding company, the financial health can only be derived after consolidation of, financial statements of the subsidiaries and associates. This Court also finds that the Technical Tender Committee of the respondent No. 2 had analyzed the standalone financial statements and consolidated financial statements of the petitioner, whereafter it was of the view that the standalone EPS was positive and EPS derived on the basis of consolidated financial statement was negative from the financial year 2013-2014 to 2016-2017. Thus, this Court is of the view that the employer i.e the respondent No. 2 in the present case, is duty bound to ensure that the bidder is sound from all corners, hence, if the Respondent No. 2 has considered the financial health of the petitioner company in totality along with its subsidiaries, in order to satisfy itself with regard to the right picture of the financial liabilities of the petitioner company, there is nothing wrong in it and in fact, the Respondent No. 2 has in the process found out that the petitioner company is in a bad shape* *on account of its subsidiaries, which poorly reflects on the financial health of the petitioner company, hence, the Technical Tender Committee has rightly held that the petitioner does not fulfil/qualify Clause 4.5(D) of the NIT dated 10.6.2019. Thus, the decision of the Technical Tender Committee of the Respondent No. 2 to hold the petitioner guilty or submitting misleading/false information, in light of Clause 4.8 of the instruction to bidders, cannot be faulted with, consequently this Court finds that the bid of the petitioner has rightly been rejected by the Technical Tender Committee of the Respondent No. 2 on this ground as well."*

26. I note that the Indian wind energy sector has experienced significant turbulence over the past two decades due to policy shifts, fluctuating tariffs, and challenges in securing land and approvals. The sector faced periods of stagnation and uncertainty. The shift from feed-in tariffs to competitive bidding (auctions) impacted the sector, leading to lower tariffs and squeezing profit margins for manufacturers. This transition also altered the project development landscape, shifting focus from Original Equipment Manufacturers (OEMs) to Independent Power Producers. Fluctuating policies and inconsistent support mechanisms hinder long-term planning and development. The competitive bidding process, while intended to drive down costs, introduced volatility and financial risks. Revenue losses due to grid constraints and policy-driven tariff adjustments also posed challenges. Acquiring suitable land for wind farms and ensuring grid connectivity has been a persistent challenge, often leading to project delays. These challenges were beyond the control of a company operating in the wind energy sector and the companies were on their own to run the show. This also shows that the policy changes and the withdrawal of the incentives by the government were one of the reasons that forced the companies to go for internal restructuring plans, increased losses, thinning margins, etc.

27. Under such turbulent circumstances, it is best left to the management, which has been entrusted by the stakeholders with the task of steering the ship. I note that the decisions taken by the management of a company should not be questioned as they are the better judges of the challenges being faced by them. The key issue is whether the decisions are in compliance with the applicable provisions, taken with due approvals and whether the same have been disclosed adequately to the stakeholders, which in this case I find has been done. The same exhibits clear intention of the

company that nothing is being hidden by them and dissemination to the public at large has been made. After a disclosure is there in the public domain, it is then upto the investors whether they want to continue or not.

28. As already established above, Noticee 1 had taken board and shareholders' approval as and when required and had also made requisite disclosure to the stock exchanges. Hence, I do not find any merit in the allegations against the Noticees.

29. Since, violations as alleged are not established, therefore, ISSUE-II and ISSUE-III do not require any consideration.

ORDER

30. Accordingly, the Adjudication proceedings initiated against the Noticees vide SCN dated November 09, 2022 stands disposed of.

31. In terms of Rule 6 of the SEBI Adjudication Rules, a copy of this order is sent to the Noticees and also to SEBI.

AMIT KAPOOR
Digitally signed by AMIT KAPOOR
Date: 2025.06.27 17:41:10 +05'30'

Place: Mumbai | **AMIT KAPOOR**

Date: June 27, 2025 | **ADJUDICATING OFFICER**