BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AA/GN/2021-22/15604)

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SCR(R) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

SREI Infrastructure Finance Limited

(PAN No.- AAACS1425L)

(Address: 86C, Vishwakarma, Topsia Road – South, Kolkata, West Bengal, 700046)

In the matter of

SREI Infrastructure Finance Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an examination in the matter of SREI Infrastructure Finance Limited (hereinafter referred to as **SIFL / Noticee**) to ascertain the compliance pertaining to the disclosures/ filings with stock exchanges, as required under the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as '**LODR Regulations**')**.**

APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to the examination, the undersigned was appointed as the Adjudicating Officer vide order dated October 06, 2021 under Section 23 I of the Securities Contract (Regulation) Act, 1956 (hereinafter referred to as **SCR Act)** and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as the SC(R) Rules) read with Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**) to inquire into and adjudge under Section 23E of SCR Act to enquire into and adjudicate certain violations, the details of which are given below.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. A Show Cause Notice (hereinafter referred to as "SCN") no. SEBI/HO/EFD1_DRA1/P/OW/2021/000032576/1 dated November 15, 2021 was issued to the Noticee under rule 4(1) of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as the **SC(R) Rules**) to show cause as to why an inquiry should not be initiated against the Noticees and why penalty, if any, should not be imposed on the Noticees under Securities Contract (Regulation) Act, 1956 (hereinafter referred to as **SCR Act)** for the alleged violations of-
    a) Regulation 30 read with Clause 1 & 3 of para A of Part A; and Clause 8 of para B of Part A of Schedule III of LODR Regulations and;
    b) Para 8 of Part 2 of Annexure I of SEBI circular dated September 09, 2015

4. The details in respect of violations by the noticees as alleged in the SCNs are as follows:

4.1. SREI Equipment Finance Limited (hereinafter referred to as **SEFL**) is a wholly owned subsidiary of the Noticee / SIFL.

4.2. SEFL had filed two scheme of arrangements with Hon'ble National Company Law Tribunal, Kolkata Bench (NCLT).

- SEFL has filed an application (CAA) No. 1106/KB/2020 for approval of a proposed Scheme of Arrangement with its creditors, being the banks and financial institutions ("<u>First Scheme</u>") before the NCLT. Where the Hon'ble NCLT vide its <u>order dated October 21, 2020</u> directed the Company to go ahead with convening the meeting of the said creditors.

- Further, the SEFL has filed a separate application (CAA) No. 1492/KB/2020 for the approval of a proposed Scheme of Arrangement with its other set of creditors ("Other Creditors") being the secured debenture holders, unsecured debenture holders, secured ECB lenders, unsecured ECB lenders, PDI holders and individual debenture holders of the Noticee ("<u>Second Scheme</u>") before the Hon'ble NCLT. The Hon'ble NCLT vide its order dated <u>December 30, 2020 directed the SEFL to go ahead with convening the meeting of the said 'other creditors'.</u>

4.3. It is observed from the websites of the BSE Limited (hereinafter referred to as **BSE**) and the National Stock Exchange of India Ltd (hereinafter referred to as **NSE)** that the First Scheme and Second Scheme, which the noticee had filed with the Hon'ble NCLT Kolkata for the approval, was not disclosed by the Noticee to BSE Limited (BSE) and National Stock Exchange of India Limited (NSE). Further, the NCLT order dated October 21, 2020 was also not disclosed by the Noticee to BSE and NSE.

4.4. NCLT, Kolkata in its order dated December 30, 2020 has directed that the Credit Rating Agencies shall not consider any such non-payment to be a default under the respective debt documents and shall maintain the rating(s) of SEFL at least that of investment grade.

4.5. Pursuant to abovementioned order of the NCLT Kolkata, Care Ratings Limited and Acuite Rating & Research Limited filed an appeal with NCLAT Delhi on February 17, 2021, in which SEFL was the respondent. The direction of the NCLT in relation to the Credit Rating Agencies in the impugned order dated December 30, 2020 as mentioned in para 7 above, was stayed by the NCLAT Delhi vide its order dated March 02, 2021. However, this order was not disclosed by the Noticee to the BSE and NSE. Subsequently, CARE Ratings Limited vide press release dated March 06, 2021 has downgraded the ratings of the instruments/facilities.

5. The SCN was sent through speed post acknowledgement due. The same was delivered to the Noticee. The Noticee vide email dated December 04, 2021 submitted its reply to the SCN. The reply of the noticee is as follows-

   i. *Reserve Bank of India ("RBI") under Section 45-IE(1) of the Reserve Bank of India Act, 1934 ("Act") superseded the Board of Directors of SIFL and SREI Equipment Finance Limited ("SEFL") and appointed the Manoj Kumar as the Administrator under Section 45-IE(2) of the Act ("Administrator") on October 04, 2021.*

   ii. *Subsequently the RBI on October 08, 2021 filed an application for initiating corporate insolvency resolution process ("CIRP") against SIFL and SEFL under Section 227 read with Clause (zk) of sub-Section (2) of Section 239 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), read with Rules 5 and 6 of the Insolvency and*

Bankruptcy (Insolvency and Liquidation Proceedings of Finance Service Providers and Application to Adjudicating Authority) Rules, 2019 ("FSP Insolvency Rules"). On October 08, 2021, the National Company Law Tribunal bench at Kolkata ("NCLT") commenced the CIRP of SIFL and SEFL and appointed the undersigned as the Administrator of SIFL and SEFL.

iii. *As per Rule 5(b)(i) of the FSP Insolvency Rules read with IBC, an interim moratorium commences on and from the date of filing of the application (i.e. October 08, 2021) and a moratorium commences from the date of admission (i.e. October 08, 2021) of the financial service provider into CIRP ("Moratorium"). Section 14 of the IBC imposes a Moratorium on inter alia:*

a) the institution of suits or continuation of pending suits or proceedings against the Company, including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing off by the Company or any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

iv. *Accordingly, the Hon'ble NCLT, Kolkata, while passing order dated November 08, 2021 to admit the petition on behalf of RBI to initiate CIRP against SIFL, also pronounced as under, vide para 15 of the order, which is reproduced as under:*

"b. There shall be moratorium in terms of section 14 of the Code in respect of Financial Service Provider.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under section 31(1) of the IBC or passes an order for liquidation of the Financial Service Provider under section 33 of the Code, as the case may be."

v. *It is submitted that upon commencement of Moratorium period, no proceedings can be instituted and/or continued against corporate debtor (in the present case SIFL) before any court or authority. The present inquiry initiated against SIFL under Rule 4(1) of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 are 'proceedings' within the meaning of Section 14 of IBC and the present proceedings therefore can not continue and ought to be stayed during the Moratorium period, as mandated by IBC.*

vi. *It is further submitted that the IBC is a subsequent statute and the provisions of the IBC shall prevail upon the provisions of the SEBI Act, 1992 ("SEBI Act") in view of Section 238 of IBC. It is respectfully submitted that this issue has been dealt with and decided by the Hon'ble National Company Law Appellate Tribunal in its order dated May 9, 2019 passed in the case of Bohar Singh Dhillon vs. Rohit Sehgal & Ors – Company Appeal No. 665 of 2018. In the said judgement and order, the Hon'ble National Company Law Appellate Tribunal held that the provisions of the IBC shall prevail over the provisions of the SEBI Act, 1992 and SEBI cannot take any coercive action and/or step against the corporate debtor during the Moratorium period.*

vii. *Additionally, reference is made to the order by Securities Appellate Tribunal ("SAT") dated October 9, 2020 in the case of Dewan Housing Finance Corporation Ltd. v. Securities and Exchange Board of India – Appeal No. 206 of 2020, wherein SAT held that the order and proceedings initiated by SEBI against Dewan Housing Finance Corporation Ltd ("DHFL") after initiation of CIRP against DHFL and imposition of moratorium, could not be instituted by SEBI. Further, the SAT quashed the show cause notice and the entire proceedings by SEBI in this regard. The relevant extracts are reproduced below –*

"18. ... In the instant case, the moratorium kicked in when the petition was filed on November, 2019 under Rule 5(a)(i) of the Insolvency and Bankruptcy (Insolvency and liquidation proceedings of financial service provider and application to Adjudicating Authority) Rules, 2019 and thereafter it was admitted on 3rd December, 2019. The adjudicating officer issued notice subsequently on 24th December, 2019. It is quite clear that the proceedings was initiated by the adjudicating officer after the moratorium had come

into effect. In our view no proceedings could be instituted in view of section 14(1) of the Act."

viii. *In view of the above, it is respectfully submitted that there is a bar in law against SEBI from initiating and/or continuing with the present proceedings against SIFL during the Moratorium period. Therefore, it is requested that the said Notice and all proceedings relating to it be discontinued.*

ix. *The Notice relates to events which occurred prior to appointment of Administrator and the Administrator does not have any personal knowledge of the circumstances surrounding the concerned events. The above response does not deal with the merits of the matter and we reserve our rights to deal in merits of the same at a later stage.*

x. *This letter is without prejudice to and without waiver of any rights, remedies or claims available to SIFL under applicable laws, equity or otherwise and SIFL reserves the right to contest and respond to each averment made in due course. Nothing contained in the Notice may be deemed to be admitted for want of a specific denial.*

6. In the interest of natural justice, vide email dated December 6, 2021, the Noticee was granted an opportunity of personal hearing on December 20, 2021. The Authorised representative (AR) of the noticee vide email dated December 19, 2021 requested for rescheduling of hearing to another date in the week commencing from Monday, 27th December, 2021. Vide email dated December 20, 2021, a fresh opportunity of personal hearing was granted on January 05, 2022. The AR attended the hearing on the scheduled date i.e. on January 05, 2022 and reiterated the submissions made by the Noticee.

7. During the hearing on January 05, 2022, the AR also requested for additional time to submit reply on merits. The request of the noticee was acceded to and were granted time till January 19, 2022 to submit a reply on merits. Thereafter, a second opportunity of personal hearing was granted on January 24, 2022. The same was intimated to the noticee vide email dated January 05, 2022. The noticee has submitted it reply vide email dated January 19, 2022

8. The reply dated January 19, 2022 received vide email dated January 19, 2022 submitted by the noticee are as follows-

i. *We write on behalf of Srei Infrastructure Finance Limited. We refer to the reply dated December 4, 2021 ("Reply") filed to the SCN and the hearing held on January 5, 2022 where time was granted to file reply on merits. A copy of the Reply is annexed at Annexure-A.*

ii. *At the outset, we repeat and reiterate the submissions made in our Reply and the arguments advanced during the hearing held on January 5, 2022. We do not admit the contents of the SCN. Nothing contained in the SCN shall be deemed to be admitted unless specifically admitted herein or for want of any specific traverse. It is submitted that SEBI does not have jurisdiction to issue the SCN or carry on these proceedings, in light of the initiation of the corporate insolvency resolution process ("CIRP") and moratorium in Srei Infrastructure Finance Limited ("Noticee / SIFL").*

iii. *It is submitted that the Noticee is not in a position today to defend the actions taken by the previous management. The Administrator was appointed by Reserve Bank of India ("RBI") Press Release dated October 4, 2021; and subsequently confirmed by the order of the National Company Law Tribunal at Kolkata ("NCLT Kolkata") dated October 8, 2021. The erstwhile promoters and board of directors of the Noticee, who were running the business undertaking in question during the period in which the alleged violations were committed, were superseded by RBI Press Release dated October 4, 2021. Therefore, the Administrator is not personally aware or conversant with the facts and circumstances of the case to be able to depose on the facts and / or principles on which the decision had been taken.*

iv. *Since the SCN related to events which occurred prior to appointment of the Administrator, and the Administrator does not have any personal knowledge of the circumstances surrounding the concerned events, it is humbly submitted that SEBI cannot assess the matter on merits. In fact, the law specifically prohibits SEBI from proceeding with the present matter as the same will result in prejudice being caused to the CIRP of SIFL.*

v. *Further, as stated in our Reply, upon commencement of Moratorium period, no proceedings can be instituted and/or continued against the Noticee (in the present case SIFL) before any court or authority. The present inquiry initiated against SIFL under Rule 4(1) of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 are* *'proceedings' within the meaning of Section 14 of Insolvency and Bankruptcy Code, 2016 ("IBC / Code") and the present proceedings therefore cannot continue and ought to be stayed during the Moratorium period, as mandated by IBC.*

vi. *On October 8, 2021, the RBI filed CP/295/IB/KB/2021 before NCLT, Kolkata under sub-clause (i) of clause (a) of Rule 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019 to initiate CIRP against the Noticee under the provisions of the IBC. The NCLT Kolkata Bench admitted the Petition filed by the RBI and confirmed appointment of Mr. Rajneesh Sharma as Administrator to perform all the functions of the RP, and CIRP of the Noticee on October 8, 2021. Accordingly, from October 8, 2021, both initiation and continuation of any proceedings, including but not limited to the present proceeding, by or against the Noticee is barred. Therefore, is submitted that issuance of the SCN is barred.*

vii. *The order by the Securities Appellate Tribunal ("SAT") dated October 9, 2020 in the case of Dewan Housing Finance Corporation Ltd. v. Securities and Exchange Board of India – Appeal No. 206 of 2020, held that the order and proceedings initiated by SEBI against Dewan Housing Finance Corporation Ltd ("DHFL") after initiation of CIRP against DHFL and imposition of moratorium, could not be instituted by SEBI. Further, the SAT quashed the show cause notice and the entire proceedings by SEBI in this regard. The relevant extracts are reproduced below –*

"18. ... In the instant case, the moratorium kicked in when the petition was filed on November, 2019 under Rule 5(a)(i) of the Insolvency and Bankruptcy (Insolvency and liquidation proceedings of financial service provider and application to Adjudicating Authority) Rules, 2019 and thereafter it was admitted on 3rd December, 2019. The adjudicating officer issued notice subsequently on 24th December, 2019. It is quite clear that the proceedings was initiated by the adjudicating officer after the moratorium had come into effect. In our view no proceedings could be instituted in view of section 14(1) of the Act."

viii. *Thus, given that the Adjudicating Officer was appointed only on October 12, 2021, and the SCN was issued only on November 15, 2021, which was after the commencement of* *moratorium, it is submitted that the present proceedings could not have been initiated/ cannot be continued. It also appears that the aforesaid order of the Hon'ble SAT has been challenged before the Hon'ble Supreme Court, however the same has not been stayed as yet. It is submitted that mere filing on an appeal will not amount to stay of operation of the order. It is therefore submitted that this Hon'ble Adjudicating Officer is bound by the order of the Hon'ble SAT, which is in force and binding.*

9. In the reply dated January 19, 2022, the noticee did not reply on merits and reiterated the submissions made in the reply dated December 04, 2021. On January 24, 2022, the authorised representative of the noticee appeared and made submission on the lines of its replies dated December 04, 2021 and January 19, 2022.

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

A. Whether SEBI has jurisdiction to adjudicate the instant proceedings initiated vide SCN dated November 15, 2021?

B. Whether the Noticee has violated the provisions of regulation 30 read with Clause 1 & 3 of para A of Part A; and Clause 8 of para B of Part A of Schedule III of LODR Regulation and Para 8 of Part 2 of Annexure I of SEBI circular dated September 09, 2015?

C. Does the violation, if any, on the part of the Noticee attract monetary penalty under section 23E of the SCRA Act, 1992? If so, what would be the monetary penalty that can be imposed upon the Noticee?

Before proceeding further, it will be appropriate to refer the relevant provisions under the LODR Regulations, 2015 and SEBI circular dated September 09, 2015 alleged to have been violated by the Noticees. The texts of the alleged provisions are as under-

a) <u>Regulation 30 of LODR Regulations is as follows:</u>

Disclosure of events or information

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

30(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information.

30(7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

30(9) The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.

b) Clause1 and 3 of Para A of Part A of Schedule III as given in LODR is as follows:

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

1. *Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring*

3. *Revision of Ratings*

c) Clause 8 of Para B of Part A of Schedule III as given in LODR is as follows:

A. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):

8. Litigation(s) / dispute(s) / regulatory action(s) with impact.

d) Para 8 of Part 2 of Annexure I of SEBI circular dated September 09, 2015 is as follows:

8. Litigation(s) / dispute(s) / regulatory action(s) with impact: *The listed entity shall notify the stock exchange(s) upon it or its key management personnel or its promoter or ultimate person in control becoming party to any litigation, assessment, adjudication, arbitration or*

dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact.

8.1. At the time of becoming the party:

a) brief details of litigation viz. name(s) of the opposing party, court/ tribunal/agency where litigation is filed, brief details of dispute/litigation;

b) expected financial implications, if any, due to compensation, penalty etc;

c) quantum of claims, if any;

8.2. Regularly till the litigation is concluded or dispute is resolved:

a) the details of any change in the status and / or any development in relation to such proceedings;

b) in the case of litigation against key management personnel or its promoter or ultimate person in control, regularly provide details of any change in the status and / or any development in relation to such proceedings;

c) in the event of settlement of the proceedings, details of such settlement including - terms of the settlement, compensation/penalty paid (if any) and impact of such settlement on the financial position of the listed entity.

e) Section 23 E of SCR Act is as follows-

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

If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

11. I proceed to deal with the issues on merit now:-

Issue (A): Whether SEBI has jurisdiction to adjudicate in the present matter?

i. I have noted that the Noticee vide reply dated December 04, 2021 and January 19, 2022 has contended that the Reserve Bank of India (RBI) has superseded the board of Directors of SIFL and SREI Equipment Finance Limited (SEFL) and appointed Shri Manoj Kumar as the Administrator of the Company. Subsequently, the RBI has filed an application for initiating corporate insolvency resolution process (CIRP) against SIFL and SEFL. On October 08, 2021, the National Company Law Tribunal bench at Kolkata (NCLT) commenced the CIRP of SIFL and SEFL.

ii. The Hon'ble NCLT, Kolkata, while passing order dated November 08, 2021 admitting the petition on behalf of RBI to initiate CIRP against SIFL, also pronounced that there shall be moratorium in terms of section 14 of the IBC, and it shall have effect from November 08, 2021.

iii. The noticee has referred to the order of the Hon'ble Securities Appellate Tribunal (**SAT**) order dated October 9, 2020, in the matter of *Dewan Housing Finance Corporation Ltd. v. Securities and Exchange Board of India* wherein Hon'ble SAT has held that the order and proceedings initiated by SEBI against Dewan Housing Finance Corporation Ltd ("DHFL") after initiation of CIRP against DHFL and imposition of moratorium, could not be instituted by SEBI. The Noticee has also contended that the aforesaid order of the Hon'ble SAT has been challenged before the Hon'ble Supreme Court, however the same has not been stayed as yet and mere filing of an appeal will not amount to stay of operation of the order. In view of this fact, there is a bar in law against SEBI from initiating and/or continuing with the present proceedings against SIFL because the Moratorium has been imposed.

iv. I have noted all the contentions of the noticee in this regard. I also note that the SAT order in the case of *"Dewan Housing Finance Corporation Ltd. (Appeal No. 206 of 2020)"* has been challenged by SEBI before the Hon'ble Supreme Court and the same is pending. However, the instant proceeding is only to determine if the noticee company has violated any of the provisions of securities law and if so, to assess and determine the liability of the noticee. The liability so determined with respect to the Noticee by the present proceedings under Section 23E of SCR Act will only be crystallized and the consequent penalty and directions may be liable to be enforced, subject to the outcome of the appeal before the Hon'ble Supreme Court of India in the matter of *"Dewan Housing Finance Corporation Ltd. (Civil Appeal No. 3963/ 2020)"*.

Issue (B): Whether the Noticee has violated the provisions of regulation 30 read with Clauses 1 & 3 of para A of Part A; and Clause 8 of para B of Part A of Schedule III of LODR Regulation and Para 8 of Part 2 of Annexure I of SEBI circular dated September 09, 2015?

i. I have observed from the websites of the BSE and NSE that the noticee did not disclose the first scheme of arrangement and the second scheme of arrangement which it had filed with the NCLT Kolkata for approval and subsequently approved by the NCLT Kolkata. Also, the noticee has not disclosed the NCLT Kolkata order dated October 21, 2020 and NCLAT Delhi order dated March 02, 2021 to the BSE and NSE. As per regulation 30(6) of the LODR regulations, 2015, the listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III therein, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information. And Clause 1 and 3 of Para A of Part A of Schedule III of LODR regulations, provides that, <u>Scheme of Arrangement</u> (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring shall be disclosed without any application of the guidelines.

ii. Clause 8 of Para B of Part A of Schedule III as given in LODR provides that *Litigation(s) / dispute(s) / regulatory action(s) with impact* shall be disclosed to the stock exchanges.

iii. Para 8 of Part 2 of Annexure I of SEBI circular dated September 09, 2015 states that any litigation in relation to a listed company, the outcome of which can reasonably be expected to have an impact on the listed company, is required to be disclosed by such company.

iv. The NCLAT order dated March 02, 2021 had direct impact on the extant directions to the Credit Rating Agencies (NCLT Kolkata vide order dated December 30, 2020 had directed that the Credit Rating Agencies shall not consider any non-payment to be a default under the respective debt documents and shall maintain the rating of SEFL at least that of investment grade) and Care Ratings Limited revised the ratings of the instruments of SEFL, subsequent to the stay by the NCLAT Delhi vide order dated March 02, 2021.

v. The abovementioned circular also provides that the details of any change in the status and / or any development in relation to such proceedings, is also required to be disclosed to the stock exchange, but as per the records available with the BSE and NSE the company has not disclosed any development in the proceedings. Therefore, in view of the above, the noticee has failed to notify the stock exchange about its ongoing litigation and the development in relation to such proceedings.

vi. I observe that, the disclosures in respect of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that, the investing public shall not be deprived of any vital information in respect of their investments in the securities market. Further, it is a well settled principle of law that, ignorance of law cannot be considered as an excuse.

vii. In this regard I place reliance on Hon'ble SAT's judgment dated October 14, 2014 in the matter of *Virendrakumar Jayantilal Patel vs. SEBI(Appeal No. 299 of 2014)*, wherein the Hon'ble SAT observed that "*.......... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation".*

viii. In view of the above, it is concluded that the Noticee failed to submit the Scheme of arrangements and the ongoing litigations and the outcome of that litigation as specified in the regulation 30 of LODR Regulations, 2015 read with Clause 1 & 3 of para A of Part A; and Clause 8 of para B of Part A of Schedule III of LODR Regulations and Para 8 of Part 2 of Annexure I of SEBI circular dated September 09, 2015. I therefore, hold that, the Noticee has violated the abovementioned provisions.

ix. I note that the contention taken by noticee in the reply dated January 19, 2022 filed by the administrator, is that the administrator is not personally aware of the facts and circumstances of the case, as the events in the SCN pertains to a period prior to the appointment of administrator. However, I note that from the facts and circumstances, that the violation has already been established, as seen from the above.

Issue (C): The violations, if any, on the part of the Noticee would attract monetary penalty under section 23E of the SCRA Act, 1992?

i. It has been established in the foregoing paragraphs that the Noticee has violated the provisions of regulation 30 of LODR Regulations, 2015 read with Clauses 1 & 3 of para A of Part A; and Clause 8 of para B of Part A of Schedule III of LODR Regulations and; Para 8 of Part 2 of Annexure I of SEBI circular dated September 09, 2015. Therefore, the aforesaid violation committed by the Noticee attract monetary penalty under section 23E of the SCRA Act, 1992.

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

iii. In view of the above, I conclude that the Noticee is liable for monetary penalty under section 23E of the SCRA Act, 1992 which reads as under:

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

If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

iv. I note from the available records that the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the non-compliance committed by the Noticee has not been quantified. However, the material on record does not show that failure is repetitive in nature.

ORDER

12. After taking into consideration the facts and circumstances of the case, and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 23 I of the Securities Contract (Regulation) Act, 1956 and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 read with Section 19 of the Securities and Exchange Board of India Act, 1992 hereby impose a penalty of Rs. 2,00,000/- (Two lakh only) on the Noticee under section 23E of the SCRA, Act, 1956 for the failure on its part to comply with the provisions mentioned at point (ix) of paragraph 11(Issue B) . I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

13. As discussed at para 11 A (iv) above, the instant proceedings are only meant to determine if the noticee company has violated any of the provisions of securities law and if so, to assess and determine the penalty in order to enable SEBI to crystallise its claim. This order is subject to the outcome of the Supreme Court appeal filed by the SEBI in the matter of *Dewan Housing Finance Corporation Ltd. v. Securities and Exchange Board of India.*

14. In terms of the provisions of rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **Dr. Anitha Anoop**

Date: March 29, 2022 **ADJUDICATING OFFICER**