BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/KG/2022-23/15912-15921]

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

IN RESPECT OF :

Noticee No.	Name of the Noticee
1.	Mr. Yudhisthir D Khatau (PAN: AAHPK247A)
2.	Mr. Jalaluddin S Shariff
3.	Ms. Armin Pardiwala (PAN: AGTPP6107E)
4.	Tarun Shipping & Industries Limited (AAACT1522D)
5.	Varun Maritime Limited (PAN: AADCG9963G)
6.	Varun Global Limited (PAN: AABCL8883C)
7.	Yuka Plantains Private Limited (PAN: AAACY0242P)
8.	Realpoint (Mauritius) Limited (PAN: AAECR1155L)
9.	Azure Seas Logistics (PAN: AAJCA6527G)
10.	Mountview Investments Limited

(hereinafter collectively referred to as "Noticees")

IN THE MATTER OF VARUN GLOBAL LIMITED AND VARUN RESOURCES LIMITED

BACKGROUND:

1. The Securities and Exchange Board of India (hereinafter, referred to as "SEBI") had initiated adjudication proceedings in respect of fourteen entities, which includes the above mentioned 10 Noticees and 4 other entities, namely, Mr.

Praful Modi, Varun Corporation Limited, Varun Resources Limited and Sunbeam Talc Private Limited, for alleged allotment of equity shares to the promoters of Varun Global Limited (hereinafter referred to as **"VGL"**) and Varun Resources Limited (hereinafter referred to as **"VRL"**) which were not covered under the scheme of arrangement approved by the Hon'ble Bombay High Court vide order dated May 9, 2014 and for various other acts which have allegedly led to the contravention of various provisions of SEBI Circular No. SEBI/CFD/SCRR/01/2009/03/09 dated September 3, 2009 (hereinafter referred to as "relevant SEBI Circular"). Subsequently, vide Adjudication Orders dated February 16, 2021 and August 06, 2021, the adjudication proceedings in respect of Mr. Praful Modi, Varun Corporation Limited, Varun Resources Limited and Sunbeam Talc Private Limited have been disposed of.

APPOINTMENT OF THE AJUDICATING OFFICER

2. In this regard, the undersigned was appointed as the Adjudicating Officer ("AO") by SEBI, vide orders dated January 27, 2020 and February 27, 2020 (conveyed by communiques dated February 13, 2020 and March 9, 2020),under Section 19 read with Section 15-I (1) of the SEBI Act, 1992 (hereinafter, referred to as "SEBI Act") and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "SEBI Adjudication Rules 1995") to conduct adjudication proceedings and inter-alia in respect of the Noticee, in the manner specified under Rule 4 of the SEBI Adjudication Rules, 1995 read with Section 15-I (1) and (2) of the SEBI Act, and

if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the SEBI Adjudication Rules 1995 under section 15HB of the SEBI Act.

FACTS OF THE CASE

3. The scheme of arrangement between Varun Shipping Company Limited **(“VSCL”**), Tarun Shipping and Industries Limited (“**TSIL”**), Varun Gas Infrastructure Limited **(“VGIL”),** Varun Global Limited,(“**VGL”)** Varun Maritime Limited **(“VML”)** and Varun Resources Limited (“**VRL”**)was approved by the Hon’ble Bombay High Court on May 9, 2014.

4. The scheme of arrangement, inter alia provided for the following:
    a. demerger of ship management and shipping investment business of VSCL into VGL;
    b. demerger of offshore shipping and shipping investment business of TSIL into VML;
    c. Merger of VGIL, residual VSCL and residual TSIL into VRL.

5. Pursuant to the scheme, VRL and VGL have issued and allotted equity shares to shareholders of VSCL and TSIL. VRL had thereafter applied to BSE for listing of VRL and VGL vide letter dated June 10, 2015. VRL had also been restructured under the Joint Lenders Forum Scheme (“**JLF Scheme**”) and the same was signed on September 5, 2014.

6. It was *prima facie* observed by SEBI that subsequent to the scheme of arrangement, VRL had allotted 75,86,00,000 equity shares to their promoters, increasing their stake from 44.82% to 72.57% in VRL and VGL had also allotted 16,80,00,000 equity shares to their promoters increasing their stake from 30.89% to 67.40% in VGL pursuant to the scheme of restructuring under the Joint Lending Forum. It was alleged that such allotment of equity shares to their promoters pursuant to JLF on September 10, 2015 which are not covered under the Court approved scheme of arrangement, is in contravention of paragraph no. 1(d) of Part A in the annexure to the SEBI Circular dated September 3, 2009. It has been further alleged that despite SEBI advising VRL and VGL to either (a) comply with Regulation 76(2) and (3) of the SEBI (ICDR) Regulations, 2009 pertaining to pricing requirements or (b) to give the present non-promoter public shareholders an option to subscribe to additional shares at the same conditions at which they have been allotted to promoter so that they do not get an undue advantage over the shareholders of the said companies, the companies failed to do so. This happened allegedly despite the fact that the SEBI vide letter dated November 23, 2016, had sought the opinion of the Joint Lenders Forum to which the JLF had agreed with the proposal at point (b) mentioned above and vide letter dated December 30, 2016, advised the companies to carry out such issue of shares in order to expedite the resolution of the issue.

7. It was further alleged that the following acts of VGL and VRL have amounted to the contravention of the relevant SEBI Circular:

   a. VRL and VGL have not taken steps for listing its equity shares within 30 days of the date of the order of the High Court sanctioning the scheme of arrangement. In this regard it is noted that the certified copy of the order sanctioning the scheme of arrangement was issued by the Bombay High Court on November 20, 2014. The same was filed with the Registrar of Companies ("RoC") on December 8, 2014. RoC took on record applicable form filed by Varun Shipping Company Limited and other applicable companies for giving effect to the order passed by the Bombay High Court on April 25 and 28, 2015. However, the application for listing was filed on June 10, 2015, i.e., well beyond the period of 30 days from the date of the order of the Hon'ble High Court, thereby violating paragraph no. 2 of Part A in the annexure to the aforesaid Circular.

   b. VRL and VGL did not commence the formalities for trading within 45 days from May 9, 2014, i.e., the date of the final order of the Hon'ble High Court, thereby violating paragraph no. 5 of Part A in the annexure to the aforesaid Circular.

8. The contents of the aforesaid provisions of the SEBI Circular, allegedly violated by the Noticees are reproduced herein below:

1. An unlisted issuer may make an application to the Board under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "the SCRR"), seeking relaxation from the strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof for listing of its equity shares on a recognised stock exchange without making an initial public offer if it satisfies the following conditions:

*(a) ********

*(b) ********

*(c) ********

(d) The transferee entity has not issued/ reissued any shares, not covered under the Scheme;

2. The transferee entity shall also confirm that it has taken steps for listing of its equity shares, within thirty days of the date of the order of the High Court sanctioning the Scheme, simultaneously on all the stock exchanges where the equity shares of the transferor entity are/were listed.

5. The formalities for commencing of trading shall be completed within forty five days of the date of final order of the High Court. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving following details:

(a) Name and address of its registered office.

(b) Details of change of name and/or object clause.

(c) Capital structure - pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value).

(d) Shareholding pattern giving details of its promoter group shareholding, group companies.

(e) Names of its ten largest shareholders - number and percentage of shares held by each of them, their interest, if any.

(f) Details of its promoters - educational qualifications, experience, address.

(g) Business and its management.

(h) Reason for the amalgamation.

(i) Financial statements for the previous three years prior to the date of listing.

(j) Latest audited financial statements along with notes to accounts and any audit qualifications. Change in accounting policies in the last three years and their effect on profits and reserves (Financial statements should not be later than six months prior to the date of listing).

(k) Details of its other group companies including their capital structure and financial statements.

(l) Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies.

(m) Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years.

(n) Any material development after the date of the balance sheet.

(o) Such other information as may be specified by the Board from time to time.

9. It was alleged that the contravention of the provisions of paragraphs no. 1(d), 2 and 5 of Part A in the annexure to the SEBI Circular dated September 3, 2009, makes VRL, VGL and the other Noticees, who were the Directors/ Promoters of VGL and VRL at the relevant point in time when the alleged contraventions of the aforesaid SEBI Circular took place, liable for penalty under Section 15 HB of the SEBI Act, the contents whereof is reproduced herein below:

"Penalty for contravention where no separate penalty has been provided*.*

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

SHOW CAUSE NOTICE, REPLY AND HEARING

10. With respect to above alleged violations, the Noticees were therefore, called upon to show cause, vide a notice dated January 19, 2019, as to why an inquiry

should not be held against them in terms of Rule 4 of the SEBI Adjudication Rules, 1995 read with section 15-I of the SEBI Act, and penalty should not be imposed in terms of Rule 5 of the said Rules and the provisions of Section 15 HB of SEBI Act. The SCN was served upon Varun Global Limited (Noticee No. 6) , Mr. Yudhishthir Khatau (Noticee No. 1), Ms. Armin Pardiwala (Noticee No. 3), Yuka Plantations Limited (Noticee No. 7) and Varun Maritime Limited (Noticee No. 5) and the said Noticess had also availed the opportunity of personal hearing before me on February 23, 2021 and March 3, 2021. I note that the SCN was duly served through email on Mountview Investments Limited, the Noticee No. 10, to which it had responded. However, no submissions were made on merits by the Noticee No. 10 after the initial response, which has been brought out in the later paragraphs in this order. I also note from the report of examination that Tarun Shipping and Industries Limited (Noticee No. 4) has already been merged with Varun Resources Limited much prior to the commencement of the present proceedings. Therefore, Tarun Shipping and Industries Limited (Noticee No.4) had ceased to exist as a juristic entity even prior to the initiation of the present proceedings and therefore cannot be proceeded against.

11. I further note that the SCN was attempted to be served upon Realpoint (Mauritius) Limited (Noticee No. 8), Azure Seas Logistics Limited (Noticee No. 9) and Mr. Jalaluddin S. Shariff (Noticee No. 2), whose addresses are outside India, through postal service, which has however returned undelivered from

their said last known addresses. Thereafter, the SCN was attempted to be served through the concerned regulatory authority in Dubai (for the Noticee No. 2) and Mauritius (for the Noticees No. 8 and 9) under the inter-regulatory arrangement in accordance with the IOSCO MMoU. However, the SCN could not be successfully served upon the said Noticees, despite all these efforts. The email addresses of these entities are also not available on record; however, attempt was made to obtain their UCC details from the stock exchanges, which too have yielded no result. I therefore note that all efforts have been made to serve the SCN on these entities. Therefore, I hold that the principles of natural justice have been complied with respect to these entities as well.

12. Vide written submissions dated March 2, 2021 and March 11, 2021 and hearing dated March 3, 2021, representations were made on behalf of Yudhisthir Khatau, Varun Maritime Limited, Yuka Plantations Pvt Ltd. and Varun Global Limited (the Noticees No. 1, 5, 7 and 6 respectively). The submissions are summarized herein below:

Submissions made vide the letter dated March 2, 2021:

a. *Due to the global crisis prevalent at that time, the shipping industry was adversely affected which led to liquidity problems and the debts owed by Varun Resources Limited could not be serviced in a timely manner leading to the restructuring of debt of Varun Resources Limited under Joint Lender Forum Scheme dated September 5, 2014 approved by the lenders ("JLF Scheme").*

b. *One of the pre-conditions to the approved debt restructuring under the JLF Scheme was infusion of contribution by promoters through additional equity capital to the tune of approximately Rs. 75.86 Crores in VRL and Rs. 16.8 Crores in VGL.*

c. *On the basis of the JLF Scheme and the decision taken by the lenders, the JLF lenders and VRL entered into the Master Restructuring Agreement dated March 30, 2015 ("MRA") and a Restated Master Restructuring Agreement dated June 29, 2015. The promoters infused Rs. 75.86 crores in VRL & Rs 16.8 crores in VGL before the execution of the MRA in the form of an unsecured loan, pending conversion into equity to save the business in the interest of its shareholders. As per the covenants of the MRA, if the promoters would have failed in their compliance of the terms and conditions relating to promoter's contribution, the same would have constituted an "event of default" under the MRA and lenders would have the liberty to recall and cancel the JLF Scheme. Hence, the aforesaid infusion of promoter's contribution and subsequent conversion of the same to equity was paramount for the success of the JLF Scheme/survival of VGL and VCL.*

d. *It may be noted that the equity shares were allotted to promoter group only after the approval of shareholders through special resolution passed on September 10, 2015. The copies of the special resolutions dated 10th August, 2015 are enclosed hereto and marked as Annexure — 5. The sole reason for issuance of the additional shares was to satisfy the conditions precedent to debt restructuring as per JLF Scheme and not done at the discretion of the promoters. The shareholders have approved the issuance of the additional shares under the* above circumstances without any request for shares to be issued to them or transferred to them.

e. *The promoter group has infused the funds in the interest of investors/shareholders of VGL and VR.L as entire revival is in the best interest of VGL and VRL and their shareholders. The promoters have not taken any advantage or benefit out of such allotment, rather they have infused their own funds in VRL and VGL for their immediate revival. Further, it was also offered through various communications with SEBI that the shares allotted on preferential basis to be locked-in for a reasonable period and will forego other corporate benefits as may deemed fit for the purpose of the listing of shares of the VRL and VGL, as requested earlier.*

f. *As per the terms of JLF Scheme and executed MRA, VGL and VRL were restricted from issuing shares or changing capital structure without lenders' permission. VGL, VRL and its promoters were continuously engaged with lenders to get the necessary approval enabling the listing/issuance of shares to general public as per the advice from SEBI. The letter dated November 23, 2016 addressed to State Bank of India and their response dated December 26, 2016 reconfirming the requirement of NOC from JLF is enclosed hereto and marked as Annexure — 6.*

g. *Through multiple lenders meetings and continuous follow-ups, VRL and VGL had been seeking timely approval from various lenders for allowing the option to public shareholders to subscribe to the additional shares as per the requirements* *of SEBI. Copies of letters dated February 18, 2017, March 22, 2017 and April 11, 2017 in this regard are enclosed hereto and marked as Annexure — 7.*

h. *Pending such approval, following steps were taken in connection thereto:*

i. *Obtaining of necessary approvals of the boards of VRL and VGL to issue such shares;*

j. *Appointment of merchant bankers, legal advisors and secretarial auditors in relation to the proposed issue;*

k. *Preparation of draft postal ballot;*

l. *Initiation of process for appointment of intermediaries.*

m. *Simultaneously, it may be noted that LIC, a secured creditor to VGL, had initiated the winding up process against VGL despite the fact that since April 2014, VGL/promoters had been trying to resolve/settle with LIC. The settlement of debt owed to SCB and resolution with LIC was an integral part of the approved JLF Scheme for VGL.*

n. *As per the terms of the agreements executed by VGL. and VRL with lenders, no issuance of further shares/listing /change in capital structure was feasible unless the matter is resolved by the lenders.*

o. *It is pertinent to note that throughout the process, officials from VRL and VGL had continuous communication with SEBI to resolve the issue and SEBI was kept* *informed on the status and steps taken towards compliance. Copies of such letters addressed to SEBI are enclosed hereto and marked as Annexure — 8.*

p. *While the approval of all lenders never came in but one of the lenders of VRL initiated insolvency proceedings with NCLT which was admitted vide NCLT order dated June 14, 2017. The said order is enclosed hereto and marked as Annexure — 9.*

q. *Post appointment of Mr. Sanjeev Maheshwari as the resolution professional, I was not responsible and had no role in operations and regulatory compliances of Varun Resources Limited. Being aware of this fact, SEBI had also taken up the matter of JLF approval and listing of shares directly with Mr. Sanjeev Maheshwari.*

r. *Under CIRP process of VRL, the resolution plan was not approved by the committee of creditors and liquidation order of VRL was passed on 4th December, 2018.*

s. *With CIRP process starting for VRL, the revenue income of VGL was impacted severely and liquidation order was passed on February 1, 2018 for VGL under the winding up proceedings by LIC. The matter has been stayed and the final court hearing to issue the order was scheduled on November 26, 2020 which may now come up on board soon. The liquidation proceedings by SCB are also pending before the Hon'ble Bombay High Court for admission.*

t. *Simultaneously, CIRP process started for VCL on June 30, 2017 and Mr. Prakash Pandya was appointed as the resolution professional. Liquidation order dated May 18, 2018 has been passed liquidating VCL.*

u. *As non-promoter shareholders of VCL and VRL did not invest in these shares, they have not lost any funds/ investment in this process.*

v. *As the Companies have been either liquidated or are in the process of being liquidated, we are not in a position to further respond or act towards the alleged non-compliances as stated in the Notice.*

<u>Submissions made vide the letter dated March 11, 2021:</u>

1. ***Approval from the ROC***

a. *The certified copy of the Composite Scheme for Demerger & Amalgamation in, inter alia, VSCL, VRL and VGL, was obtained on November 20, 2014. Thereafter, the RoC Form(s) INC-28 for filing certified copy of the Order was filed on December 08, 2014. However, the final approval from RoC for taking on record, the composite scheme, was received on April 25, 2015. Annexed hereto as "Annexure — 1" is the copy of the said email approval by the ROC.*

b. *The said approval of the scheme was a prerequisite for allotment of equity shares in VRL & VGL to the shareholders of VSCL. Thus, until such time the scheme was taken on record and said approval was received, the shareholders of VSCL could not be allotted shares in VRL & VGL. Hence, the shareholders of VSCL could not be allotted shares in VRL & VGL prior to April 25, 2015.*

c. Similarly, the allotment of equity shares in VRL & VGL to the shareholders of VSCL, was a prerequisite for listing those very shares for trading of the stock exchanges. Thus, until such time the equity shares in VRL & VGL were allotted to the shareholders of VSCL, no listing application could be made to the stock exchanges for trading of the equity shares in VRL & VGL. Hence, application for listing of the equity shares in VRL & VGL, could not be filed with the stock exchanges prior to April 25, 2015. The copies of the cover letters of the listing application filed with the stock exchanges was annexed as "Annexure — 4" in my letter to you dated March 02, 2021.

d. From the above, it can be seen that listing of the shares was not possible prior to the ROC approval i.e April, 2015.

Alteration of share capital:

e. The capital of both Varun Resources Limited and Varun Global Limited was altered at the behest of lenders as per Master Restructuring Agreement, prior to March, 2015 i.e. before the ROC approval was obtained. Annexed hereto as "Annexure — 2" is a relevant extract of the said Master Restructuring Agreement.

f. From the above, it can be seen that the share capital of both the companies (VRL & VGL) had undergone a change at the behest of the banks before March 31, 2015 which was prior to the ROC approval (which was obtained on April 25, 2015) and therefore, the listing of shares without the approval of the Lenders was not possible at any time.

Approval of the Lenders:

g. *As explained by Mr. Y. D. Khatau and me, four letters were written to the lenders and 2 JLF meetings were convened wherein the management of the company expressly requested for consent of the lenders for issuance of additional shares/listing of shares and no approval was forthcoming from any lenders. Annexed hereto as "Annexure — 3" is the said letters written to the lenders and "Annexure — 4" which contains the minutes to the 2 JLF meetings aforementioned.*

h. *It is also pertinent to note that as per the loan agreement between the erstwhile Varun Shipping Company Ltd. (subsequently demerged into VGL and VRL) and LIC, the Borrowers were bound by Clause 16.7(A)(ii) wherein, unless the Lender otherwise agrees, the Borrower shall not, without prior approval of the Lender, issue equity or preference capital. As the aforesaid loan, pursuant to the Scheme resided in VGL, VGL could not alter its share capital without prior written consent of its Lender, namely LIC. As LIC has filed a petition for liquidation of VGL, no approvals are forthcoming. The relevant extract of the loan agreement has been annexed hereto as "Annexure — 5".*

i. *The liquidation application of LIC against Varun Global Ltd. remains an issue, as can be seen in the Order passed by the Hon'ble Bombay High Court on November 26, 2020.*

Approval of shareholders:

j. We had also for good orders, included the shareholders approval for issuance of additional capital which was annexed as "Annexure — 5" in my letter to you dated March 02, 2021.

<u>CONCLUSION</u>

k. As you can see, the Promoters/Directors tried their utmost including taking the shareholders approval but were restricted by lenders covenants and the lack of approvals from lenders without which, listing the amended Scheme capital/dilution of capital was impossible and therefore I pray that all claims against the undersigned be withdrawn.

13. Ms. Armin Pardiwala during the personal hearing held on February 23, 2021 and through her letter dated March 9, 2021, made the following submissions:

1. *She was only an independent director of Varun Resources Limited and Varun Global Limited and had no role in the process of decision-making in the two companies. She does not remember if she was a party to the board resolution whereby issue and allotment of equity shares to the promoters of the two companies was approved pursuant to the negotiations with the Joint Lenders Forum.*

2. *She took utmost efforts to convince the two companies named above to comply with the extant Rules/ Guidelines/ Directions of SEBI.*

The following submissions were made vide the letter dated March 9, 2021:

3. *I am not a promoter or shareholder of either Varun Resources Limited or Varun Global Limited or any other company in the same group.*

4. *My role in both these companies was limited to that of an independent director and a legal advisor. In fact I have resigned as an independent director from Varun Resources Limited ("VRL"} w.e.f. 26th February, 2018 and from Varun Global Limited ("VGL") w.e.f 12th June, 2018. Hereto annexed as Annexure 1 and 2 are the forms DIR 12 of Varun Resources and Varun Global respectively.*

5. *As you are aware, the erstwhile Varun Shipping Company Limited has been demerged and amalgamated into two resulting companies namely VGL and VRL vide the order of the Hon'ble Bombay High Court dated September 24, 2014**.** Since the erstwhile Varun Shipping Company Limited was listed with BSE Limited (hereinafter referred to as "BSE") and National Stock Exchange Limited ("NSE") both the resulting companies namely VRL and VGL were bound to be listed with the BSE and NSE as per relevant laws. Pursuant to the provisions of the Companies Act, 2013 and the listing compliances, I was inducted in the Board of VGL and VRL as an independent and non-executive woman director.*

6. *I would like to advert your attention to the fact that I have been appointed as an Independent non-executive director, out of necessity for compliance with*

the Companies Act, 2013 and the listing requirements and obligations. I am not and have never been involved in the management and affairs of both these companies. I would like to reiterate that I am a practicing advocate and pursuant to Advocates Act, 1961 and the rules of Bar Council of India I am not eligible to act as person responsible for day to day management and affairs of any company. My role as an independent director was limited to advisory capacity relevant to my expertise and experience.

7. *The alleged allotment of additional shares to promoters in these two companies was made pursuant to the understanding between the promoter of VRL and VGL and the Joint Lenders Forum of VRL. As an Independent director I was not responsible for the decision to increase the promoter's stake or to allot the additional shares to the promoters of these companies. In fact, I was not the only independent director of VRL and VGL, both these companies had board which was compliant of listing agreement with regard to corporate governance. And to the best of my knowledge no show cause notice has been issued to any of the other independent directors of either companies. In absence of any specific allegations against me in the said notice, I understand that you have erred in including me as one of the parties to the show cause notice.*

8. *It is the JLF Lenders' failure to grant the no objection that led to VRL not being able to list its shares as per SEBI's directives* (the detailed submission of Ms. Armin Pardiwala in this regard is similar to that made on behalf of the Noticees No. 1, 5, 7 and 6 as already detailed herein before).

9. *In the circumstances aforesaid, I state that I had acted diligently as the independent director of VGL and worked together with my team and Arihant Capital towards completing the listing as per SEBI's directive but because of lack of funding the listing could not be completed. There was no failure in my duty as the independent director of VGL as far as the listing of VGL's share was concerned.*

14. Mountview Investments Limited, the Noticee No. 10, vide letter dated February 1, 2021 (sent vide email dated February 2, 2021), had sought certain documents and inspection of such original documents. Vide email dated February 22, 2021, it was responded that all such documents which have been/ are to be relied upon for the purposes of the present proceedings have already been provided along with the SCN and no document shall be relied upon which has not been provided in advance to it. Subsequently, there was no communication received from it in the present proceedings. The email dated February 22, 2021, was sent to the same email address from which the letter dated February 2, 2021, was received. I therefore hold that sufficient compliance of the principles of natural justice has been done with respect to Mountview Investments Limited, the Noticee No. 10, and the present proceedings can be continued with respect to it on the basis of the material available on record.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

15. Before dealing with the submissions of the Noticees detailed in the preceding paragraphs, I consider it important to deal with a preliminary issue about the existence of Varun Global Limited as a corporate entity. I note that vide order dated November 16, 2021, in Company Petition No. 892 of 2014 (*Varun Global Limited Vs Life Insurance Corporation of India*), the Hon'ble Bombay High Court had ordered the liquidation of Varun Global Limited as reproduced herein below:

> *"2. Admittedly, there is a default in payment of the balance amount of Rs.16,75,00,000/- along with the lumpsum interest of Rs.55,00,000/- as fixed by the Court. In view thereof, as recorded in paragraph No.12 of the order dated 31 st August, 2021, which is reproduced above, the above Appeal stands dismissed. All interim orders stand vacated. <u>The Official Liquidator is now entitled to take further appropriate steps for winding up in terms of the order dated 1 st December, 2018.</u> All pending Interim Applications/Notice of Motion stand disposed of."*

16. I note that at the time when the present proceedings was initiated and when the hearings were conducted *inter alia* with respect to Varun Global Limited (Noticee No. 6), there was a stay on the order of winding up of the said company, as ordered by the Hon'ble Bombay High Court. However, as seen above, subsequently, the said order of stay was vacated and the original order

of winding up was given effect. Before proceeding further in the matter on its merit, it would be in the fitness of the things to first decide the preliminary issue as to whether the Adjudication proceedings initiated by SEBI against the Noticees would continue.

17. In this regard, it will be appropriate to refer to provisions of Section 446 of the Companies Act, 1956 and corresponding provisions of Section 279 of the Companies Act, 2013. The said provisions are reproduced as under:

> ***Section 446 of the Companies Act, 1956 Suits stayed on winding up order.***
>
> *(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.*
>
> *(2) The court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of –*
>
> *(a) any suit or proceeding by or against the company ;*
>
> *(b) any claim made by or against the company (including claims by or against any of its branches in India) ;*

(c) any application made under section 391 by or in respect of the company ;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company; whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a high Court

Section 279 of the Companies Act, 2013

Stay of suits, etc., on winding up order.—

(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose: Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

18. According to Black's Law Dictionary, Sixth Edition, the term 'Legal Proceedings' includes "all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy." Further, the term 'Proceedings' means, "any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given."

19. In the "Guide to the Companies Act" by A Ramaiya, (17th Edition Reprint 2010, page 4929 & 4930), it is stated that the object of winding up of a company by the court is to facilitate the protection and realization of its assets with a view to

ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. Consequently, once the court has taken the assets of a company under its control or has passed an order for its being wound up, it will not be proper to allow proceedings to be started or continued against the company.

"Section 446 is wide in its terms and is not restricted to any category of suits or any class of plaintiffs. It is wide enough to cover all suits and other legal proceedings who-ever may be plaintiff." {Murgan Oil Industries (P.) Ltd. Re, (1970) 40 Com. Cases 77, 82 (Mad)}

20. I note that the provisions of Section 279 of the Companies Act, 2013 are *pari materia* the provisions of Section 446 of the Companies Act, 1956 in so far as the commencement or continuation of any 'other legal proceedings', after appointment of official liquidator, are concerned. In this regard, I note the observations of Hon'ble High Court of Bombay, in the case of *Deutsche Bank v. S.P. Kala* {(1990) 67 Com. Cases}, wherein it was held that –

"Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Subsection

(2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction…………….. The expression "any suit or proceeding by or against the company" is wide enough to bring within its sweep any kind of suits."

21. I note from above that it is mandatory and a pre-condition to obtain the leave of Hon'ble Court / Tribunal for commencing <u>and/or continuing</u> the present proceedings against Varun Global Limited, which is under liquidation. I note that there is no material on record to suggest that leave of Hon'ble Court has been taken to continue the present adjudication proceedings with respect to Varun Global Limited. Therefore I hold that the present adjudication proceedings cannot be continued with respect to Varun Global Limited.

22. It was alleged in the SCN that subsequent to the scheme of arrangement, VRL had allotted 75,86,00,000 equity shares to their promoters, increasing their

stake from 44.82% to 72.57% in VRL and VGL also allotted 16,80,00,000 equity shares to their promoters increasing their stake from 30.89% to 67.40% in VGL pursuant to the scheme of restructuring under the Joint Lending forum. It has been alleged that such allotment of equity shares to their promoters pursuant to JLF on September 10, 2015 which are not covered under the Court approved scheme of arrangement, is in contravention of paragraph no. 1(d) of Part A in the annexure to the SEBI Circular dated September 3, 2009.

23. It was further alleged that despite SEBI advising VRL and VGL to either (a) comply with Regulation 76(2) and (3) of the SEBI (ICDR) Regulations, 2009 pertaining to pricing requirements or (b) to give the present non-promoter public shareholders an option to subscribe to additional shares at the same conditions at which they have been allotted to promoter so that they do not get an undue advantage over the shareholders of the said companies, the companies failed to do so. This happened allegedly despite the fact that the SEBI vide letter dated November 23, 2016, had sought the opinion of the Joint Lenders Forum to which the JLF had agreed with the proposal at point (b) mentioned above and vide letter dated December 30, 2016, advised the companies to carry out such issue of shares in order to expedite the resolution of the issue.

24. I note that VGL and/or its then Directors/ promoters have not attempted to dispute the allegation that the issue of equity shares to its promoters as detailed above, was indeed not in accordance with the scheme of amalgamation approved by the Hon’ble Bombay High Court under section 391 of the

Companies Act, 1956. They have however, strenuously submitted to establish that such a departure/ divergence from a term/clause of the approved scheme of amalgamation was indeed necessary and in fact beyond their control, in order to avail credit under a scheme of debt restructuring with the Joint Lenders Forum (JLF) in terms of the Master Restructuring Agreement ("MRA") entered into with the JLF. In this regard, I note that the Hon'ble Bombay High Court had approved the scheme of amalgamation as already detailed in the preceding paragraphs in this order, on May 9, 2014, whereas the JLF scheme was approved on September 5, 2014 and the MRA was entered into on March 30, 2015, i.e., both the actions which led to the departure/ divergence from the terms of the approved scheme of amalgamation had happened subsequent to the order sanctioning the scheme of amalgamation. It is an established principle of law [for instance, in *National Organic Chemical vs State Of Maharashtra And Ors*. (2004 118 CompCas 556 Bom)] that an order of a High Court sanctioning a scheme of amalgamation/ arrangement has statutory force which cannot be nullified/altered through any terms of contract. In the said judgment it was also held that the order of the High Court under Section 391 of the Companies Act is in the nature of insolvency jurisdiction as contemplated under Section 41 of the Indian Evidence Act and therefore, an order passed under Section 391 of the Companies Act is an order *in rem* binding on all the parties to the scheme as well as authorities including the sales tax authorities. Thus, there is no scope to diverge from any clause/term of an approved scheme of amalgamation by any of the parties for any reason whatsoever. Further, section 392 of the

Companies Act provides scope for any affected party to seek an alteration/modification for any term(s) of an approved scheme by making an appropriate application before the concerned High Court which had sanctioned the said scheme. There is absolutely no mention of any such application filed by VGL/VRL or any of their Directors/persons then in charge of their affairs, before the Hon'ble Bombay High Court seeking an alteration/modification of the terms/clauses pertaining to the issue of equity shares in order to enter into the MRA in terms of the JLF scheme. The fact that VGL/VRL and/or its Directors/Managerial Personnel had entered into a contractual arrangement, whatever be the motive or purpose of such a contract, in contradiction to any term/clause of the scheme of amalgamation approved by the Hon'ble Court without first seeking an approval for such modification from the competent court, is a violation of the relevant terms of the Companies Act, 1956, leading to a violation of Paragraph No. 1(d) of the Part A of the Annexure to SEBI Circular dated September 3, 2009.

25. The advice of SEBI as mentioned in the written submissions made on behalf of the Noticee No. 1, 3, 5, 6, and 7 and at previous paragraphs above, to VGL/VRL, was intended to provide relief to the non-promoter shareholders of VGL/VRL and the steps taken by VGL/VRL and/or its Directors to act in accordance with such advise (as submitted during the hearing and written submissions), even if held to be true, does not wash away the original non-compliance of the terms of the sanctioned scheme of amalgamation and thereby a non-compliance of

the SEBI Circular dated September 3, 2009 and in no way constitutes any acquiescence on the part of SEBI or a condonation of such non-compliance.

26. With respect to the submissions made regarding the compliance by VGL/VRL with respect to the timelines provided by the aforesaid Circular of SEBI, it is helpful to refer to the chronology of events tabulated herein below:

Sl. No.	**Date**	**Event**
1	May 9, 2014	Court approval of the scheme of demerger
2	November 20, 2014	Obtaining certified copy of the scheme
3	December 8, 2014	Scheme filed with RoC
4	April 25, 2015	Approval of the scheme received from RoC
5	April 25, 2015	Allotment of the shares of VGL & VRL to the shareholders of VSCL.
6	June 10, 2015	Application for listing of the shares filed with relevant exchanges.

27. The entities have annexed a copy of the email dated April 25, 2015 from RoC granting approval. No other explanation and/or evidence have been provided in support of the other events tabulated above. Be that as it may, there is no explanation for the time period lapsed between the date of approval of the scheme of demerger by the Hon'ble Bombay High Court and the date when the certified copy of the said Composite Scheme for Demrger & Amalgamation was obtained by the entities (more than 6 months), when it was known to the entities that as per the extant law, they needed to *take steps for listing of equity shares, within thirty days of the date of the order of the High Court sanctioning the*

Scheme, simultaneously on all the stock exchanges where the equity shares of the transferor entity are/were listed. There is no mention of the date when the entities had applied for obtaining a certified copy of the approved scheme and/or what steps they had taken during the intervening period of 6 months (from May 9, 2014 to November 20, 2014) to obtain the said certified copy and act in compliance of the statutory timelines. The onus of compliance with the time period provided under the extant law is squarely on the entities and therefore they must be held accountable for any non-compliance thereof. Further, even after obtaining the approval from the RoC on April 25, 2015, the entities took 45 days for mere filing of the application seeking listing of the shares with the stock exchanges, whereas the extant law stipulates that all the steps for listing of the shares should have been completed within 30 days and all the formalities for commencing of trading (i.e., including the obtaining of the permission for listing) ought to have been completed by them *within forty five days of the date of final order of the High Court.* There is also no explanation provided by the said entities why it took them 45 days even after the grant of approval by the RoC for taking the scheme on record, only for making the application for listing of the said shares on the stock exchanges. The entire chain of events as tabulated above does not show any sense of urgency or commitment on the part of the said entities to comply with the statutory time period. I also note that under the relevant Circular dated September 3, 2009, there is no exception provided from the responsibility to comply with the timelines prescribed therein. Therefore, I hold that there was indeed a non-compliance of the statutory timelines by VGL and VRL for which the then Directors and/or persons then in charge of the affairs of VGL/VRL are responsible. In this regard, I note that Regulation 19(1) to 19(6) of the SCRR, 1957 lays down the detailed requirements that a company desirous of getting its shares listed on a recognized stock exchange must comply with. Regulation 19(7) provides the power to SEBI to create exceptions from the aforesaid mandatory norms for compliance and more specifically from the requirement to make an initial public offering of its shares. It is an established principle of law that any exception from the general requirements of a law can only be provided in exceptional circumstances. In the present context, such exceptional circumstance(s) and the means of availing the said exceptions have been detailed in the aforesaid Circular of SEBI dated September 3, 2009. It is an also an established principle of law that an exception provided to the general requirements of a law, must be strictly interpreted so as not to water down the general meaning and import of the particular law. In *Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Others* [(2003) 5 SCC 413] the Hon'ble Supreme Court had held that a proviso acted as an exception to the main provision but such an exception must be strictly construed and confined to the intent of the legislature. This principle of strict interpretation gains all the more significance in the context of a statute regulating financial and/or economic activities. In *Commissioner of Income Tax - III Vs. M/s. Calcutta Knitwears, Ludhiana* in Civil Appeal No. 3958 of 2014 (decided on March 12, 2014), the apex court, *inter alia* relying upon its judgments delivered in the cases of *Swedish Match AB v. Securities and*

Exchange Board, India, AIR 2004 SC 4219 and *Commissioner of Income Tax v. Ajax Products Ltd.* [1965] 55 ITR 741 (SC)] had held that the foremost principle of interpretation of fiscal statutes in every system of interpretation is the rule of strict interpretation which provides that where the words of the statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. Thus, I find neither any reason nor any authority to grant any relaxation from the timeline prescribed under the Paragraphs No. 2 and 5 of the Annexure to the Circular of SEBI dated September 3, 2009. This delayed application by the then Directors (Noticees No. 1-3) for listing further goes against the mandate of the sanctioned scheme approved by the shareholders of VGL and VRL. In view of the above, I conclude that VGL and VRL had indeed violated the express provisions of the SEBI Circular dated September 3, 2009.

28. Having established the violations committed by VGL and VRL as detailed herein above, an important issue that now needs to be adjudicated upon is whether the promoters of the said 2 companies as named in the SCN (Noticees No. 4-10) are also responsible along with the directors for such violations. I note that the phrase “promoter” was not defined in the Companies Act, 1956, however, has been defined in Section 2 (69) of Companies Act, 2013. Section 2 (69) of the Act states that promoter is a person whose name has been mentioned in the prospectus of the company or is identified in the annual returns of the company, or any person who has direct or indirect control over the affairs

of the company, whether as a stakeholder or as a director, or on whose direction the Board of Directors act. It is an established principle of common law that a promoter stands in a fiduciary relation (i.e. a relationship that requires confidence or trust) with the company he promotes. He is neither an agent nor an employee of the company and therefore, has to fulfill certain duties towards the company that do not resemble that of any agency or employee-employer relationship.

29. The Companies Act, 2013, places certain liabilities and gives certain rights to the promoters. They are as follows[1]:

Sl. No.	Section	Provision
1.	Sub-section (6) of section 7	Liability for furnishing false or incorrect information for incorporation of the company
2.	Sub-section (8) of section 13 and sub-section (2) of section 27	Obligation to give exit opportunity to the dissenting shareholders
3.	Sub-section (1) of section 35	Liability to pay compensation for misstatement or omission in prospectus
4.	Sub-section (10) of section 42	Penalty for accepting money in contravention of provisions of section 42
5.	Sub-section (4) of section 102	Liability to compensate for gain resulting from non-disclosure or insufficient disclosure of information in explanatory statement
6.	Sub-section (3) of section 167	Power to appoint directors in case of vacation of office of all directors
7.	Sub-section (3) of section 168	Power to appoint directors in case of resignation by all directors
8.	Sub-section (3) of section 257	Appearance before the meeting of committee of creditors upon instruction of interim administrator

[1] https://www.icsi.edu/media/portals/86/Geeta_Saar_38_Promoter_and_Control_Part-1.pdf

9.	Sub-section (1) of section 284	Duty to extend full co-operation to Company Liquidator
10	Sub-section (1) of section 300	Liability to be examined before Tribunal upon report of Company Liquidator

30. I note that Section 2(60) of the Companies Act, 2013 mentions the following class of persons as “officer who is in default”:—

i. whole-time director;

ii. key managerial personnel;

iii. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

v. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

vi. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

31. It is therefore important to observe from the above, that the role of promoters as envisaged in the applicable statutory provisions does not include managing the daily affairs of a company. The elaborate provisions for Directorship and the Board of Directors cover the day to day management of a company.

32. On the question of which class of persons are responsible for the conduct of a company, it was held by the Hon'ble Supreme Court in *K.K. Ahuja v. V.K. Vora & Anr.* [(2009) 10 SCC 48] [cited in various judgments including the judgment of the Hon'ble Delhi High Court in *Sai Girdhar Raj Kumar vs Arun Kapoor & Ors*, decided on 4 May, 2020], as reproduced herein under: -

21. A combined reading of Sections 5 and 291 of the Companies Act, 1956 with the definitions in clauses (24), (26), (30), (31), (45) of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

(a) the Managing Director(s);

(b) the whole-time Director(s);

(c) the manager;

(d) the secretary;

(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(f) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent in that behalf to the Board); and

(g) where any company does not have any of the officers specified in clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors. It follows that other employees of the company, cannot be said to be persons who are responsible to the company, for the conduct of the business of the company. [emphasis supplied].

33. From the above, it is therefore clearly established that promoters of a company *per se* cannot be held to responsible for the day to day affairs of a company (either under the Companies Act, 1956 or under the Companies Act, 2013) unless they (or any of them) fall in any of the categories as mentioned above. There is no material available on record which suggests that the Noticees No. 4, 5, 7, 8, 9 and 10 along with Varun Corporation Ltd and Sunbeam Talc Private Limited who were named as the promoters of VGL and VRL at the relevant period of time were falling within any of the categories mentioned either under section 5 of the Companies Act, 1956 or under section 2(60) of the Companies Act, 2013. There is also no such observation/ allegation against the said Noticees in the findings of the investigation. Therefore, I hold that the Noticees No. 4, 5, 7, 8, 9 and 10 cannot be held responsible for the violations of VGL/VRL.

34. Mr. Yudhishthir D. Khatau (Noticee No. 1) was the Chairman and Managing Director of Varun Resources Limited at the relevant point in time when the contraventions, as already established in the preceding paragraphs, had occurred. This fact is established from the available material and is also not disputed. Further, Mr. Yudhishthir D. Khatau and Mr. Jalaluddin S. Shariff

(Noticee No. 2), were the non- independent Directors of Varun Global Limited. Thus, they cannot escape their liability for the non-compliances of VGL/VRL in view of the position of law discussed in the preceding paragraphs.

35. With respect to the role of Ms. Armin Pardiwala (Noticee No. 3), who was an independent Director in VGL, I find that there is no material available on record to establish that she was engaged in the day to day affairs of the company or was in charge of the affairs of the company. There is no finding in the investigation that Ms. Armin Pardiwala was involved in the day-to-day affairs and management of the Company. Further, there is no evidence available to controvert her submissions that she was not involved in the process whereby the decision to allot shares to the promoters of VGL/VRL was taken. Thus, in view of the aforementioned facts and following the principle of law established *inter alia* in the case of *Adesh Jain Vs SEBI* (SAT Appeal No. 217 of 2020, decided on 19.11.2020), I hold that Ms. Armin Pardiwala cannot be held responsible for the action of VGL and VRL in allotting shares to their promoters and/or for the delay in compliance with the stipulations of SEBI Circular dated September 3, 2009.

36. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default of the Noticee. Further, from the material made available, the amount of loss caused to an investor or group of investors is not on record. However, it is important to note that VGL/VRL and/or its promoters/directors who at the relevant point of

time were in charge of the affairs of the said companies did not seek permission of the Hon'ble High Court for amending a clause of the sanctioned scheme of arrangement when a departure from the said clause was decided upon by them. They had also delayed in compliance of the stipulated time period under the Circular of SEBI dated September 3, 2009, which cannot be viewed lightly.

ORDER

37. I note that vide earlier orders, the adjudication proceedings have already been disposed of with respect to the entities - Mr. Praful Modi, Varun Corporation Limited, Varun Resources Limited and Sunbeam Talc Private Limited. In the instant order, I have already held that the proceedings cannot be continued against the Noticee No. 6 as well. Further, I have already held that the charges as leveled in the SCN do not stand established with respect to the Noticees No. 3, 4, 5, 7, 8, 9 and 10 as they cannot be held responsible for the violations of VGL/VRL.

38. In view of what has been discussed in the preceding paragraphs, I hold the Noticees No. 1 and 2 [Mr. Yudhisthir D Khatau (PAN: AAHPK247A)] and Mr. Jalaluddin S. Shariff respectively], who were the Directors of the Company at the relevant point in time, to have violated the provisions of paragraphs no. 1(d), 2 and 5 of Part A in the annexure to the SEBI Circular dated September 3, 2009, which makes them liable for penalty under section 15HB of the SEBI Act.

39. In view of the foregoing, considering the facts and circumstances of the case, the material on record, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules,1995, hereby impose a total penalty of **Rs. 10 Lakhs** under Section 15HB of the SEBI Act, 1992, on the Noticees No. 1 and 2 i.e. Mr. Yudhisthir D Khatau (PAN: AAHPK247A)] and Mr. Jalaluddin S. Shariff, for the said violations, who are liable to pay the penalty jointly and severally.

40. The aforementioned Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

41. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief Enforcement Department I-DRA-III, the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

Case Name :	
Name of Payee :	
Date of Payment:	

Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

43. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees named above and also to the Securities and Exchange Board of India.

Date : April 11, 2022 **G. Ramar**

Place : Mumbai **Adjudicating Officer**