BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/SM/2020-21/8433/47]

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

In respect of

Alok Industries Limited

(Address: 17/5/1, 521/1,
Village Rakholi/Saily, Silvassa – 396230,
Union Territory of Dadra & Nagar Haveli)

BACKGROUND

1. A department (in short **OD**) of Securities and Exchange Board of India (in short **SEBI**) examined the status of compliance with the provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (in short **LODR Regulations, 2015**) by Alok Industries Limited (hereinafter referred to as **Noticee/Alok Industries**), whose equity shares are listed on Bombay Stock Exchange (BSE). During the examination, OD observed that the Noticee did not make requisite disclosures under the provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 52(5) and 54(2) – under Chapter V of LODR Regulations, 2015 disclosure.

APPOINTMENT OF ADJUDICATING OFFICER

2. As regards alleged non-compliances by the Noticee, OD initiated Adjudication Proceeding against the Noticee. The Competent Authority prima facie being of the view that there are grounds to adjudicate upon the alleged violations, appointed Shri V.S. Sundaresan as Adjudicating Officer (in short AO), under section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) r/w rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer)

Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section of 15A(b) of the SEBI Act, 1992, the alleged violations of provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clause A1, A4, A9), 52(4), 52(5) and 54(2) of LODR Regulations, 2015. The said matter was transferred and undersigned was appointed AO, which was conveyed vide communique dated December 26, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice dated October 18, 2019 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the Adjudication Rules, 1995 advising Noticee to show cause as to why an inquiry should not be held against it and why penalty under section 15A(b) of the SEBI Act, 1992, be not imposed on it for the violations alleged and specified in the said SCN. The SCN was sent through speed post acknowledgment due (in short SPAD). The said SCN was delivered to the Noticee and the proof of delivery is on record.

4. The allegations in the SCN are given below in brief:

   a. OD observed that the Noticee had issued and listed series of Non-Convertible Debt securities (NCDs) during the period 2011 to 2012, the details of which are as follows:

ISIN	Listing Date
INE270A07513	14/01/2011
INE270A07570	02/03/2012
INE270A07588	02/03/2012
INE270A07596	02/03/2012
INE270A07604	03/03/2012
INE270A07612	03/03/2012
INE270A07620	03/03/2012

b. With respect to above, SEBI vide emails dated July 18, 2017, July 20, 2017, July 25, 2017, July 26, 2017, August 22, 2017, August 28, 2017, September 29, 2017, January 16, 2018, January 31, 2018, February 22, 2019, advised BSE to provide details as to whether the Noticee has complied with the LODR Regulations and specific period of non-compliances, if any. BSE vide emails dated July 18, 2017, July 19, 2017, July 25, 2017, July 27, 2017, September 01, 2017, October 04, 2017, January 29, 2018, February 07, 2018, February 26, 2019 replied in this regard. The Correspondence between SEBI and BSE is provided to the Noticee as Annexure-I.

c. On the basis of details received from BSE, SEBI vide email dated November 02, 2018 sought clarification from the Noticee with respect to various non-compliances with LODR Regulations, as indicated by BSE. The Noticee vide email dated November 16, 2018, provided its reply. The Correspondence between SEBI and the Noticee is is provided to the Noticee as Annexure-II.

d. From the above, it was observed that the Noticee had not made disclosures as required under LODR Regulations in regard to aforesaid series of NCDs issued and listed by Noticee. Based on the observations, following are alleged:

e. The Noticee has failed to promptly inform BSE of the default in payment of interest/principal in respect of various series of NCDs referred to at para 3. Thus, the Noticee has alleged to have violated Regulation 51(1) of the LODR Regulations.

f. The Noticee has failed to disclose the expected default and/or the action that shall affect adversely in timely payment of interests/principal in respect of NCDs. The Noticee has also failed to disclose the delay/default in payment of interest/principal amount for a period of more than three months from the due date. Thus, the Noticee has alleged to have violated Regulation 51(2) read with Part B of Schedule III (Clause A1, A4, A9) of the LODR Regulations.

g. The Noticee while submitting the financial results for the period ended March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30, 2017, September 30, 2017, December 31, 2017, March 31, 2018 and June 30, 2018 has failed to disclose the line items as required u/r 52(4) of the LODR Regulations in respect of the NCDs. Thus, the Noticee has alleged to have violated Regulation 52(4) of the LODR Regulations.

h. The Noticee has failed to submit to BSE, the certificate signed by the debenture trustee stating that the debenture trustee has taken note of the information as required under Regulation 52(4). Thus, the Noticee has alleged to have violated Regulation 52(5) of the LODR Regulations.

i. The Noticee has failed to disclose to BSE in its quarterly financial statements for the period ending March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30 2017, September 30, 2017, December 31, 2017, March 31, 2018, and June 30 2018, the extent and nature of security created and maintained with respect to its listed NCDs. Thus, the Noticee has alleged to have violated Regulation 54(2) of the LODR Regulations.

5. In view of the above, it is alleged as under:

Paragraph No.	Alleged Violation
4.1	Regulation 51(1) of the LODR Regulations
4.2	Regulation 51(2) read with Part B of Schedule III (Clause A1, A4, A9) of the LODR Regulations
4.3	Regulation 52(4) of the LODR Regulations
4.4	Regulation 52(5) of the LODR Regulations
4.5	Regulation 54(2) of the LODR Regulations

6. The relevant provisions of LODR Regulations are reproduced hereunder:

LODR Regulations, 2015

Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.

51. (1) *The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares.*

Explanation. -The expression 'promptly inform', shall imply that the stock exchange must be
informed as soon as practically possible and without any delay and that the information shall
be given first to the stock exchange(s) before providing the same to any third party.

(2) *Without prejudice to the generality of sub-regulation (1), the listed entity who has issued or is issuing non-convertible debt securities and/or non-convertible redeemable preference shares shall make disclosures as specified in Part B of Schedule III.*

[Schedule III

Part B: Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information: non-convertible debt securities & non-convertible redeemable preference shares

[See Regulation 51(2)]

A. *The listed entity shall promptly inform to the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares including:*

(1) *expected default in timely payment of interests/preference dividend or redemption or repayment amount or both in respect of the non-convertible debt securities and non-convertible redeemable preference shares and also default in creation of security for debentures as soon as the same becomes apparent;*

…………..

(4) *any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares including default by issuer to pay interest on non-convertible debt securities or redemption amount and failure to create a charge on the assets;*

…………..

(9) *delay/default in payment of interest or dividend / principal amount /redemption for a period of more than three months from the due date;**]***

52. (4) *The listed entity, while submitting half yearly /annual financial results, shall disclose the following line items along with the financial results:*

(a) credit rating and change in credit rating (if any);

(b) asset cover available, in case of non-convertible debt securities;

(c) debt-equity ratio;

(d) previous due date for the payment of interest/dividend for non-convertible redeemable preference shares/repayment of principal of non-convertible preference shares/non-convertible debt securities and whether the same has been paid or not; and,

(e) next due date for the payment of interest/dividend of non-convertible preference shares/principal along with the amount of interest/dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

(5) While submitting the information required under sub-regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.

***54. (2)** The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.*

Applicability of Chapters IV and V.

***63.(1)** Entity which has listed its 'specified securities' and 'non-convertible debt securities' or 'non-convertible redeemable preference shares' or both on any recognised stock exchange, shall be bound by the provisions in Chapter IV of these regulations.*

***(2)** The listed entity described in sub-regulation (1) shall additionally comply with the following regulations in Chapter V:*

(a)regulation 50(2), (3);
(b)regulation 51;
(c)regulation 52(3), (4), (5) and (6);
(d)regulation 53
(e)regulation 54
(f)regulation 55
(g)regulation 56
(h)regulation 57
(i)regulation 58
(j)regulation 59
(k)regulation 60
(l)regulation 61:

Provided that the listed entity which has submitted any information to the stock exchange in compliance with the disclosure requirements under Chapter IV of these regulations, need not re-submit any such information under the provisions of this regulations without prejudice to any power conferred on the Board or the stock exchange or any other authority under any law to seek any such information from the listed entity: Provided further that the listed entity, which has satisfied certain obligations in compliance with other chapters, shall not separately satisfy the same conditions under this chapter.

7. The aforesaid alleged violations, if established against the Noticee, will make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, which reads as follows:

SEBI Act, 1992
Penalty for failure to furnish information, return, etc.

***15A.** If any person, who is required under this Act or any rules or regulations made thereunder, -*

(a) …….

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which

shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

8. Noticee vide its letter dated November 08, 2019 replied to the SCN and the submissions are given below :

   a) With regard to the non-compliance under SEBI Listing Regulations, Noticee submitted following:

Sr.No.	Relevant Regulation of SEBI Listing Regulations	Requirement under SEBI Listing Regulations	Comment
1	Regulation 51(1)	Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information	This requirement has been complied with on November 14, 2018 pursuant to the submission of half yearly financial results for the period ending on 30th September, 2018 in accordance with provisions of the SEBI Listing Regulations.
2	Regulation 51(2) read with Part B of Schedule III (Clause A1, A4, A9)	Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information	This requirement has been complied with on November 14, 2018 pursuant to the submission of half yearly financial results for the period ending on 30th September, 2018 in accordance with provisions of the SEBI Listing Regulations.
3	Regulation 52(4)	Disclosure of line items (Such as credit rating and change in credit rating, asset cover, debt-equity ratio, previous due date for the payment of interest/repayment of principal of non-convertible debentures and whether the same has been paid or not, debt-service coverage ratio, interest service coverage ratio, debenture redemption reserve, net worth, net profit after tax and earnings per share) along with the financial results while submitting	This requirement has been complied with on November 14, 2018 pursuant to the submission of half yearly financial results for the period ending on 30th September, 2018 in accordance with provisions of the SEBI Listing Regulations.

		half yearly/annual financial results.	
4	i. Regulation 52(5) ii. Regulation 52(7)	i. A listed entity is required to submit to the stock exchanges a certificate signed by the debenture trustee taking note of contents disclosed under Regulation 52(4) of the SEBI Listing Regulations ii. A listed entity is required to submit to the stock exchanges on half yearly basis along with the half yearly financial results, a statement including material deviations in the use of proceeds of issue of non-convertible debentures from the objects stated in the offer document.	This requirement has been complied with on November 14, 2018 pursuant to the submission of half yearly financial results for the period ending on 30th September, 2018 in accordance with provisions of the SEBI Listing Regulations.
5	Regulation 54(2)	Disclosure of extent and nature of security created and maintained with respect to the secured non-convertible debentures in quarterly, half yearly and annual financial statements	This requirement has been complied with on November 14, 2018 pursuant to the submission of half yearly financial results for the period ending on 30th September, 2018 in accordance with provisions of the SEBI Listing Regulations.

b) Noticee submitted that it had availed financial assistance from various lenders including by way of issuance of privately placed non-convertible debentures to debenture holders for the purposes set out in the financing agreements in the financial year 2011 and 2012, respectively. Subsequently, on account of decline in the operating profits and liquidity, Noticee was unable to serve the obligations with respect to payment of principal amount or interest accrued on NCDs issued by it and the loans availed from various lenders were classified under the "Special Mention Account II" category in April 2014. Between June 2014 and September 2016, the account of the Noticee was classified as a non-performing asset.

c) Noticee submitted that it has been admitted into the corporate insolvency resolution process vide an order of the Hon'ble National Company Law Tribunal, Ahmedabad Bench dated July 18, 2017. Under the said order dated July 18, 2017, an interim resolution professional was appointed in terms of the Insolvency and Bankruptcy Code, 2016 (IBC) for the Noticee, who was then confirmed as the resolution professional. In terms of the provisions of the IBC and its related rules and regulations, the interim resolution professional made a public announcement on July 19, 2017, inviting all creditors of the Noticee to submit claims of their outstanding dues to the interim resolution professional. Accordingly, claims by the debenture holders pertaining to these outstanding NCDs were also submitted to interim resolution professional and pursuant to the same such debenture holders/lenders were admitted to the committee of creditors of the Noticee (CoC) in terms of the Code.

d) The CoC were generally made aware of the financial position of the Noticee and material developments pertaining to the Noticee. Since, these debenture holders were members of the CoC, the disclosures pertaining to servicing of debt obligations of the Noticee, financial performance and other material information pertaining the Noticee has been made available to such debenture holders during the CIR process of the Noticee, and no follow up enquiry has been received by any of the members of the CoC with respect to the same. The Noticee considered providing the information to the debenture holders, as mentioned above, as an adequate compliance with the requirement of providing material disclosures and information to the debenture holders in relation servicing of its debt obligations. Therefore, the requirement of providing information and disclosures to the stock exchanges in accordance with LODR Regulations, 2015 is complied with by providing such information/disclosure to the debenture holders in the manner mentioned above. The CIR process of the Noticee expired on April 14, 2018 and the Hon'ble Tribunal vide its order dated March 08, 2019 had approved the resolution plan (as amended) submitted by Reliance Industries Limited, JM Financial Asset Reconstruction Noticee Limited and JMFARC–March 2018 Trust (Resolution Applicants) under section 31(1) of the IBC and a monitoring committee had been constituted for maintaining the Noticee as a going concern till the complete control is transferred to the Resolution Applicants.

e) Noticee replied that it has complied with the applicable requirements under LODR Regulations, 2015 for the half year ended September 30, 2018 and made disclosures of line items required under 52(4) of the LODR Regulations, 2015 along with the financial results on November 14, 2018. Further, the Noticee has also filed the certificate dated November 14, 2018 signed by Axis Trustee Services Limited, the debenture trustee, with the stock exchanges taking note of the line items disclosed under regulation 52(4) of the LODR Regulations, 2015. The certificate dated November 14, 2018 has been attached as Annexure A.

f) In light of the above, the Noticee wishes to seek relief from the non-compliance of certain provisions of the LODR Regulations, 2015 and undertakes to continue to comply with the requirements of the LODR Regulations, 2015 going forward. Noticee also requested for personal hearing.

6. Vide hearing notice dated March 02, 2020, an opportunity of hearing was granted to the Noticee, scheduled on March 17, 2020. The said hearing Notice was sent through SPAD and the same was delivered to the Noticee as seen from record. Noticee vide letter dated March 09, 2019 requested to give another date of hearing. Owing to the spread of Covid-19, as a precautionary measure, vide e-mail dated the said hearing scheduled on March 17, 2020 was postponed. Vide email dated April 28, 2020, Noticee was granted the opportunity of hearing on May 12, 2020 and then June 05, 2020. Noticee vide its e-mail dated June 02, 2020, Noticee requested to give another date of hearing in the month of July citing the reason of Covid-19. Acceding the request of Noticee, the said hearing was postponed to July 08, 2020. On the scheduled date of hearing i.e. July 08, 2020, the Noticee Secretary of the Noticee namely Shri K H Gopal, attended the hearing and reiterated the submissions made by the Noticee vide letter dated November 08, 2019. During the proceedings of hearing, AR informed that the Resolution Plan (RP) under Corporate Insolvency Resolution Process has been approved on March 08, 2019 and also provided a copy of extract of the RP (page

no. 22). The AR further submitted that the approved RP is binding on the Noticee, its employees, members, creditors, guarantors and the stakeholders involved in the RP. The hearing minutes are on record.

5. After taking into account, the allegations levelled in the SCN, reply to SCN and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

6. The issues arising for consideration in the instant proceedings before me are:-

(a) Whether the Noticee has violated the provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 52(5) and 54(2) of LODR Regulations, 2015?

(b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?

(c) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

9. Before proceeding further, I refer to the relevant provisions LODR Regulations, 2015 which are reproduced hereunder:

LODR Regulations, 2015

Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.

51. (1) *The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares.*

Explanation. -The expression 'promptly inform', shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.

(2) *Without prejudice to the generality of sub-regulation (1), the listed entity who has issued or is issuing non-convertible debt securities and/or non-convertible redeemable preference shares shall make disclosures as specified in Part B of Schedule III.*

Schedule III

Part B: Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information: non-convertible debt securities & non-convertible redeemable preference shares

[See Regulation 51(2)]

A. *The listed entity shall promptly inform to the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares including:*

(1) *expected default in timely payment of interests/preference dividend or redemption or repayment amount or both in respect of the non-convertible debt securities and non-convertible redeemable preference shares and also default in creation of security for debentures as soon as the same becomes apparent;*

…………...

(4) *any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares including default by issuer to pay interest on non-convertible debt securities or redemption amount and failure to create a charge on the assets;*

…………...

(9) *delay/default in payment of interest or dividend / principal amount /redemption for a period of more than three months from the due date;**]***

52. (4) *The listed entity, while submitting half yearly /annual financial results, shall disclose the following line items along with the financial results:*

(a) credit rating and change in credit rating (if any);

(b) asset cover available, in case of non-convertible debt securities;

(c) debt-equity ratio;

(d) previous due date for the payment of interest/dividend for non-convertible redeemable preference shares/repayment of principal of non-convertible preference shares/non-convertible debt securities and whether the same has been paid or not; and,

(e) next due date for the payment of interest/dividend of non-convertible preference shares/principal along with the amount of interest/dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated *financial sector entities eligible for meeting capital requirements as specified by respective regulators.*

(5) *While submitting the information required under sub-regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.*

54. (2) *The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.*

FINDINGS:

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue (a): Whether the Noticee has violated the provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 52(5) and 54(2) of LODR Regulations, 2015?

(a) It is alleged in the SCN that Noticee did not make disclosures as required under LODR Regulations, 2015 with regard to aforesaid series of NCDs issued and listed by Noticee during the period 2011 to 2012. Noticee failed to inform BSE of the default in payment of interest/principal in respect of various series of NCDs referred in SCN and hence alleged to have violated regulation 51(1) of the LODR Regulations, 2015. Further, Noticee failed to disclose the expected default and/or the action that shall affect adversely in timely payment of interests/principal in respect of NCDs. Noticee also failed to disclose the delay/default in payment of interest/principal amount for a period of more than three months from the due date. Thus, Noticee has alleged to have violated regulation 51(2) read with Part B of Schedule III (Clause A1, A4, A9) of the LODR Regulations. It is also alleged that Noticee while submitting the financial results for the period ended March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30, 2017, September 30, 2017, December 31, 2017, March 31, 2018 and June 30, 2018 has failed to disclose the line items as required under regulation 52(4) of the LODR Regulations, 2015 in respect of the NCDs. Thus, the Noticee has alleged to have violated regulation 52(4) of the LODR Regulations, 2015. Noticee also failed to submit to BSE, the certificate signed by the debenture trustee stating that the debenture trustee has taken note of the information as required under Regulation 52(4). Thus, the Noticee has alleged to have violated regulation 52(5) of the LODR Regulations, 2015. Noticee also failed to disclose to BSE in its quarterly financial statements for the period ending March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30 2017, September 30, 2017, December 31, 2017, March 31, 2018, and June 30 2018, the extent and nature of security created and maintained with respect to its listed NCDs. Thus, the Noticee is alleged to have violated regulation 54(2) of the LODR Regulations, 2015.

(b) Noticee has replied that it is undergoing insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (in short the **IBC**) and the Resolution Plan (RP) approved on March 08, 2019. In this regard, I observe that the Hon'ble NCLT, vide its order dated May 08, 2019 in the matter of State Bank of India vs Alok Industries Limited [CP(IB) No. 48 of 2017], the resolution plan has been approved.

(c) As per regulation 51(1) of LODR Regulations, 2015, the listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares. The expression 'promptly inform', shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party. It is alleged in SCN that Noticee did not make prompt disclosure of its NCDs which were issued and listed during the period 2011 to 2012. In this regard, Noticee contended that it has made the said disclosure in November 14, 2018. However, no evidentiary proof has been submitted by the Noticee. Further, as seen from the reply from BSE, Noticee did not submitted the required disclosures under the regulations 51(1) of LODR Regulations, 2015 for the NCDs has issued and listed NCDs which were issued and listed in the year 2011 and 2012. Therefore, Noticee violated the provisions of regulations 51(1) of LODR Regulations, 2015 by not making the said disclosure of its NCDs which were issued and listed during the period 2011 to 2012.

(d) Further, it is alleged that Noticee failed to disclose the expected default and/or the action that shall affect adversely in timely payment of interests/principal in respect of NCDs. Noticee also failed to disclose the delay/default in payment of interest/principal amount for a period of more than three months from the due date as prescribed under regulation 51(2) read with Part B of Schedule III (Clauses A1, A4, A9) of the LODR Regulations. In this regard, Noticee contended that it has made the said disclosure in November 14, 2018. However, no evidentiary proof has been submitted by the Noticee. Further, as seen from the reply from BSE, Noticee did not submit the required disclosures under the regulations 51(2) of LODR Regulations, 2015 for the NCDs has issued and listed NCDs which were issued and listed in the year 2011 and 2012. Therefore, Noticee violated the provisions of regulation 51(2) read with Part B of Schedule III (Clauses A1, A4, A9) of the LODR Regulations, 2015 by not making the said disclosure of its NCDs which were issued and listed during the period 2011 to 2012.

(e) Further, as per regulation 52(4) of LODR Regulations, 2015, the listed entity, while submitting half yearly /annual financial results, shall disclose the line items along with the financial results. In the SCN, it is alleged that the Noticee failed to disclose the line items for the period ended March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30, 2017, September 30, 2017, December 31, 2017, March 31, 2018 and June 30, 2018. In this regard, In this regard, Noticee contended that it has made the said disclosure in November 14, 2018. However, no evidentiary proof has been submitted by the Noticee. Regulation 52(4) of LODR Regulations, 2015 speaks about half yearly or annual financial results and not about the quarters. Hence the said violation is applicable only for the period ended March 31, 2016, September 30, 2016, March 31, 2017, September 30, 2017 and March 31, 2018 and not for the quarter ended June 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017 and June 30, 2018. Therefore, relevant allegations are only the period ended March 31, 2016, September 30, 2016, March 31, 2017, September 30, 2017 and March 31, 2018. Further, as seen from the reply from BSE, Noticee did not submitted the required disclosures under the regulations 52(4) of LODR Regulations, 2015. Record does not show that Noticee made any disclosure for the said period ended March 31, 2016, September 30, 2016, March 31, 2017, September 30, 2017 and March 31, 2018. Therefore Noticee violated the provisions of regulation 52(4) of LODR Regulations, 2015 for not making the said disclosures.

(f) Further, as per regulation 52(5) of LODR Regulations, 2015, the listed entity, while submitting required disclosure under regulation 52(4) of LODR Regulations, 2015, the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents. It is alleged that Noticee failed to submit the said certificate to BSE. In this regard, Noticee replied that it has filed the certificate dated November 14, 2018 signed by Axis Trustee Services Limited, the debenture trustee, with the stock exchanges taking note of the line items disclosed under Regulation 52(4) of the SEBI Listing Regulations. However, no such certificate dated November 14, 2018 provided by the Noticee in its reply dated November 08, 2019. Further, as seen from the reply from BSE, Noticee did not submitted the required disclosures under the regulations 52(5) of the LODR Regulations, 2015. Therefore, allegations against the Noticee regarding violation of the provisions of regulation 52(5) of LODR Regulations, 2015 stand established.

(g) Further, as per regulation 54(2) of LODR Regulations, 2015, the listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities. It is alleged in SCN that Noticee did not make disclosure to BSE in its quarterly financial statements for the period ending March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30 2017, September 30, 2017, December 31, 2017, March 31, 2018, and June 30 2018, the extent and nature of security created and maintained with respect to its listed NCDs. In this regard, Noticee contended that it has made the said disclosure in November 14, 2018. However, no evidentiary proof has been submitted by the Noticee. Further, as seen from the reply from BSE, Noticee did not submitted the required disclosures under the regulations 54(2) of the LODR Regulations, 2015. Therefore, by not making the said disclosures for the period ending March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30 2017, September 30, 2017, December 31, 2017, March 31, 2018, and June 30, 2018, Noticee violated the provisions of regulation 54(2) of LODR Regulations, 2015.

(h) In view of the above, I am of the view that Noticee has violated the provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 52(5) and 54(2) of LODR Regulations, 2015 by not making the required disclosures as prescribed in the said provisions of LODR Regulations, 2015. Therefore, the allegations of violation provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 52(5) and 54(2) of LODR Regulations, 2015 in SCN stand established for the specific instances mentioned above.

Issue (b): *Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?*

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and material available on record, I am of the view that the said failure on the part of the Noticee to make required disclosures under the relevant provisions discussed above attracts imposition of monetary penalty under section 15A(b) of SEBI Act, 1992 which is reproduced below:

The SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?

a) While determining the quantum of penalty under section 15J of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 , which reads as under:-

The SEBI Act, 1992
***15J**: "Factors to be taken into account by the adjudicating officer-*
While adjudging quantum of penalty under section 23 I, the adjudicating officer shall have due regard to the following factors, namely:-
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

b) I observe, that the material available on record, does not mention disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee has violated the provisions of regulation 51(1), 51(2) r/w Part B of schedule III (Clause A1, A4, A9), 52(4), 52(5) and 54(2) of LODR Regulations, 2015.

c) Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 12,00,000 (Rupees Twelve Lakh only) will be commensurate with the violations of violated the provision of regulations 51(1), 51(2) r/w Part B of schedule III (Clause A1, A4, A9), 52(4), 52(5) and 54(2) under section 15A(b) of the SEBI Act, 1992 committed by the Noticee.

<u>ORDER</u>

11. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 12,00,000 (Rupees Twelve Lakh only) on the Noticee i.e. Alok Industries Limited under section 15A(b) of the SEBI Act, 1992 for violations of provision of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 52(5) and 54(2) of LODR Regulations, 2015.

12. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html
b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

13. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

a) Case Name
b) Name of the 'Payer/Noticee'
c) Date of Payment
d) Amount Paid
e) Transaction No.
f) Bank Details in which payment is made
g) Payment is made for (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details)

14. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992.

15. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules, 1995.

Date: July 30, 2020 **SANGEETA RATHOD**
Place: Mumbai **ADJUDICATING OFFICER**