BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2023-24/30073]

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

In respect of:

NIRAJ CEMENT STRUCTURALS LIMITED

PAN: AAABCN1596J

In the matter of

Niraj Cement Structurals Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) examined into the alleged failure of Niraj Cement Structurals Ltd (hereinafter referred to as **Noticee**) to obtain the prior approval of shareholders for material related party transactions **("RPTs")** in accordance with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **LODR Regulations**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communique dated January 11th, 2024, appointed the undersigned as the Adjudicating Officer under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under section 15HB of SEBI Act for the alleged violation of Regulation 23(4) of LODR regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice (hereinafter referred to as **"SCN"**) dated January 17, 2024 was issued to the Noticee under rule 4(1) of the SEBI Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of SEBI Rules read with Section 15-I of SEBI Act and penalty, if any, be not imposed on Noticee under Section 15HB of the SEBI Act.

4. On the basis of submissions made by the Noticee, it was observed that the material RPTs carried out by the Noticee with Niraj Patel JV, Niraj Babulnath JV and Niraj Jandu JV during the Financial Year 2022-23 exceeded the monetary limit approved by the shareholders of the Company. However, the Noticee allegedly failed to obtain the prior approval of the shareholders as required under regulation 23(4) of LODR regulations, for the transactions in excess to previous approval granted vide resolution dated September 29, 2022.

5. In view of the Noticee's failure to take prior approval of the shareholders, it was alleged that the Noticee has violated Regulation 23(4) of SEBI (LODR) Regulations, 2015.

6. The SCN was issued at the last known address of Noticee through Speed Post Acknowledgment Due (SPAD) which was delivered. SCN was also sent through Digitally Signed E-mail dated January 18, 2024 which was delivered and the delivery of the notice is on record. Vide email dated January 31, 2024, Noticee sought personal hearing. Vide email dated January 31, 2024, Noticee was requested to submit its reply to the SCN, and was informed that subsequent to receipt of reply, personal hearing will be granted to the Noticee. Vide email dated February 05, 2024 Noticee submitted the reply dated February 05, 2024, which is summarized below-

   a) *Noticee acknowledged that it failed to obtain prior approval for certain Related Party Transactions (RPT), as mandated by regulation 23(4) of the SEBI (LODR) Regulations, 2015. This lapse occurred due to unforeseen circumstances involving its Company Secretary and Compliance Officer, Mr. Anil Anant Jha.*

   b) *Noticee submitted that Mr. Anil Anant Jha, who oversees all compliance matters, underwent successive ear and eye surgeries in December 2022. Following the surgeries, he has been compelled to work remotely due to health concerns, attending the office solely for board meetings and critical tasks directly related to company affairs. Regrettably, the impact of these medical procedures has hindered his ability to fully concentrate on work, thereby limiting his availability during this period.*

   c) *Furthermore, noticee submitted that certain related parties expedited the execution of specific projects at an accelerated pace, surpassing the initially projected timeline. The rapid expansion demanded swift decision-making and execution, leaving insufficient time to secure prior approvals as required.*

d) *Notice submitted that these transactions were undertaken in good faith and all such transactions are in the ordinary course of business and at Arm's Length basis. Importantly, these actions were motivated by the best interests of the company and were not intended to have any adverse effects on the investors and stakeholders.*

e) *Noticee submitted that the failure to obtain prior shareholder approval, notably in the last quarter of the Financial Year 2022-23, was a direct consequence of Mr. Anil Anant Jha's ongoing medical condition, leading to an unintended lapse.*

7. Vide hearing notice dated February 07, 2024, opportunity of hearing was given to the Noticee on February 13, 2024. Hearing Notice was issued to the Noticee through SPAD was delivered and Hearing Notice was also sent through Digitally Signed E-mail dated February 07, 2024 which was delivered and the delivery is on record.

8. The authorized representatives (**ARs**) attended the hearing on the schedule day. ARs reiterated the submission made vide reply dated February 05, 2024 and further sought time till February 19, 2024 for making the additional submissions. Vide email dated February 19, 2024, Noticee made the following additional submissions-

a) *Noticee submitted that on the basis of following facts the Noticee has obtained the prior approval of Related Party Transaction (RPT)-*

   i. *Balance Value of the project to be completed.*
   ii. *Possible speed of the work to be completed related to the project.*
   iii. *Approval of the work done by the authority of the principal government client.*
   iv. *The value of balance Project work based on the past record and pending invoices of the JV's.*
   v. *Availability of allocated funds related to the project with government client.*

b) *Noticee further submitted that during the audit of the books of accounts, it was observed that, in accordance with regulation 23(4) of the SEBI LODR regulations, there was a Shortfall in the approval obtained from the shareholder's with regard to the Material Related Party transaction in the second half of the financial year 2022-23.*

c) *Noticee further submitted that in the FY 2022-23, the invoices which were pending for approval from the government clients such as National Highways Authority of India (NHAI), Northeast Frontier Railway (NFR) etc. were eventually approved in February and*

March 2023 and the transactions exceeded the approved limit and there was inadvertent lapse on the part of the Noticee to seek prior approval of shareholders of the Noticee for the subsequent modification of the material Related Party Transactions in few of there joint venture partners, namely Niraj Patel JV, Niraj Babulnath JV and Niraj Jandu JV which are summarized as below:

Sr. No.	*Name of the Party*	*Limit approved by the shareholders of the Company*	*Date of Approval*	*Amount of Transaction*	*Amount of which fail to obtain prior approval*	*Fresh limit approved on 26th Sept., 2023*
1	*Niraj Patel JV*	*55 Crore*	*29-09-2022*	*56.91 Crore*	*1.91 Crore*	*200 Crores*
2	*Niraj Babulnath JV*	*40 Crore*	*29-09-2022*	*57.12 Crore*	*17.12 Crore*	*200 Crores*
3	*Niraj Jandu JV*	*40 Crore*	*29-09-2022*	*135.69 Crore*	*95.69 Crore*	*200 Crores*

d) Noticee submitted that all their Joint Ventures (JV's) are independent parties, and the company does not have any limitation over the JV's. All the JVs of the Company have been regular interact with the Govt department for work status and clearance / approval of the invoices. Noticee further submitted that certain related parties expedited the execution of specific projects at an accelerated pace, surpassing the initially projected timeline. This unexpected surge in execution led to a noteworthy increase in revenue.

e) Noticee further submitted that the shortfall of prior approval of shareholder of subsequent modification of material related party transaction pursuant to regulation 23(4) of SEBI: -

I. Has not resulted in any harm or loss to any of the shareholders.
II. No gain or unfair advantage was sought to be obtained and no gain or advantage resulted to the Shareholders from the shortfall.
III. This was the first lapse on the part of the Noticee and not a repetitive one. Noticee emphasize that the Company has never penalized by SEBI and their track record remains untarnished by any past defaults or violations. They have consistently adhered to regulatory guidelines and have always prioritized the best interests of our clients and stakeholders.
IV. That the lapse was unintentional, due to medical exigency of undergoing eye and ear surgery, of Mr. Anil Jha, their company secretary and compliance officer, and

V. The shortfall in obtaining of prior approval of shareholder, has not affected adversely anybody.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

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

ISSUE I: Whether Noticee violated the Regulation 23(4) of SEBI (LODR) Regulations, 2015?

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15HB of SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

10. Before proceeding further, it will be appropriate to refer to the relevant provisions:

LODR Regulation, 2015

Related party transactions.

Regulation 23(4)

(4) All material related party transactions [and subsequent material modifications as defined by the audit committee under sub-regulation (2)] shall require [prior] approval of the shareholders through resolution and [no related party shall vote to approve] such resolutions whether the entity is a related party to the particular transaction or not:

[Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.]

[Provided [further] that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject

to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved;]

FINDINGS

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder:

ISSUE I: Whether Noticee violated the Regulation 23(4) of SEBI (LODR) Regulations, 2015?

12. It was observed that material RPTs was carried out by the Noticee with Niraj Patel JV, Niraj Babulnath JV and Niraj Jandu JV during the Financial Year 2022-23 which exceeded the monetary limit approved by the shareholders of the Noticee. However, the Noticee allegedly failed to obtain the prior approval of the shareholders as required under regulation 23(4) of LODR regulations, for the transactions in excess to previous approval granted vide resolution dated September 29, 2022.

13. Therefore, it is alleged in the SCN that the Noticee has violated Regulation 23(4) of SEBI (LODR) Regulations, 2015.

14. Noticee in its reply to the SCN, vide letter dated February 05, 2024, admitted that the Noticee failed to obtain prior approval of certain RPTs as mandated by regulation 23(4) of the LODR regulations, 2015 and submitted that the same happened due to the inadvertence on the part of the Noticee and due to the ill-health of its compliance officer.

15. I further note from the material available before me that SEBI vide email dated December 20, 2023 sought details of RPT for which no prior approval of the shareholders have been taken. In response to the aforesaid query, Noticee, vide email dated December 27, 2023 submitted that after the finalization of account, it was observed that the RPTs exceeded the prescribed and permissible limit because of the approval of bills for almost entire work in progress by the client i.e. National Highway and other authorities. I note that vide email dated February 19, 2024, Noticee submitted that there was inadvertent lapse on the part of the Noticee to seek prior approval of shareholders of the Noticee for the subsequent modification of the material RPTs in few of there joint venture partners, namely Niraj Patel JV, Niraj Babulnath JV and Niraj Jandu JV, the details of the RPTs are provided below in the tabular form:

Sr. No.	Name of the Party	Limit approved by the shareholders of the Noticee	Date of Approval	Amount of Transaction	Amount of which fail to obtain prior approval	Fresh limit approved on 26th Sept., 2023
1	Niraj Patel JV	55 Crore	29-09-2022	56.91 Crore	1.91 Crore	200 Crores
2	Niraj Babulnath JV	40 Crore	29-09-2022	57.12 Crore	17.12 Crore	200 Crores
3	Niraj Jandu JV	40 Crore	29-09-2022	135.69 Crore	95.69 Crore	200 Crores

16. Regulation 23(4) of the LODR regulations, 2015 provides that all material RPTs and subsequent material modifications as defined by the audit committee shall require prior approval of the shareholders through resolution.

17. I observe that Noticee obtained prior approval of the shareholders of the Noticee for the RPTs with Niraj Patel JV, Niraj Babulnath JV and Niraj Jandu JV for financial year 2022-23 and the limit approved for the each RPTs was Rs. 55 crores, Rs. 40 crores and Rs. 40 crores respectively. However, final transaction amount with the related parties was Rs. 56.91 crore with Niraj Patel JV, Rs. 57.12 crore with Niraj Babulnath JV and Rs. 135.69 crore with Niraj Jandu JV, i.e. in excess of amount of Rs. 1.91 crores, Rs. 17.12 crores and Rs. 95.69 crores respectively. Thus Noticee did not obtain prior approval of the shareholders for the RPTs of the balance amount of Rs. 1.91 crores with Niraj Patel JV, Rs. 17.12 crores with Niraj Babulnath JV and Rs. 95.69 crores with Niraj Jandu JV. I observe from the records available before me that the transactions were also not subsequently ratified by the shareholders.

18. In view of the above and the admission of the Noticee, I observe that the Noticee has violated regulation 23(4) of the SEBI (LODR) regulations, 2015.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15HB of SEBI Act?

19. It has been established in the foregoing paragraphs that the Noticee has violated regulation 23(4) of the LODR regulations. In context of the above, I would refer to Judgment of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}, in which Hon'ble Supreme Court has held that:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.............."

20. Thus, I am of the view that it is a fit case for penalty under section 15HB of the SEBI Act, which reads as given below:

Section 15HB – Penalty for contravention where no separate penalty has been provided.

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.]

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

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

While adjudging quantum of penalty under section 15-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."

22. I note that the material made available on record does not quantify the amount of disproportionate gain or unfair advantage obtained by the Noticee or loss caused to investors as a result of the default. I also note from the records that Noticee has not been penalized by SEBI in past and thus do not bring out any repetitive default on the part of the Noticee. However, I find that the Noticee failed to adhere to the best practices of corporate governance as a listed entity.

23. I find that the Noticee had not obtained mandatory shareholders' approval for a modification in material RPT. "It is pertinent to mention that the LODR Regulations were framed keeping in view that the RPTs may pose potential or actual conflicts of interest and may raise questions whether such transactions are in the larger interest of the company as well as the stakeholders. I am of the view that as a listed entity, the Noticee has the most solemn and onerous obligation to ensure compliance with Regulation 23(4) of LODR Regulations and therefore is expected to maintain a higher level of due diligence in its regulatory compliance. I note that any failure to ensure compliance with mandatory regulatory provisions under Regulations 23(4) of LODR Regulations would adversely affect the integrity of securities market and interest of investors.

ORDER

24. Having considered the facts and circumstances of the case, the material available on record, the submissions made by the Noticee, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble Supreme Court in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HB of the SEBI Act, 1992 on the Noticee:

S. No.	Name of entity	Penalty Provisions	Penalty (Rs.)
1	Niraj Cement Structurals Limited (PAN: AAABCN1596J)	15HB of SEBI Act, 1992	₹ 4,00,000/- (Rupees Four Lakh Only)

25. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery

proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Place: Mumbai	**BARNALI MUKHERJEE**
Date: March 06, 2024	**ADJUDICATING OFFICER**