

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Section 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Name of the Noticees	PAN
1	Vistaar Capital Advisors Limited	AACCV6540K
2	Sunil Godhwani	AACPG6998F
3	Sheetal Talwar	ADNPT6365M
4	Rakesh Madan Nanda	AACPN2533P
5	Shachindra Nath	ABOPN3798F
6	Gurpreet Singh Dhillon	AFQPD5302R
7	Santosh Datta	AAQPD2621N
8	Kavil Venkatachalam Gourishankar	ACCPG6678E
9	Vistra ITCL (India) Limited	AAACI6832K

The aforesaid entities are hereinafter individually referred to by their respective names/noticee numbers and collectively as “the Noticees”.

Final Order in the matter of inspection of Vistaar Religare Media Fund

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) on July 04, 2017 conducted an inspection of Vistaar Religare Media Fund (hereinafter referred to as “**VRMF**”/ “**the Fund**”), a SEBI registered Venture Capital Fund (hereinafter referred to as “**VCF**”), for the period July 25, 2008 to July 04, 2017. A copy of the inspection report and its annexures were shared with the Fund. Based on the findings of the inspection and after considering the reply of the Fund, a show cause notice dated October 25, 2021 (hereinafter referred to as “**SCN**”) was issued by SEBI to the Noticees, alleging violation of Regulations 12(d)(ii)(e), 20(1), 23(1)(a), 24(2) of SEBI (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as “**VCF Regulations**”) by the Noticees. The SCN called upon the Noticees to show cause as to why suitable directions under Sections

11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) read with Regulations 29, 30(a), 30(d) and 30(f) of VCF Regulations should not be issued against them.

2. The brief facts, as narrated in the SCN, are as under:

2.1. Vistaar Religare Media Fund was set up in the nature of Trust by way of Indenture of Trust dated February 25, 2008 and was registered with SEBI as a VCF on July 25, 2008 bearing SEBI Registration No. IN/VCF/08-09/128. The Fund launched only one scheme, i.e. Film Fund (hereinafter referred to as “**Scheme**”). The details of the Scheme as on July 4, 2017 were as follows:

Name of the Scheme	Target Corpus	Funds raised	No. of investors	Investments made*	Industry Type
Film Fund	Rs. 200 Cr	Rs. 42.70 Cr	7	Rs. 41.94 Cr	Media & Entertainment

*The difference in the amount of fund raised and investments made is due to payment of management fee, expenditures, etc.

2.2. Vistaar Capital Advisors Limited (formerly known as ‘Vistaar Religare Capital Advisors Limited’) (hereinafter referred to as “**VCAL**”) is the Investment Manager to the fund. Vistra ITCL (India) Limited (formerly known as ‘IL&FS Trust Company Limited’) (hereinafter referred to as “**Vistra ITCL**”) is the Trustee of the fund.

2.3. The details of the Board of directors of VCAL during the inspection period are as under:

Director	Tenure
Mr. Sheetal Talwar	Feb, 2008 - Present
Mr. Sunil Godhwani	Feb, 2008 to Apr 2014
Mr. Rakesh Madan Nanda	Feb, 2008 to Jul 2014
Mr. Shachindra Nath	Feb, 2008 to Apr 2014
Mr. Gurpreet Singh Dhillon	Jul, 2009 to Apr, 2014
Mr. Santosh Datta	July, 2014 - Present
Mr. Kavil Venkatachalam Gourishankar	Mar, 2014 - Present

2.4. Pursuant to the inspection, *inter-alia*, the following was observed-

A. Non winding up on expiry of tenure of the Scheme of the Fund

2.4.1. As per the Private Placement Memorandum (PPM) issued by the Scheme of the Fund, the tenure of the Scheme was 5+1+1 years from its initial closing date. As submitted by the Fund, tenure of the Scheme expired on July 24, 2013 and no extensions were granted. No steps were taken for extension or winding up of the Scheme in accordance with the VCF Regulations and the investments were yet to be liquidated by the fund and repaid to investors.

2.4.2. The SCN alleged that as the Fund failed to wind up upon the expiry of tenure of the Scheme of the Fund, it is in violation of the provisions of the Regulation 23 (1)(a) and 24(2) of VCF Regulations.

B. Investment of more than 33.33% of investible funds into Special Purpose Vehicles

2.4.3. Five out of total seven investee companies of the Fund are SPVs, created specifically for the purpose of a single transaction/project. The details of the investee companies and the amount invested is as under:

Sr. no.	Name of the Investee Company	Whether SPV or not	Amount invested (in Rs.Cr)	Share of total Investments (%)
1.	Friday Entertainment Limited	SPV	3.32	7.92
2.	Mausam Films Ltd.	SPV	0.40	0.95
3.	Stoneman	SPV	2.49	5.94
4.	Vistaar Religare Entertainment Limited	SPV	8.94	21.3
5.	Vistaar Religare Films Limited	SPV	6.96	16.6
6.	Vistaar Religare Media Limited	-	9.60	22.9
7.	WSG Film Awasthi	-	10.23	24.4
	Total		41.94	100

2.4.4. The SCN alleged that as the Fund made 52.72% of its total investments in these five SPVs, the Fund is in violation of Regulation 12(d)(ii)(e) of VCF Regulations, which provides that not more than 33.33% of investible funds of a fund can be invested in SPVs.

C. Non redressal of investor complaints & non submission of periodic reports as required by SEBI:

2.4.5. The Fund did not maintain the records of complaints received by it and did not take any steps to reply to the complainants/redress the same.

2.4.6. The Fund had not submitted the quarterly reports since June 2014 as required in terms of SEBI circular no. SEBI/MFD/VCF/CIR no 1/7352/03 dated April 29, 2003 read with circular no. SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010.

2.4.7. The SCN alleged that as the Fund failed to redress the investors' grievances and failed to submit quarterly returns and reports relating to its activity as a VCF, the Fund is liable for action in terms of Regulation 30(a), 30(d) and 30(f) of VCF Regulations.

D. Non-maintenance of books and records

2.4.8. There was absence of records w.r.t details of investments and exits by the Fund, investors' grievances received and steps taken for redressal of same. Thus, as the Fund failed to ensure maintenance of proper books and records, the same was in violation of the provisions of Regulation 20(1) of VCF Regulations.

2.5. As observed from the available documents, the Investment Manager of the Fund, i.e. VCAL and its directors during the inspection period were responsible for winding up on expiry of the tenure of the Scheme of the Fund, maintenance of books of accounts and submission of periodical reports, investment of funds in compliance with the regulations and redressing investor grievance.

2.6. Vistra ITCL, being the Trustee of the Fund did not ensure, (a) maintenance of books and records by the Fund, (b) redressal of investors' complaints, (c)

submission of quarterly reports to SEBI, (d) investment of fund in compliance with regulations and (e) winding up of the Scheme of the Fund on expiry of its tenure, and therefore, failed to perform its duties.

2.7. The SCN alleged that the Noticees have violated provisions of Regulations 12(d)(ii)(e), 20(1), 23(1)(a), 24(2) of the VCF Regulations and are also liable for action in terms of Regulation 30(a), 30(d) and 30(f) of the VCF Regulations.

2.8. The SCN called upon the Noticees to show cause as to why suitable directions should not be passed under Sections 11B of SEBI Act, 1992 read with Regulations 29, 30(a), 30(d) and 30(f) of VCF Regulations.

Inspection, replies and written submissions and hearing

3. I note that the SCN was issued and delivered to all the Noticees by speed post. The matter was placed before the undersigned on February 16, 2022 for granting date for personal hearing in the matter. An opportunity of personal hearing was granted to all the Noticees. The hearing notice sent to Noticee no. 6 could not be delivered through speed post and affixture and was therefore served through newspaper publication. The hearing in the matter was adjourned several times at the request of the Noticees. The details of conclusion of personal hearing granted to the Noticees, are as under:

Noticee no.	Noticee Name	Date of conclusion of hearing
1.	Vistaar Capital Advisors Limited	September 15, 2022
2.	Sunil Godhwani	September 02, 2022
3.	Sheetal Talwar	September 15, 2022
4.	Rakesh Madan Nanda	August 04, 2022
5.	Shachindra Nath	April 19, 2022
6.	Gurpreet Singh Dhillon	September 02, 2022
7.	Santosh Datta	September 15, 2022
8.	Kavil Venkatachalam Gourishankar	September 15, 2022
9.	Vistra ITCL (India) Limited	April 19, 2022

* Noticee no. 6 neither appeared for hearing nor sought any adjournment

4. I also note that, upon the request made by the Noticees, inspection of relevant documents relied upon in the SCN was provided to the respective Noticees, on the following dates:

Noticee no.	Noticee Name	Inspection date
1	Vistaar Capital Advisors Limited	July 07, 2022
2	Sunil Godhwani	May 26, 2022
3	Sheetal Talwar	July 07, 2022
7	Santosh Datta	July 07, 2022
8	Kavil Venkatachalam Gourishankar	July 07, 2022

Copies of the documents sought by the Noticees/Authorised Representatives of the Noticees, except those mentioned in the respective letters sent to the Noticees, were also provided post-inspection.

5. The Noticees (except Noticee no. 6) have filed their replies to the SCN, including written submissions and additional submissions. The Noticees had also sent several requests for adjournment of hearing and letters/email seeking additional time to file reply. The details of the emails letters filed by the Noticees are as under:

Noticee no.	Noticee Name	Letter/email dated
1.	Vistaar Capital Advisors Limited	• November 10, 2021 • March 07, 2022 • April 04, 2022 • July 29, 2022 • August 18, 2022 • August 26, 2022 (joint letter and email from Noticees 1, 3, 7, 8) • August 30, 2022 (email on behalf of Noticees 1, 3, 7, 8) • September 14, 2022 (joint reply of Noticees 1, 3, 7 and 8)
2.	Sunil Godhwani	• August 01, 2022 • August 29, 2022
3.	Sheetal Talwar	• November 15, 2021 • Undated letter received on March 08, 2022 • April 04, 2022 • July 29, 2022

		• August 26, 2022 (joint letter and email from Noticees 1, 3, 7, 8) • August 30, 2022 (email on behalf of Noticees 1, 3, 7, 8) • September 14, 2022 (joint reply of Noticees 1, 3, 7 and 8)
4.	Rakesh Madan Nanda	• December 18, 2021 • April 11, 2022 • July 27, 2022
5.	Shachindra Nath	• November 21, 2021 • February 16, 2022 • April 18, 2022
6.	Gurpreet Singh Dhillon	• No reply filed
7.	Santosh Datta	• November 15, 2021 • Undated letter received on March 08, 2022 • May 19, 2022 • July 29, 2022 • August 26, 2022 (joint letter and email from Noticees 1, 3, 7, 8) • August 30, 2022 (email on behalf of Noticees 1, 3, 7, 8) • September 14, 2022 (joint reply of Noticees 1, 3, 7 and 8)
8.	Kavil Venkatachalam Gourishankar	• November 15, 2021 • Undated letter received on March 08, 2022 • May 19, 2022 • July 29, 2022 • August 26, 2022 (joint letter and email from Noticees 1, 3, 7, 8) • August 30, 2022 (email on behalf of Noticees 1, 3, 7, 8) • September 14, 2022 (joint reply of Noticees 1, 3, 7 and 8)
9.	Vistra ITCL (India) Limited	• November 19, 2021 • April 20, 2022 • May 04, 2022 • September 16, 2022 • December 05, 2022 (additional reply) • December 28, 2022 • January 19, 2023

6. The submissions made by the respective Noticees are summarized as follows:

6.1. Noticee no. 2 has made the following submissions:

- 6.1.1. He was a director on VCAL board as a nominee of Religare Enterprises Limited (hereinafter referred to as “**REL**”) and had no active involvement in the running of the affairs of VCAL. He attended a few board meetings and did not attend the investment committee meeting held on December 23, 2018.
- 6.1.2. He had no role to play in the functioning of VCAL and in terms of the shareholders’ agreement dated February 26, 2008, Mr. Sheetal Talwar, CMD of VCAL was in charge of day-to-day management of the company along with managerial personnel who were under his direct control and supervision.
- 6.1.3. It is a settled law that when an offence is committed by a company, the liability is not imposed on all officers of the company *en bloc*. The entire board of directors cannot be held responsible for any lapses when VCAL had a MD who was entrusted with a specific role in the functioning of VCAL.
- 6.1.4. Section 27(1) of the SEBI Act, 1992 states that any person is deemed to be guilty of an offence committed by the company on the condition that they were in charge and responsible to the company. Liability depends on the role one plays in the affairs of the company and not on designation or status one holds.
- 6.1.5. There is no specific finding in the SCN that he was responsible for the alleged acts of VCAL and reliance is placed on orders of the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”) in the matters of Sayanti Sen v. SEBI (Appeal no. 163 of 2018) dated August 09, 2019, Rahul H Shah & Anr. v. SEBI dated September 15, 2004 and judgements of Hon’ble Supreme Court in SMS Pharmaceuticals Ltd. v. Neeta Bhalla & Anr (2005) 5 SCC 89 and National Small Industries Corporation Limited v. Harmeet Singh Paintal & Anr. 2010 3 SCC 330.

- 6.1.6. The allegations made against an individual, in the capacity of a director of a company, have to be substantiated with specific findings on impropriety or involvement and therefore it is absolutely unjust and bad in law to pin responsibility on him for the breach of provisions of SEBI Act and Regulations.
- 6.1.7. Reference is also made to an order dated May 18, 2022 passed by Adjudicating Officer, SEBI in respect of 39 entities, including him, in the matter of Fortis Healthcare Limited wherein he has been exonerated from the charges therein as he was not in actual and complete control of the relevant company group.
- 6.1.8. Without prejudice, REL exited VCAL vide agreement dated March 06, 2014 and he resigned as director w.e.f. April 02, 2014. He cannot be held liable for acts of VCAL after the date of resignation.
- 6.1.9. Email dated August 22, 2017 sent by compliance officer of Religare Capital Markets Limited to SEBI states that the tenure of the Fund was extended till April 08, 2014. He resigned before expiry of tenure of the Fund and therefore does not know whether the fund extended tenure or was wound up on April 08, 2014.
- 6.1.10. The SPVs made investments in other entities which were in the business of producing movies. As per the report of Advisory Committee on Venture Capital, SPVs are independent, standalone entities specifically set up for the purposes of a single transaction/project. An entity set up for producing/funding one project invests in another entity which was set up for the purpose of funding production of another project, then the investing company is then aiding with the production of two projects and therefore cannot be called an SPV.

6.1.11. The inspection report states *“it is understood that all companies indicated above were floated by the fund for channelling the Fund’s investment and thus can be considered as SPVs”*. The words “can be considered” casts a serious doubt on the conclusiveness of SEBI’s findings on these five entities being SPVs.

6.1.12. Without prejudice, he was not in charge of day-to-day affairs of the Fund and did not attend the IMC meeting dated December 23, 2008 wherein all the proposed projects of the fund were discussed and therefore, cannot be held responsible as the same were not in his knowledge.

6.1.13. REL exited VCAL in 2014 and all records/books of accounts were handed over to the VCAL management. The complaints were filed in September 2014 and May 2016 and the and non-submission of quarterly reports occurred from June 2014, therefore, the alleged violation occurred after REL exited VCAL in March 2014 and he resigned w.e.f. April 02, 2014 and therefore, he cannot be held liable.

6.1.14. Regulation 30 of VCF Regulations provides for action to be taken in the manner provided under Chapter V of Intermediaries Regulations, 2008 against the VCF. These provisions do not cover the liability of the Board or the management of the fund, hence the action can be initiated against the Fund and not individuals/board members.

6.2. Noticee no. 4 has made the following contentions:

6.2.1. He was appointed as a non-executive director. In terms of the articles of association of VCAL and as noted in the annual report of VCAL for the period ended March 31, 2009, he was not a permanent director and was subject to retirement by rotation.

- 6.2.2. He was neither a shareholder nor a promoter/whole time director/key managerial personnel of VCAL at any point of time. He was never assigned any specific role/task as a director and was not a member of any committee of VCAL.
- 6.2.3. Sometime in April/May 2008 he submitted his resignation from the said directorship and Shri Sheetal Talwar informed him that his resignation had been accepted. However, he does not have a copy of the said resignation. He never participated in any board meeting of VCAL, nor received any copy of notice/agenda/minutes/resolutions etc. of such meetings from VCAL and did not receive any payments towards director's remuneration, sitting fee etc. from VCAL.
- 6.2.4. He was unaware of anything about the Fund and its activities including its investors/schemes/investments etc. VCAL and Shri Sheetal Talwar are non-cooperative and failed to file Form 32/DIR-12 in respect of the Noticee's resignation in due time in violation of the provisions of the Companies Act.
- 6.2.5. The SCN has been issued after a delay of four years from the conclusion of SEBI inspection and thirteen years from his resignation as non-executive director of VCAL. The present proceedings are barred on account of inordinate delay and doctrine of laches and are liable to be quashed.
- 6.2.6. There is no evidence of his culpability in respect of the alleged violations and hence, the SCN in so far it relates to him is devoid of merits.
- 6.2.7. Without prejudice to the averments regarding resignation from directorship of VCAL in 2008, article 144 of the articles of association of VCAL states, *"Subject to section 283(2) of the Act, the office a Director shall become vacant if, (d) he absents himself from three consecutive meetings of the Board or from all meetings of the Board for*

a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board". Further, as per article 156 of the articles of association of VCAL, the Company's Board of Directors shall *"meet at least once in every three months and at least four such meetings shall be held in every year"*. Thus, he would have ceased to be a director in the first year itself on account of his non-attendance in board meetings.

6.2.8. He does not fall in any of the categories specified in sub-section 60 of section 2 of the Companies Act, 2013, regarding officer in default, and hence can be not held liable for the alleged violations of the Company even under the Companies Act. Having resigned from the directorship of VCAL soon after its incorporation in 2008, he cannot be said to be "in charge of" and "responsible to" the company for the conduct of its business at the time the contravention so as to be held liable for the alleged contraventions by the company under sub-section 1 of section 27. Besides, the SCN does not contain any specific imputation of consent/connivance /neglect etc. *qua* the Noticee, let alone giving any evidence thereof, so as to invoke the deeming clause in sub-section 2 of Section 27 either.

6.2.9. Hon'ble Supreme Court through a catena of judgments has held that to foist vicarious liability on a director of a body corporate, the statute under which the charge is made must provide for it and the SCN must make specific allegation *qua* the Director. Reliance is placed on *Maksud Saiyed v. State of Gujarat and Others* (2007) MANU/SC/7923/2007 [cited in *GHCL Employees Stock Option Trust v. Kranti Sinha* (2013) 4 SCC 505], *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609, *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Ors.*, (2007) MANU/SC/ 7125/ 2007, *Shailendra Swarup v. The Deputy Director, Enforcement Directorate*, (2020) MANU/SC/0544/2020, *Chintalapati Srinivasa Raju and Ors. v. Securities and Exchange Board of India*, (2018) MANU/SC/0598/2018.

6.3. Noticee no. 5 has made the following submissions:

6.3.1. He had served as non-executive director of VCAL, as a REL nominee, from Feb 2008 to April 2014. He was not involved in running the day-to-day operations or affairs of VCAL as it was managed by a separate management and compliance team and therefore do not have any knowledge or active role in any alleged non-compliance on the part of VCAL. Vistra ITCL, trustee of the Fund, delegated certain duties to VCAL in terms of Investment Management Agreement (IMA) dated February 26, 2008. REL exited VCAL on March 06, 2014 through a share purchase agreement. Clause 7.3(d) of the said agreement states that

“the purchaser understands that liability arising out of any acts of the Board of the Company and the SPV shall not be attributable to such nominee director appointed by /associated with Seller and in such an event the Seller have the right to be indemnified against all losses, liabilities, penalties and claims arising from such acts of the Board of the Company and the SPVs.”

6.3.2. Post exit of REL from the Fund, the responsibility of compliance was in the hands of VCAL. Therefore, he cannot be held liable for non-winding up on expiry of tenure of the Scheme.

6.3.3. He always relied upon the advice provided by the compliance team of REL and the operating partner of the Fund, i.e. VCAL and its managing director Mr. Sheetal Talwar. He was made to understand that the investment up to 33% was to be made equivalent to the total fund value i.e. 200 crores and was not on the drawn value of the fund. Post the initial close the Fund was unable to generate additional interest from investors, hence the initial investment crossed the prescribed limit. Moreover, there is no personal gain to him in the transaction.

6.3.4. As he was in the capacity of non-executive director on the board of VCAL from February 2008 to April 2014 by virtue of his position held in

REL, no liability falls upon him as along with the exit of REL from the management of the fund, his role also ended.

6.3.5. Non-submission of reports happened after his exit, hence no liability arises upon him. Further, as per trust deed, the duty of maintaining the books of accounts and filing of reports, lied with the trustee of the fund, therefore, he has no liability.

6.3.6. There was no quantifiable gain or unfair advantage accrued to him and no loss was caused to the investors as a result of the violations.

6.4. Noticee no. 9 has made the following submissions:

6.4.1. The Fund's tenure expired in July 2013. The trustee made all efforts to comply with the duties and obligations mentioned under the PPM, Trust deed, contribution agreement and investment management agreement but VCAL and their team were highly non-cooperative as far as the monitoring of the Fund's activities are concerned. In several instance the trustee received incomplete information and false promises from the investment manager. Trustee has limited authority and it flagged such issues to SEBI.

6.4.2. As per PPM the primary objective of the Fund was to invest in and provide finance to film projects through SPVs set up to exploit individual film revenue streams. The IM has not provided Quarterly Compliance Reports (QCR) or investment details to the Trustee on timely basis, due to which the trustee was not privy to real time investment done by the Fund. Further, the QCR received by the trustee does not specify the name of the companies in which the investments were done by the Fund.

6.4.3. The Trustee repeatedly followed up with the IM in connection with two long pending investor grievances but did not receive any response in this regard. The trustee highlighted the non-submission of periodical reports to the investment manager as part of monitoring process but the investment manager had failed to comply with it. The Trustee highlighted the said matter to SEBI.

6.4.4. If majority of the investors do not consent to receiving the in-specie distribution of residual assets, then the regulations are silent on the way forward. In such situation, the investment manager may take decision on the strategy of exit from the remaining investments, subject to prior approval from the majority of the investors. Due to unfavourable market conditions, VCFs are not able to liquidate their investments made within the specified tenure and hence winding up of the Fund at distress valuation is not the viable option in the interest of investors.

6.4.5. The investment manager, its directors, key investment team and sponsors are responsible for winding up on expiry of the tenure of the Scheme/Fund, maintenance of accounts and submit the mandatory periodical reports to SEBI, investment updates to investors and provide status of investment to the trustee. If the investment manager has not carried out its role and duties properly then action should be taken against the investment manager and not the Trustee.

6.4.6. The allegations pertain to operations of the Fund during the period 2008 to 2013 and the SCN has been issued in the year 2021. The said inordinate delay in issuance of inspection report and SCN has severely prejudiced us and therefore, the proceedings need to be discontinued and the SCN needs to be dropped. Reliance placed on orders of Hon'ble SAT in Ashok Shivalal Rupani and Others v. SEBI dated August 22, 2019, in Garware Polyester v. SEBI (appeal no. 187 of 2021), in Ashlesh Gunantbhai Shah v. SEBI dated January 31, 2020.

6.4.7. Reliance is placed on orders of Hon'ble SAT in Libord Finance Ltd. V. SEBI dated March 31, 2008, in Ashok K Chaudhary v. SEBI dated November 05, 2008, in Ashlesh Gunvantbhai Shah v. SEBI dated January 31, 2020 and in Ashok Shivilal Ruprani and Anr. v. SEBI dated August 22, 2019

6.4.8. Since 2012, despite follow-up, the investment manager was not sharing requisite information/reports with the trustee. Trustee is helpless in a situation where the investment manager starts obstinately resisting providing any information or responding to the requests of the trustee.

6.4.9. The trustee had no role in investment decisions. In terms of investment management agreement and PPM, the responsibility of managing the investments made by the Fund were delegated to the investment manager. The investment manager was obligated to comply with VCF Regulations in this regard and it failed to adhere to the investment conditions under the VCF Regulations.

6.4.10. All the investors have been arranged by the investment manager, all the investments have been made by the investment manager, the movies in which investments were to be made through the SPV's was decided by the investment manager, the details pertaining to present status of investments etc. and the assets (if any), is available with the investment manager, the maintenance of records etc. was the responsibility of the investment manager and post completion of tenure of the Scheme, winding up of the Scheme was the responsibility of the Investment Manager. Trustee cannot be held liable for the alleged acts of the investment manager.

6.4.11. From 2008 to 2014 REL was a major shareholder of the investment manager and was controlling and operating it through its

representatives. Sheetal Talwar and REL were intimately connected. Clients of Religare Macquarie Wealth Management Ltd. were brought in as investors in the Fund. After REL exited, Sheetal Talwar took over. The trustee is a victim of violations committed by the investment manager.

6.4.12. In the facts and circumstances of the case, the directions proposed to be issued against the trustee are exceedingly disproportionate and not warranted. Reliance is placed on the order passed by Hon'ble Supreme Court in the matter of Excel Corp. Care Ltd. v. CCI (2017) 8 SCC 47 with regard to the doctrine of proportionality.

6.4.13. Investment manager was responsible for filing periodic reports. Only recourse available with the trustee was to follow up with investment manager and request SEBI to intervene in the matter. The Trustee informed SEBI about the non-submission of periodic reports by the investment manager.

6.4.14. The allegations in the SCN relate to managerial and administrative functions which the trustee was duty bound to delegate to an investment manager under the trust deed. Section 47 of the Trusts Act 1882 expressly provides for delegation of a trustee's authority to delegate its duties to an agent if any of the following circumstance is established:

- (i) If the delegation is permissible under the relevant instrument of trust;
- (ii) If the delegation is in the regular course of business;
- (iii) If the delegation is necessary; or
- (iv) If the beneficiary, who is competent to contract, consents to the delegation.

All the above conditions are established in the present case. Not only is the delegation "permissible", but it is rather the trustee's fundamental

obligation under the trust deed. Without prejudice, the alleged violations relate to functions of the trustee that stood delegated to investment manager pursuant to investment management agreement and therefore, the investment manager should be held liable.

6.4.15. Without prejudice, Compliance with Regulation 23(1)(a) of the VCF Regulations is subject to the consent of Religare Finvest Limited (hereinafter referred to as “**RFL**”), an entity involved in the governance of the Fund at the time of alleged violations, who is creating hurdles for the investment manager in winding up of the Fund. Due to RFL’s consent not being received, the investment manager could not windup the Scheme/Fund. Reliance is placed on order of the Hon’ble Supreme Court in State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2005) 4 SCC 530 and in State of Rajasthan & Anr. v. Shamsheer Singh 1985 (Supp) SCC 416. There is a necessary or invincible disability to perform the mandatory part of the law, the law excuses such performance. Despite efforts by investment manager, compliance is rendered impossible due to RFL’s objection.

6.4.16. Without prejudice, the alleged violations have neither led to any gain or advantage to the trustee nor have the interest of the investors in the securities market has been prejudicially affected. Reliance placed on decision of the Hon’ble Supreme Court in SEBI v. Bhavesh Pabari (2019) SCC Online SC 294 to say that SEBI has the discretion to consider any other factor in deciding the quantum of penalty. In the present case, no concerns in relation to the interests of any investor being prejudiced or adversely affected arise. The investors cannot allege losses having made the investments in fully understanding the volatile nature of the industry in which the Fund invests in, which is inherently risky and illiquid, where exits would be a challenge. The risk factors disclosed in the PPM clearly set out these issues.

6.4.17. The SCN does not allege that any gains were made by the trustee or that it gained any advantage. The trustee has not been paid trusteeship fees for its services for over 11 years. The trustee has continued to provide services to protect investors' interest and trustee's pro-active co-operation and diligence in intimating SEBI of the irregularities needs to be accounted for by SEBI.

6.4.18. Any penalty being levied on the trustee would deter any person from making suo moto complaints to SEBI for any non-compliances.

6.4.19. Without prejudice, all of the violations alleged in the SCN had occurred prior to Vistra Group's acquisition of the trustee and therefore there is no just lack of intention (*mens rea*) but also *actus reus* on part of the trustee.

6.5. Noticee nos. 1, 3, 7 and 8 have submitted the following:

6.5.1. The Fund was jointly sponsored by Religare Enterprises Limited and Noticee no. 3. Since the reply of each Noticee will be considered by SEBI in arriving at a finding in the matter and it is vital for each party to be aware of the stand taken by the other Noticees, the replies of the other Noticees are germane to the matter. Without the replies of the other Noticees, the Noticees are significantly handicapped from appropriately responding to the allegations in the SCN.

6.5.2. REL was in actual control of the affairs of the Fund from 2009 until 2017 including in control of the relevant records and documents of the Fund. Moreover, since the matters relate to the period of 2008 to 2017, and considering the inordinate delay in initiating the present proceedings, the concerned Noticees are unable to trace the documents and do not have several of the documents relating to this period which would enable the concerned Noticees to properly respond to the SCN. The Noticees do

not have access to the Vistaar-Religare server which has bulk of the documents relating to the Fund as it was on the premises of REL. The concerned Noticees are severely prejudiced since their right to natural justice stand violated.

6.5.3. Noticee No. 1 was originally set up as a 50:50 joint venture between REL and Vistaar Entertainment Ventures Pvt. Limited (hereinafter referred to as “**VEVPL**”). It was always envisaged that REL would handle the regulatory and compliance aspects of the business while VEVPL would handle the film production side of the business. On February 26, 2008, REL and VEVPL entered into a Shareholders Agreement under which both the companies had equal representation on the board of VCAL. Vide Amending Agreement, dated April 17, 2009, the shareholding pattern stood modified to 74:26 between REL and VEVPL such that REL became a majority shareholder of VCAL and VCAL became a subsidiary of REL. Thus, REL took over both actual managerial control as well as shareholding control of VCAL

6.5.4. VCAL was appointed as an investment manager to the Fund by way of an investment management agreement dated February 26, 2008 entered into between the Trustee and VCAL. Since REL had *de facto* managerial control over VCAL and was also a controlling shareholder from April 2009 onwards, the Fund was effectively being managed by REL through its subsidiary VCAL. Representatives of REL were responsible for key functions such as managing the financial and statutory requirements of the Fund. The concerned Noticees had no control over these aspects of the Fund. Quarterly reports of the Fund were also submitted by REL to SEBI till March 2014.

6.5.5. The Fund was managed by the Investment Manager i.e., VCAL, which was under the control of REL. All day-to-day affairs of the Fund including all statutory obligations including maintenance of books, records, and

secretarial material were within the control of REL and stored at the office of REL.

6.5.6. As per the prospectus of the Fund, REL had itself committed to make a capital contribution of Rs. 20 crore to the Fund. Further, six out of the seven investors were either group companies of Religare or clients of Religare.

6.5.7. Since REL had expertise in asset management and financial services, and VEVPL was in the business of producing films, the distinct roles of both the parties to the venture was always clear. VEVPL/Mr. Talwar were not involved in the regulatory and compliance aspect of the Fund.

6.5.8. The Fund intended to accept investments only from institutional and sophisticated investors who understood the risks involved and not to raise funds from retail investors or laymen as the minimum contribution was kept at Rs. 50 lakhs. The investors were aware that only upon the film in which the Fund has invested is a commercial success, the investors would see any returns.

6.5.9. The Fund received investment from the following seven investors:

SN	Particulars	Investor Category	Amount
1.	Bennett, Coleman & Co. Ltd.	Institutional/Corporate	20 crore
2.	Religare Finvest Limited	Institutional/Corporate	20 crore
3.	Jai Maa Vinimay Pvt. Lytd.	Institutional/Corporate	20 lacs
4.	Mohan Jhamumal Bhambhani	Individual	1 crore
5.	Shilpa Chandrashekar	Individual	50 lacs
6.	Ajit Singh Talwar	Individual	50 lacs
7.	Murali Mohan & Jayshree Murali Mohan	Individual	50 lacs

6.5.10. The Fund raised Rs.42,70,00,000/- (Rupees Forty-Two Crores Seventy Lakhs only) out of which Rs. 41,94,00,000/- (Rupees Forty-One Crore Ninety-Four Lakhs only) were invested in a total of seven investee companies ("Investee Companies") after payment of management fees,

expenditures, etc. Out of the seven companies, five were project/film specific SPVs created for individual movies/ projects. None of these companies were SPVs as contemplated under Regulation 12(d)(ii)(e) of the VCF Regulations. The details of the investment made is tabulated below:

Sr. No.	Particulars	Project Name	Investment (Rs crore)
1.	Stoneman Films Pvt Ltd	Stoneman	2.49
2.	Vistaar Religare Media Limited	Victory, Siddhart, Aamras	9.6
3.	Friday Entertainment Ventures Pvt. Ltd.	Rann	3.32
4.	WSG Film Awasthi Pvt. Ltd.	Happi, Finding Lenny	10.23
5.	Vistaar Religare Entertainment Ltd.	Joneses	8.94
6.	Vistaar Religare Films Ltd.	Office Office	6.96
7.	Mausam Films Ltd.	Mausam	0.4
		Total	41.94

6.5.11. The Investee Companies produced, developed and distributed 10 films between 2008 and 2013. These films under-performed at the box office and the Investee Companies accumulated losses amounting to Rs. 98,61,00,000/- as of March 31, 2013. The loss suffered by the Investee Companies are tabulated below:

(all figures in Rs. crore)

Sr. No.	Particulars	Fund Investment	Debt	Revenue	Profit/ Loss
1.	Stoneman Films Pvt Ltd	2.49	3	0.08	-6.67
2.	Vistaar Religare Media Limited	9.6	4.37	1.68	-16.4
3.	Friday Entertainment Ventures Pvt. Ltd.	3.32	15	2.25	-18.8
4.	WSG Film Awasthi Pvt. Ltd.	10.23	3.02	2.09	-18.5
5.	Vistaar Religare Entertainment Ltd.	8.94	-	0.66	-0.16
6.	Vistaar Religare Films Ltd.	6.96	-	-	-5.49
7.	Mausam Films Ltd.	0.4	62	29.21	-32.59
	Total	41.94	87.39	35.97	-98.61

These were genuine business losses and a risk that the investors had agreed to bear when investing in the Fund.

6.5.12. Until 2014, REL was in complete control of the Fund. On March 6, 2014, VCAL, REL and VEVPL entered into a Share Purchase Agreement pursuant to which REL sold its shares in VCAL to VEVPL. Even after REL sold its shareholding, it was always intended that the secretarial and compliance services to the Fund would continue to be rendered by Religare. In fact, Schedule III of the SPA specifically provides a condition subsequent for execution of Service Agreement between VCAL and Finserve Shared Services Limited ("Finserve") which is a company controlled by Religare. Agreed draft of the Service Agreement is even attached to the SPA as Schedule IV.

6.5.13. The Service Agreement was executed on March 6, 2014 and Finserve was providing the secretarial and compliance services to the Fund. Copy of the executed Service Agreement is not available with the concerned Noticees since REL is in possession of the same and it was never handed over to the concerned Noticees.

6.5.14. Upon the expiry of the term of the Service Agreement on March 29, 2016, Finserve/REL terminated the Service Agreement. Though Finserve/REL claims that all documents and statutory records in relation to the Fund were delivered to VCAL, the same were never handed over to VCAL. Moreover, this further fortifies the fact that all the documents and records were in possession and control of Finserve/REL and not the concerned Noticees.

6.5.15. REL retained the documents, records and materials relating to the Fund at its own offices and under the control of its own employees and thus all compliance activities could only be done by REL. Even the bank accounts of the Fund were under the control of REL and its employees and the concerned Noticees did not have access to the bank accounts

of the Fund. Even post 2016, REL failed to handover the relevant documents and material to the new management of VCAL for taking necessary steps for compliance. In the absence of such handover, owing to the failure of REL, the present Noticees do not have any documents and records relating to the Fund. The concerned Noticees on several occasions sought these documents from REL, however the same were not provided by REL.

6.5.16. Throughout the inspection period the Fund was being managed by REL. Thus, any violations alleged during the said period could only be addressed by REL. However, the concerned Noticees provided full cooperation to SEBI to the extent possible and also furnished the documents that were available with the concerned Noticees.

6.5.17. The concerned Noticees made several attempts to liquidate the Fund's assets and investments and distribute such amounts to the investors of the Funds so that they could proceed with the winding up of the Fund. However, the delay in winding up was on account of the following factors which were beyond the control of the concerned Noticees:

6.5.17.1. There were pending Income Tax cases against three of the Investee Companies. The income tax proceedings against Vistaar Films Limited commenced on September 12, 2013 before the Assessing Officer. The order in the matter was passed by the Assessing Officer on May 13, 2015 which was challenged before the Commissioner of Income Tax (Appeal)- 13, New Delhi. The Commissioner of Income Tax (Appeal)-13, New Delhi thereafter passed an order dated June 14, 2019 which was challenged before the Income Tax Appellate Tribunal, Delhi. Only on June 15, 2021 the Appellate proceedings were settled with the Income Tax Department under the Vivad Se Vishwaas Scheme.

6.5.17.2. The income tax proceedings against Vistaar Mediaworks Limited commenced on September 2, 2014 before the Assessing Officer. The order in the matter was passed by the Assessing Officer on February 18, 2015 which was challenged before the Commissioner of Income Tax (Appeal)-24, New Delhi. The Commissioner of Income Tax (Appeal)-24, New Delhi thereafter passed an order dated March 29, 2019 which was challenged before the Income Tax Appellate Tribunal, Delhi. The Appellate proceedings were settled with the Income Tax Department only on April 18, 2022 under the Vivad Se Vishwaas Scheme.

6.5.17.3. The income tax proceedings against Friday Entertainment Ventures Private Limited commenced on September 29, 2011 and the Assessing Officer passed an order dated March 2, 2013 in the said proceedings. The said order has been challenged before the Commissioner of Income Tax (Appeals) III, Mumbai on March 10, 2014 and the proceedings are pending adjudication.

6.5.18. Though the income tax issues were not fully resolved, considering that two of the income tax proceedings were settled, the concerned Noticees took active steps on an expeditious basis for winding up the Fund in coordination with the Trustee. To ensure that the process of liquidation is transparent, VCAL, vide engagement letter dated May 25, 2022, appointed Fedex Securities Private Limited, SEBI registered Category I merchant banker ("Investment Banker") to carry out the valuation of the Fund's assets.

6.5.19. As per the valuation report submitted by the Investment Banker, the valuation of the assets of the Fund was Rs.38,44,569/-. The Investment Banker, on the instructions of VCAL also took steps to identify buyers and dispose the assets of the Fund as soon as possible. Two offers were received by VCAL. All steps were being taken in consultation with and

as per the advice of the Trustee. As per the advice of the Trustee, VCAL convened a meeting of the Fund's investors on August 12, 2022, to take their consent for disposal of the assets of the Fund.

6.5.20. Vide letter dated August 09, 2022, Religare Finvest Limited objected to the business proposed to be transacted at the meeting. Vide letter dated August 11, 2022 VCAL responded to RFL's letter requesting to suggest an alternate way to wind up the Fund if not by way of liquidation of assets of the Fund in view of RFL's objection. The meeting was attended by three (3) investors namely RFL, and the two individual investors Mr. Ajit Talwar and K. S. Murali Mohan (through proxy). It is relevant to note that these individual investors were the two complainants referred to in the SCN and they voted in favour of disposal of the assets through proxy. However, REL voted against the sale of the assets and winding up of the Fund. As a consequence, the resolution to liquidate the assets of the Fund could not be passed solely due to the objection of REL and for no fault of VCAL. This resulted in a virtual impossibility as REL held 43.84% of the total investment in the Fund and no resolution with the required majority of 75% could be passed without REL's concurrence. Additionally, since the Trustee had itself directed that the consent of the investors should be taken for liquidation, it was not possible for VCAL to unilaterally take steps to dispose of the assets and wind up the Fund. In view of the aforesaid, VCAL addressed a letter dated August 18, 2022 to SEBI with a request to issue directions under Regulation 23 of the VCF Regulations to wind up the Fund. The concerned Noticees have not yet received any response from SEBI to this letter.

6.5.21. As apparent from the above, the concerned Noticees have taken all steps within their power and control to comply with the VCF Regulations. However, due to the circumstances beyond the control of the concerned Noticees, the Fund could not be wound up.

6.5.22. It was the responsibility of REL to handle the regulatory and compliance aspect of the Fund. In fact, the employees of Religare group were responsible for managing the financial and statutory requirements of the Fund. The concerned Noticees were not involved in these aspects of the Fund. The role of the concerned Noticees was limited to handling the film production business.

6.5.23. REL had complete control of VCAL since 2009 after execution of the Amending Agreement and REL was in effect managing the Fund. Even after REL sold its shareholding in VCAL to VEVPL in 2014, since was in complete control of Fund during the life of the Fund i.e., from 2008 to 2013, it is REL that failed to wind up the Fund when tenure of the Fund ended in 2013.

6.5.24. Even after the exit of REL from VCAL, the Fund was managed by REL till 2017 and the necessary steps for compliance were to be taken by REL. REL was also in control and possession of all the documents of the Fund. The concerned Noticees did not even access to the servers of the Fund since the same were under the control of REL. Thus, it was impossible for the concerned Noticees to wind up the Fund on expiry of the tenure of the Fund. In fact, Mr. Talwar vide his email dated January 25, 2016 wrote to REL seeking an explanation as to why REL had not wound up the Fund despite being in charge of the compliance related aspect of the Fund. No steps however appear to have been taken by REL for winding up of the Fund.

6.5.25. Even after 2017, REL failed to hand over the relevant documents to the concerned Noticees. Despite the same, the concerned Noticees made attempts to liquidate the Fund. However, on account of factors beyond the control of the concerned Noticees, the process of winding

up of the Fund was delayed. The hurdles and difficulties faced by the concerned Noticees to wind up the Fund include:

- (i) Due to the ongoing tax litigations in three Investee Companies, the Fund could not be wound up. Since the tax litigations had commenced even prior to 2014 and are continuing till date, the concerned Noticees could not initiate the winding up of the Fund.
- (ii) Moreover, due to the outbreak of COVID- 19 pandemic, the Fund could not be wound up between March 2020 to March 2022.

6.5.26. The concerned Noticees, in consultation with the trustee, appointed an Investment Banker to carry out the valuation of the assets of the Fund and find a buyer for the Fund. Under Regulation 23(1)(b) of the VCF Regulations, the Trustee of the Fund has the requisite powers to wind up the Fund. The trustee advised the concerned Noticees to wind up the Fund under Regulation 23(1)(c) of the VCF Regulations requiring VCAL to convene a meeting of investors and pass a resolution to wind up with Fund with 75% majority. Since the concerned Noticees could not have taken a unilateral decision to wind up the Fund, the concerned Noticees convened a meeting as per the Trustee's advice.

6.5.27. Out of the investors that attended the meeting, only REL, which held 43.84% voted against the sale of the assets and winding up of the Fund. Since the required 75% majority was not achieved, the Fund could not be wound up by the concerned Noticees. Thus, REL has played a mischief since it was aware that without its concurrence, the Fund cannot be wound up since it has more than 25% majority. In view of REL's objection and the Trustee's decision to wind up the Fund under Regulation 23(1)(c) of the VCF Regulations instead of enforcing their power under Regulation 23(1)(b), the hands of the concerned Noticees

are tied and it is impossible for the concerned Noticees to wind up the Fund.

6.5.28. In view of the above, VCAL addressed a letter dated August 18, 2022 to SEBI requesting to issue directions under Regulation 23(1)(d) of the VCF Regulations to wind up the Fund. The response and direction of SEBI is awaited.

6.5.29. Despite best efforts the winding up of the Fund was incapable of being performed. It is well settled principle of law that the power to punish, though it exists, can only be imposed when there is a wanton wrongdoing with an intention and state of mind to violate the law. Moreover, it is settled law that law cannot force the conduct of something that is incapable of being performed. Reliance placed on order of Hon'ble Supreme Court in State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2005) 4 SCC 530.

6.5.30. Further, while analysing the maxim "*lex non cogit ad impossibilia*", Hon'ble Supreme Court, in then matter of State of Rajasthan & Anr. Vs. Shamsher Singh 1985 (Supp) SCC 416, held that in situations which are time imperative, no allowance can be made for lethargic indifference. No allowances can be made for needless procrastination. But allowances must surely be made for necessary efforts where intricacies and factual ramifications are involved.

6.5.31. Since the intention of the concerned Noticees was not to violate the VCF Regulations but considering that the Noticees were faced with hurdles beyond their control which made it impossible for the concerned Noticees to wind up the Fund, it would be unfair and prejudicial to hold the concerned Noticees liable for not winding up the Fund and violating the VCF Regulations.

6.5.32. It is submitted that as per the PPM, the primary investment objective of the Fund was to invest in and provide finance to film projects through SPVs set up to exploit individual film revenue. In accordance with the PPM, investments were made by VCAL in SPV's. However, these SPVs are not SPVs as contemplated under the Regulation 12(d)(ii)(e) of the VCF Regulations

6.5.33. Only those SPVs which are created for facilitating or promoting investment in the Fund are covered within the ambit of the aforesaid Regulation. In the present case, the SPVs were not created to facilitate or promote investment in the Fund. The SPVs were created to finance one or multiple film projects. Moreover, these SPVs were not making onward investments. Thus, the SPVs in the present case do not fall within the ambit of the SPVs under the VCF Regulations.

6.5.34. The Inspection Report of SEBI refers to report of the Ashok Lahiri committee where it is stated that "*Special Purpose Vehicles (SPV) are independent, stand-alone entities (SPV) specifically set up for the purposes of a single transaction / project.*" The report appears to be of an advisory committee which can never override the provisions of the VCF Regulations or expand the meaning of SPVs in the VFC Regulations. Since the SPVs in the present case were not mandated for promotion or investment of the Fund, the same do not fall within the ambit of the meaning assigned to SPVs in the VCF Regulations.

6.5.35. Since REL was managing the Fund including the statutory and compliance related aspect, it was REL's obligation to handle the investor grievances. The concerned Noticees did not even have the SCORES ID and password to access and resolve the complaints of the investors since REL was managing the Fund. VCAL made every effort to redress the complaints received however, since the SCORES ID and password was not available with the concerned Noticees the investors were

intimated on the status of the investments made by the Fund over the phone.

6.5.36. The two complainants were clients of Religare's wealth management business. Thus, it was REL who was engaging with the investors. This is evident from the emails exchanged between REL and such investors. The email was sent to REL and not VCAL since the investors were also aware that the Fund was being managed by REL.

6.5.37. The investor complaints are in respect of repayment of the investments made by them in the Fund. However, these investors were institutional and sophisticated investors who were aware of the risks involved in investing in a media fund. These investors also understood that they could lose their entire investment if the film was not commercially successful. This is explicitly set out in the PPM.

6.5.38. The concerned Noticees were never involved with compliance and statutory aspect of the Fund. Since REL was required to ensure that the Fund was compliant with the statutory obligations, it was the responsibility of REL to submit periodic reports to SEBI. Under clause 5 of the Trust Deed, certain duties were thrust on the Trustee of the Fund including the duty to file reports as required by SEBI. Quarterly reports in accordance with SEBI Circular, were submitted till March 2014 by REL. It was the responsibility of the trustee to ensure that the reports were periodically filed by REL with SEBI.

6.5.39. Since there was segregation of duties and roles, as such the concerned Noticees are not liable for action in terms of Regulation 30(a), 30(d) and 30(f) of VCF Regulations.

6.5.40. As stated hereinabove, the books, documents, and records of the Fund were maintained by REL at its office and the employees of REL had complete control over the same between 2009 and 2016. These

relevant documents were not handed over to the concerned Noticees even after 2016 and therefore, the concerned Noticees do not have any documents and records of the Fund. Thus, the concerned Noticees cannot be held liable for not maintaining the document, records and materials as it is REL that was maintaining such document, records and materials and failed to hand over the same to the concerned Noticees.

7. Noticee nos. 1, 3, 7, 8 and 9 filed settlement applications with SEBI for settlement of the extant proceedings. Noticee nos. 1, 3, 7 and 8 withdrew their settlement application on September 05, 2022. The settlement application filed by Noticee no. 9 came to be rejected by SEBI and the same was informed to Noticee no. 9 on January 30, 2023.

Consideration of submissions and findings:

8. I have considered the allegations made in the SCN dated October 25, 2021, submissions made by the Noticees in their respective replies, submissions made during the course of personal hearing and written submissions filed thereafter. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of VCF Regulations, as alleged in the SCN.
9. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of VCF Regulations

“Investment conditions and restrictions.

12. All investment made or to be made by a venture capital fund shall be subject to the following conditions, namely:—

(a)

....

(d) venture capital fund shall make investment as enumerated below:

(i)

(ii) Not more than 33.33% of the investible funds may be invested by way of:

(a)

....

(e) Special Purpose Vehicles which are created by a venture capital fund for the purpose of facilitating or promoting investment in accordance with these Regulations.

Explanation.—The investment conditions and restrictions stipulated in clause (d) of regulation 12 shall be achieved by the venture capital fund by the end of its life cycle;”

“Maintenance of books and records.

20. (1) Every venture capital fund shall maintain for a period of eight years books of account, records and documents which shall give a true and fair picture of the state of affairs of the venture capital fund.”

“Winding-up.

23. (1) A scheme of a venture capital fund set up as a trust shall be wound up,

(a) when the period of the scheme, if any, mentioned in the placement memorandum is over;

(b) if it is the opinion of the trustees or the trustee company, as the case may be, that the scheme shall be wound up in the interests of investors in the units;

(c) if seventy-five per cent of the investors in the scheme pass a resolution at a meeting of unit holders that the scheme be wound up; or

(d) if the Board so directs in the interests of investors.”

“Effect of winding-up.

24. (1)

(2) Within three months from the date of intimation under sub-regulation (3) of regulation 23, the assets of the scheme shall be liquidated, and the proceeds accruing to investors in the scheme distributed to them after satisfying all liabilities.”

“30. Liability for action in case of default.

Without prejudice to the issue of directions or measure under regulation 29, a venture capital fund which—

(a) contravenes any of the provisions of the Act or these regulations;

....

(d) does not submit periodic returns or reports as required by the Board;

....

*(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf,
shall be dealt with in the manner provided in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.”*

SEBI circular having reference number SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010:

“2. Format for the quarterly report on venture capital activity to be submitted by Venture Capital Funds has been revised as per enclosed Annexure. In accordance with Regulation 22 of SEBI (Venture Capital Funds) Regulations, 1996, all venture capital funds are directed to submit the report on venture capital activity to SEBI, complete in all respects in the new format with effect from the quarter ended 31st March, 2010.

3. The report is to be uploaded online on SEBI portal within 7 days from the end of each calendar quarter. Physical copies of the report are not required to be submitted.”

10.I note that VCF Regulations have been repealed by SEBI (Alternate Investment Funds) Regulations, 2012 (hereinafter referred to as “**AIF Regulations**”) from May 21, 2012. In this regard, Regulation 39 of AIF Regulations provides as under:

“Repeal and saving.

39. (1) The Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 hereby shall stand repealed.

(2) Notwithstanding such repeal:

(a) Anything done or any action taken or purported to have been done or taken, including suspension or cancellation of certificate of registration, any inquiry or investigation commenced or show cause notice issued under the repealed regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) All venture capital funds or schemes launched by such venture capital funds prior to date of notification of these regulations shall continue to be governed by provisions of Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 till the fund or Scheme is wound up:

Provided that such funds shall not launch any new Scheme after notification of these regulations;

(c) Any application made to the Board under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 and pending before it shall be

deemed to have been made under the corresponding provisions of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

In this regard, it would be appropriate to refer to the judgement of Hon'ble Supreme Court of India in **Sahara Real Estate Corporation and Others Vs. SEBI & Ors. (2013) 1 SCC 1**, wherein, it was held that:

“103. Repeal and Saving Clause under ICDR 2009 would clearly indicate that the violation under DIP Guidelines was a continuing one. Regulation 111 of ICDR reads as follows:

“Repeal and Savings

111. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.

(2) Notwithstanding such rescission;

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer documents, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

104. Regulation 111(1) of ICDR 2009 rescinded the DIP Guidelines from 26.8.2009 and clause (2) of Regulation 111 contains the saving clause. The expression “anything done” or “any action taken” under Regulation 111(1) are of wide import and would take anything done by the company omitted to be done which they legally ought to have done. Non-performance of statutory obligations purposely or otherwise may also fall within the above mentioned expressions. Failure to take any action by SEBI under DIP Guidelines, in spite of the fact that Saharas did not discharge their statutory obligation, would not be a ground to contend that 2009 Regulations would not apply as also the saving clause. 2009 Regulations, in my view, will apply to all companies whether listed or unlisted. Further, in the instant case, SEBI was not informed of the issuance of securities by the Saharas while the DIP Guidelines were in force and Saharas continued to mobilize funds from the public which was nothing but continued violation which started when the DIP Guidelines were in force and also when they were replaced by 2009

Regulations. Further, it may also be recalled that any solicitation for subscription from public can be regulated only after complying with the requirements stipulated by SEBI, in fact, an amendment was made to Schedule II of the Companies Act vide notification No. GSR 650(3) dated 17.9.2002 by inserting a declaration which has to be signed by the directors of the company filing the prospectus, which reads as under:

“That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the securities and Exchange Board of India Act, 1992 or rules made there-under or guidelines issued, as the case may be.”

I find that ratio of the aforesaid judgment of Hon’ble Supreme Court in Sahara case (supra) with respect to interpretation of repeal and saving clause of ICDR 2009 squarely applies to the interpretation of Regulation 39 of AIF Regulations. Therefore, violation of VCF Regulations can be pursued under the corresponding provisions of AIF Regulations.

11. Before dealing with the specific allegations and contentions raised by the Noticees, it would be appropriate to deal with the preliminary contentions raised by the Noticees. Many Noticees, viz. Noticee nos. 1, 3, 4, 7, 8 and 9 have contended that the SCN suffers from inordinate delay and laches which has prejudiced the said Noticees. In support of their contention, these Noticees have cited various orders passed by Hon’ble SAT on the issue of delay. However, Noticee no. 9 has not specified as to what prejudice has been actually caused to it due to such alleged delay. Noticee no. 9 has not specifically pointed out any record, document, etc. which it could not retrieve due to the alleged delay. Similarly, Noticee nos. 1, 3, 7 and 8 have also contended delay, however, these Noticees have not pointed out which document they are unable to produce due to delay which has prejudiced their defence. I note that these Noticees comprise investment manager, its directors including managing director. These Noticees

have not contended that they are not directors in VCAL. Be that as it may, I note that the present SCN was issued pursuant to an inspection of the Fund carried out by SEBI on July 04, 2017 for the period from July 25, 2008 to the date of inspection. Additional information was sought by SEBI from the Fund on August 07, 2017. Partial information was received by SEBI on August 22, 2017. Thereafter, inspection report in the matter was prepared and the inspection report was sent to the Fund for its comments on April 13, 2018. Comments of the Fund were received by SEBI on May 15, 2018. Additional information, based on the comments dated May 15, 2018, was sought from the Fund on July 10, 2018 and partial information w.r.t. the same was received from the Fund on July 21, 2018. Based on the findings of inspection and comments of the Fund, examination in the matter was taken up and the present SCN came to be issued on October 25, 2021. Thereafter, file in the matter was placed before me on February 16, 2022 for granting personal hearing to the Noticees. After many adjournments, hearing *qua* respective Noticees got concluded on various dates as mentioned in para 3 above with the last of the date of hearing being September 15, 2022. Noticees have also filed various replies/written submissions/additional written submission, on various dates such as on January 19, 2023. During this time Noticee nos. 1, 3, 7, 8 and 9 had also filed settlement applications with SEBI for settling the present proceedings. Noticee nos. 1, 3, 7 and 8 withdrew their settlement application on September 05, 2022. The settlement application filed by Noticee no. 9 came to be rejected by SEBI and the same was informed to Noticee no. 9 on January 30, 2023. Due to pendency of these settlement applications, in terms of Regulation 8 of SEBI (Settlement Proceedings) Regulations, 2018 passing of final order was kept in abeyance. Moreover, I note that the primary allegation in the SCN is regarding non-winding up of the Scheme of the Fund on expiry of the term of the Fund, in the year 2013. I note that the Fund has still not been wound up and therefore, the alleged violation in this regard is continuing even till date. In such a peculiar scenario, Noticees can not plead delay when they have yet to discharge their liability under the law. I note that Noticee no. 9 is the trustee of the Fund and as such it is not open to Noticee no. 9 to take plea of delay where the Scheme has not been wound up within the time disclosed in the Private

Placement Memorandum (PPM). In view of the aforesaid findings, orders of Hon'ble SAT relied on by the Noticees regarding the delay are not applicable in the facts and circumstances of the present case, *qua* Noticee nos. 1, 3, 7, 8 and 9. In view of the above, I find that the contention of Noticee nos. 1, 3, 4, 7, 8 and 9 regarding delay is not tenable in the facts and circumstances of the case.

12. Noticee no. 2 has contended that the Regulation 30 of the VCF Regulations, under which action has been proposed against the Noticee provides for action as provided under Chapter V of the SEBI (Intermediaries) Regulations, 2008 and the said chapter do not provide for actions against the directors. In terms of the provisions of SEBI Act, 1992, in case of any violation of the provisions of the Act or any regulations, circulars, guidelines issued under the act, SEBI can issue regulatory directions under Sections 11B(1), 11D, 11(1) of the SEBI Act, 1992 or it can impose monetary penalty under Sections 11B(2) and 15I of SEBI Act, 1992 or can initiate disciplinary proceedings (in case of registered intermediaries) under Section 12(3) of the SEBI Act, 1992 read with SEBI (Intermediaries) Regulations, 2008 or initiate prosecution under Section 24 of SEBI Act, 1992. Provisions contained in the VCF Regulations, cannot curtail or override provisions of SEBI Act, 1992 which gives power to SEBI, to initiate simultaneous proceedings under different provisions, as mentioned above. In the present case, SEBI has initiated proceedings for issue of directions under Section 11B of the SEBI Act, 1992 read with Regulation 29 of VCF Regulations which are different from proceedings under SEBI (Intermediaries) Regulations, 2008. Further, I note that SCN in the present case in para 12 clearly states that present proceedings are under Section 11B of SEBI Act, 1992 read with Regulation 29 and 30 of VCF Regulations. Even under SEBI (Intermediaries) Regulations, 2008 actions can be recommended against the director/officers of the intermediary. Therefore, the contention of the Noticee is untenable in the context of the present proceedings.

13. The allegations made in the SCN against each of the Noticees, submissions made by the Noticees *qua* the allegations made against them and my findings thereon are dealt in the following paragraphs of the order.

Non-winding up on expiry of tenure/term of the Scheme of the Fund:

14. The SCN has alleged that the Fund failed to wind up the Scheme upon the expiry of term of the Scheme of the Fund. I note that the Fund was constituted as a contributory trust and was granted registration by SEBI on July 25, 2008. The Fund launched the Scheme called “Film Fund” and issued a PPM dated April 02, 2008. Regulation 17 of VCF Regulations lays down the contents of memorandum of placement or PPM. Regulation 17(1)(f) provides that the period of maturity, if any, of the fund shall be disclosed in the PPM. As per the PPM, the term of the Fund was five years from the initial closing date and initial closing date for the Fund, was April 07, 2008. As per the PPM, the term of the Fund could be extended by up to two additional one-year periods through an annual extension at the end of 5th year and 6th year, respectively, at the discretion of IM and subject to prior consent of the investors making at least 75% of the aggregate capital contribution of the Fund. I note that as per material available on record, no such extension of the Fund was ever made. Therefore, I find that the term of the Fund expired on April 06, 2013.

15. Except Noticee no. 2, none of the Noticees have contended that the term of the Fund did not expire in 2013. Noticee no. 2 in his reply has contended that the term of the Fund was extended by one year. In support of his contention, Noticee no. 2 has referred to an email dated August 22, 2017 from compliance officer of Religare Capital Markets Limited to SEBI to state that though the initial closing date of the Fund was April 08, 2013 and the term of the Fund was five years from the initial closing date, the Fund had got an extension of one year from the initial closing date and therefore, the term of the Fund expired on April 08, 2014. In this regard, as noted above, the extension of the term of the Fund was at the discretion of IM and subject to the approval of investors holding at least 75% of the aggregate capital contribution of the Fund. Noticee no. 2 has not produced any document which proves that the IM proposed to extend the term of the Fund or that any such proposal was approved by the requisite majority of investors.

Further, vide letter dated August 18, 2022, Noticee no. 1, who is the investment manager of the Fund has, *inter alia*, stated that no extension was sought by the Fund and thus, the actual term of the Fund was five years. In absence of any documentary evidence to support the contention, the claim made by Noticee no. 2 regarding the extension of the term of the fund cannot be accepted, especially in light of the contrary claim made by Noticee no. 1, i.e. the investment manager of the Fund. In view of the above, I find that the contention made by Noticee no. 2 is untenable and the term of the fund expired on April 06, 2013.

16. As noted above, as per Regulation 23(1)(a) of VCF Regulations, a scheme of a VCF set up as a trust shall be wound up, when the term of the scheme, mentioned in the PPM comes to an end. With respect to the procedural requirements, Regulation 23(3) of the VCF Regulations provides that the trustee of the VCF shall intimate SEBI and the investors of the circumstances leading to the winding up of the Fund or scheme under sub-Regulation 1 of Regulation 23 of the VCF Regulations. Further, Regulation 24(2) of VCF Regulations provides that within three months from the date of intimation of the intention to wind up the scheme under Regulation 23(3) of VCF Regulations, the assets of the scheme shall be liquidated and the proceeds accruing to investors shall be distributed. Thus, on a conjoint reading of the aforesaid provisions of VCF Regulations, it becomes clear that the Scheme of the Fund was required to be wound up after the expiry of the term within three months from the date of intimation by the trustee to SEBI and the investors. As found above, the term of the Scheme of the Fund came to an end on April 06, 2013 and therefore, the Scheme and the Fund was required to be wound up. However, the Fund has not been wound up till date. In view of the above, I find that the Fund has failed to wind up the Scheme as required under Regulation 24(2) read with Regulation 23(1)(a) of the VCF Regulations. Therefore, the Fund is in violation of Regulations 23(1)(a) and 24(2) of the VCF Regulations.

Investment of more than 33.33% of investible funds into Special Purpose Vehicles

17. The SCN has alleged that five out of seven investee companies of the Fund are SPVs which were created specifically for the purpose of a single transaction/project. The total investment in these five SPVs amounted to Rs. 22.11 crore out of total investible funds of Rs. 41.94 crore, thereby constituting 52.72% of the total investible funds. The SCN has alleged that by investing 52.72% of its total investible funds in SPVs, the Fund violated Regulation 12(d)(ii)(e) of the VCF Regulations.

18. SCN alleged that in terms of Regulation 12(d)(ii)(e) of the VCF Regulations, a VCF cannot invest more than 33.33% of the investible funds by way of “*Special Purpose Vehicles which are created by a venture capital fund for the purpose of facilitating or promoting investment in accordance with these [VCF] Regulations.*” Further, such restriction on investment is required to be complied with, by the Fund, at the end of its life cycle.

19. In this regard, Noticee nos. 1, 3, 7 and 8 have submitted that

19.1. As per the PPM issued by the Fund, the primary investment objective of the Fund was to invest in and provide finance to film projects through SPVs set up to exploit individual film revenue.

19.2. The Fund raised Rs.42.70 crore out of which Rs. 41.94 crore were invested in a total of seven investee companies after payment of management fees, expenditures, etc. Out of the seven companies, five were project/film specific SPVs created for individual movies/ projects. The investee companies produced, developed and distributed 10 films between 2008 and 2013. The details of the investment made is tabulated below:

Sr. No.	Particulars	Project Name	Investment Amount (Rs crore)
1.	Stoneman Films Pvt Ltd	Stoneman	2.49
2.	Vistaar Religare Media Limited	Victory, Siddhart, Aamras	9.60
3.	Friday Entertainment Ventures Pvt. Ltd.	Rann	3.32

4.	WSG Film Awasthi Pvt. Ltd.	Happi, Finding Lenny	10.23
5.	Vistaar Religare Entertainment Ltd.	Joneses	8.94
6.	Vistaar Religare Films Ltd.	Office Office	6.96
7.	Mausam Films Ltd.	Mausam	0.40
		Total	41.94

19.3. However, these SPVs are not SPVs as contemplated under the Regulation 12(d)(ii)(e) of the VCF Regulations. Only those SPVs which are created for facilitating or promoting investment by the Fund are covered within the ambit of the aforesaid Regulation. In the present case, the SPVs were not created to facilitate or promote investment by the Fund. The SPVs were created to finance one or multiple film projects. Moreover, these SPVs were not making onward investments. Thus, the SPVs in the present case do not fall within the ambit of the SPVs envisaged under the VCF Regulations.

19.4. The Inspection Report refers to report of the Ashok Lahiri committee where it is stated that "Special Purpose Vehicles (SPVs) are independent, standalone entities specifically set up for the purposes of a single transaction/project.", to buttress the finding that the Fund invested more than 33.33% of investible funds into SPVs. In this regard, it is relevant to note that the report appears to be of an advisory committee which can never override the provisions of the VCF Regulations or expand the meaning of SPVs in the VCF Regulations. In any event, the reliance placed by SEBI on the report is misleading, since, the report at para 2.1.1.4 generally explains SPVs and concludes that "The Committee recommends that SPVs which are mandated for promotion/investment of a VCU may be permitted up to a maximum of 33.33 per cent portion of investible funds". Since the SPVs in the present case were not mandated for promotion or investment of the Fund, the same do not fall within the ambit of the meaning assigned to SPVs in the VCF Regulations.

20. Noticee no. 2 has submitted that the SPVs made investments in other entities which were in the business of producing movies. An entity set up for producing/funding one project invests in another entity which was set up for the purpose of funding production of another project, then the investing company is

then aiding with the production of two projects and therefore, cannot be called an SPV. The inspection report states “it is understood that all companies indicated above were floated by the fund for channelling the fund’s investment and thus, can be considered as SPVs”. The words “can be considered” casts a serious doubt on the conclusiveness of SEBI’s findings on these five entities being SPVs.

21. In this regard, I note that the SCN has alleged that the five companies were set up by the Fund specifically for the purpose of a single transaction/project and hence were SPVs. It is the case of SCN that since Regulation 12(d)(ii)(e) of the VCF Regulations restricts investment only up to 33.33% of investible funds by way of SPVs, therefore, the Fund was in violation of Regulation 12(d)(ii)(e) of the VCF Regulations, as the Fund had invested 52.72% of its total funds in these five SPVs. In this regard, I note that in terms of Regulation 12(d)(i) of the VCF Regulations, at least 66.67% of the investible funds are required to be invested in unlisted equity shares or equity linked instruments of venture capital undertakings (VCUs). Further, Regulation 12(d)(ii)(e) of the VCF Regulations restricts investment only up to 33.33% of investible funds by way of those SPVs which are created by the VCF for the purpose of facilitating or promoting investment in accordance with VCF Regulations. VCU has been defined under Regulation 2(n) of the VCF Regulations which provides as under:

“Venture capital undertaking means a domestic company –

- (i) whose shares are not listed on a recognized stock exchange in India;*
- (ii) which is engaged in the business for providing services, production or manufacture of article or things or does not include such activities or sectors which are specified in the negative list by the Board with the approval of the Central Government by notification in the Official Gazette in this behalf.”*

22. In the present matter, I note that the Fund had invested money in the five companies who were in the business of producing films. These five companies which have been alleged to be SPVs in the SCN, were themselves engaged in the business of producing films rather than further investing the money in the VCUs which would have made them SPVs created for the purpose of facilitating

investments. I note that in terms of Regulation 12 of the VCF Regulations, restriction of investment up to 33.33% of the total investible funds, is in respect of SPVs created for the purpose of facilitating investments and not on all SPVs. Thus, SCN may be right when it terms these five companies as SPVs, however, these companies are not SPVs who were facilitating or promoting investments, so as to attract the restrictions contained in Regulation 12(d)(ii)(e) of the VCF Regulations. Even the SCN does not allege that the SPVs were created for the purpose of promoting or facilitating investments rather SCN alleges that SPVs were created specifically for the purpose of a single transaction/project. Therefore, I agree with the contention raised by Noticee nos. 1, 3, 7 and 8 that the SPVs of the Fund were created not to promote investments but to finance film projects, which was the stated objective of the Fund, as described in the PPM. Therefore, since the said five companies were SPVs which were not facilitating or promoting investment but were undertaking the actual activity envisaged under the PPM, I do not find that the Fund violated Regulation 12(d)(ii)(e) of the VCF Regulations, as alleged in the SCN.

23. Noticee no. 5 has contended that he was made to understand that the investment up to 33% was to be made equivalent to the total fund value i.e. Rs. 200 crores and was not on the drawn value of the fund. Post the initial close, the Fund was unable to generate additional interest from investors, hence, the initial investment crossed the prescribed limit. In this regard, I note that Regulation 12(d)(ii)(e) of VCF Regulations talks about “investible funds”. In terms of Regulation 2(hh), investible funds means corpus of the fund net of expenditure for administration and management of the fund. Thus, corpus of the fund would mean, the funds which are actually contributed to the Fund and not the funds which it intends/disclosed to receive. Because, a fund can invest only that much which it actually possess. I further note that Explanation to Regulation 12(d) provides that the investment conditions stipulated in clause (d) shall be achieved by the end of its life cycle. Thus, assuming the contention of Noticee no. 5 to the effect that it was an impression that permissible investment under Regulation 12(d)(ii)(e) had to be computed *qua* proposed corpus of the Fund, however, at the end of the life

cycle of the Fund, it was clear or known that the Fund had only Rs. 42 Crore as opposed to intended corpus of Rs. 200 crore, and in terms of the aforesaid explanation, limits under Regulation 12(d)(ii)(e) had to be satisfied as a percentage of Rs. 42 crore and not of Rs. 200 crore. In view of this, I find that contention made by Noticee no. 5 regarding the said allegation is untenable. However, violation of Regulation 12(d)(ii)(e) of VCF Regulations is not made out for the reasons discussed in previous para.

Non-redressal of investor complaints & non-submission of periodic reports as required by SEBI

24. The SCN has alleged that complaints were received against the Fund during the inspection period regarding the Fund's inability to liquidate the investments within the tenure and failure in responding to the investor grievances. At the time of inspection, the Fund failed to produce records of complaints received by it and did not provide details of the steps taken to reply to the complainants/redress the complaints. The SCN further alleged that the Fund did not submit the quarterly reports since June 2014 and thus, failed to furnish any information relating to its activity as a VCF, as required by SEBI in terms of SEBI circular dated January 11, 2010. The SCN, therefore, alleged that the Fund is liable for action in terms of Regulation 30(a), 30(d) and 30(f) of the VCF Regulations.

25. The Noticees have not contested the allegations regarding non-redressal of investor complaints and non-submission of quarterly reports, required to be submitted in terms of SEBI circular dated SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010, since June 2014. However, the Noticees have contended that the responsibility of redressing the complaints, maintaining records and filing of periodic reports did not lie with them. Regarding the allegation, I note that at the time of inspection, it was noticed that while complaints were received from individual investors against the Fund through the SEBI Complaint Redress System i.e. SCORES and in writing as well, regarding the Fund's inability to liquidate the investments within the promised tenure and failure to respond to

investor grievances. During the course of inspection, the Fund was advised to submit the compliant register and write up on grievance redressal policy and the steps initiated to redress the complaints of the investors. However, the Fund failed to submit the same. In such a scenario a reasonable inference can be drawn that either such record is not available with the Fund or if available, is not favourable to the Fund. In view of the aforesaid facts, the Fund has failed to maintain record pertaining to complaints and also failed to submit the quarterly reports since June 2014.

Non-maintenance of books and records:

26. The SCN has alleged that there was absence of records w.r.t. details of investments and exits by the Fund. The SCN, therefore, alleged that the Fund failed to ensure maintenance of proper books and records and violated the provisions of Regulation 20(1) of the VCF Regulations.

27. The Noticees have not contested the allegations regarding maintenance of proper books and records. Rather, the respective Noticees have contended that the responsibility to maintain the books and records did not lie with them but the other Noticees. Regarding this allegation, during inspection, the inspection team noted absence of the records w.r.t. details of investments and exits by the Fund. Further, I find that as noted in para 25 above, the Fund was also not maintaining records of the complaints received and the steps taken to resolve. In view of the above, I find that the Fund failed to ensure maintenance of proper books and records, and violated the provisions of Regulation 20(1) of the VCF Regulations.

Role of Noticees in the violations:

28. Before dealing with the role of each of the Noticees, it would be appropriate to give a brief description of each of them in the context of the Fund. I note that the Fund was set up as a trust and Noticee no. 9 was its trustee. Noticee no. 1 was appointed as investment manager of the Fund in terms of investment

management agreement dated February 26, 2008 entered into between Noticee no. 9 and Noticee no. 1. Noticee nos. 2 to 8 are/were directors of Noticee no. 1, at different points of time. In terms of the investment management agreement, the investment manager was appointed to manage the assets of the Fund, for day-to-day management and administrative services to the Fund. The investment management agreement also provides the powers, duties and functions of the investment manager. I note that the investment manager-Noticee no. 1, i.e. VCAL was set up as a 50:50 joint venture between REL and VEVPL. The shareholding ratio was later revised to 74:26, with REL and VEVPL holding 74% and 26%, respectively.

29. With respect to the specific conduct of individual Noticees, I note that in the present case, the Noticees, except Noticee no. 6 have made their respective submissions. While the Noticees have made various contentions, the crux of each of the Noticee's argument is that other Noticee(s) was responsible for violation of regulatory provisions alleged in the SCN. On the one hand, Noticee nos. 1, 3, 7 and 8 have tried to make a case that the control of VCAL and therefore, the control of the Fund was with REL and thus, REL was responsible for the functioning of the Fund and fulfilling the regulatory requirements on behalf of the Fund. On the other hand, Noticee no. 2 and 5, who were nominees of REL on the board of VCAL along with Noticee no. 6, have tried to hold Noticee no. 3, being the managing director of investment manager, responsible for complying with the regulatory requirements and therefore, responsible for alleged violations as well. Noticee no. 9, being the trustee of the fund has contended that the responsibility for non-compliance of applicable provisions of the VCF Regulations lies with Noticee no. 1 and REL.

30. The Fund, in the present case, was registered as VCF with SEBI under VCF Regulations. In terms of Regulation 3 of VCF Regulations, an application for registration as VCF is required to be made in Form A as given in First Schedule to the VCF Regulations. Clause 7 of Para (viii) of said Form A provides that application for VCF shall provide the details of asset management company, if

any. Regulation 11(1) of VCF Regulations provides that a VCF may raise monies from any investor by way of issue of units. Regulation 15 of VCF Regulations provides that a VCF may receive monies for investment in the VCF only through private placement of units. In terms of Regulation 16(1) of VCF Regulations, a VCF receiving monies for investment shall issue a placement memorandum or contribution or subscription agreement, which shall contain details of the terms and conditions subject to which monies are proposed to be raised from investors. In terms of Regulation 17(1) of VCF Regulations, the placement memorandum is required to contain, *inter alia*, details of trustee or trustee company, the details of the fund manager or asset management company, if any, the period of maturity, if any, and the manner, if any, in which the fund shall be wound up. The Fund was registered as VCF with SEBI on July 25, 2008 and raised monies from the investors for its first and only scheme titled "Film Fund" through private placement of units in terms of a PPM dated April 02, 2008. In the PPM dated April 02, 2008, IL&FS Trust Company Limited (now known as Vistra ITCL (India) Limited i.e. Noticee no. 9 was named as the trustee and Vistaar Religare Capital Advisors Limited (now known as VCAL) i.e. Noticee no. 1 was named as the investment manager. In paras 14-27 above, it has been found that the Fund was in violation Regulations 20(1), 23(1)(a) and 24(2) of VCF Regulations and that the Fund has failed to maintain record pertaining to complaints and also failed to submit the quarterly reports since June 2014. Consequently, Noticee no. 1 being investment manager of the Fund and Noticee no. 9 being trustee of the Fund, are liable for violation of Regulations 20(1), 23(1)(a) and 24(2) of VCF Regulations by the Fund and for failure of the Fund to maintain record pertaining to complaints and to submit the quarterly reports since June 2014. Noticee no. 1 is a company and while discussing the liability of the directors of a company, Hon'ble Supreme Court in N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152 held as under:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long

associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

As mentioned above, Noticee no. 2 to 8 are/were directors of the Noticee no. 1, thus, these persons are vicariously liable for the violations for which Noticee no. 1 has been found to be responsible.

Noticee no. 2:

31. Noticee no. 2 has contended that when an offence is committed by a company, the liability is not imposed on all officers of the company *en bloc* and that the liability depends on the role one plays in the affairs of the company and not on designation or status one holds. In this regard, I note that being an artificial juristic person, a company cannot function on its own and it is the board of directors, who take actions on behalf of company. The company functions under the control and supervision of the board of directors. In the present case, VCAL has been found to be in violation of various provisions of VCF Regulations. Noticee no. 3 to 8 are/were directors of VCAL. The Fund was supposed to be wound up in the year 2013 but it is still in existence and has not been wound up. Violations of such nature by VCAL show that these directors did not act with due diligence and the violations are attributable to neglect on the part of these directors and in terms of Section 27(2) of SEBI Act, 1992 and they become liable for the violations committed by VCAL. Factors such as the role and functions assigned to any specific officer or director including whether one was executive or non-executive may be taken into consideration while determining the directions to be issued in the matter. In view of the above, I find that the contention of the Noticee in this regard is misplaced and therefore, untenable.

32. Noticee no. 2 has contended that Shri Sheetal Talwar (i.e. Noticee no. 3) was in charge of day-to-day management of the Company (i.e. VCAL) and it is he who

should be held responsible for any violations by VCAL. He has also referred to clause 4.8 the Shareholders Agreement dated February 26, 2008 to contend that entire board of directors cannot be held responsible for any lapses when VCAL had appointed a Managing Director who was entrusted with a specific role in the functioning of VCAL. Noticee no. 2 further contended that he attended only a few meetings of the board of VCAL and did not attend the investment committee meeting dated December 23, 2008. Regarding this contention, I note that in terms of Clause 4.8 of the shareholders agreement dated February 26, 2008, entered amongst VCAL, REL and VEVPL, day-to-day management of the Noticee no. 1 was to be conducted by the management personnel of VCAL, under the direct control and supervision of the Managing Director i.e. Noticee no. 3. This clause shows that Noticee no. 3 was responsible for the day to day management of VCAL. However, in the present case violation is pertaining to not winding up of the Fund on expiry of its term. This is not a matter pertaining to day to day management of VCAL. A violation by a company may arise out of any act or omission pertaining to its day to day affairs i.e. to say in respect of which board of the company has already taken a decision and execution is left to the executive management of the company or it may arise out any act or omission at the board level. Winding up of the Fund in accordance with VCF Regulations was a matter of the policy decision which was to be taken at the board level. Therefore, even though the day to day management of VCAL was entrusted to Noticee no. 3, however, when the Fund was not wound up upon the expiry of its term it was the responsibility of the board of VCAL to take a decision in this regard. Assuming without admitting that not winding up of the Fund upon expiry of its term was part of the day to day management even then the said Clause 4.8 further provided that Noticee no. 3 shall manage VCAL, under the direct control and supervision of the Board of VCAL. Thus, when the Fund was not wound up upon the expiry of its term it was the responsibility of the board of VCAL to take a decision in this regard. Therefore, the contention of the Noticee no. 2 in this regard is untenable.

33. Noticee no. 2 has also contended that there is no specific finding in the SCN that he was responsible for the alleged acts of VCAL and placed reliance on SAT

orders in the matters of Sayanti Sen v. SEBI (Appeal no. 163 of 2018) dated August 09, 2019, Rahul H Shah & Anr. v. SEBI dated September 15, 2004, Judgements of Hon'ble Supreme Court in the matter of SMS Pharmaceuticals Ltd. V. Neeta Bhalla & Anr (2005) 5 SCC 89 and National Small Industries Corporation Limited v. Harmeet Singh Paintal & Anr. 2010 3 SCC 330. In view of the findings given in paras 30-31 above, I note that the cases relied on by Noticee no. 2, which deals with vicarious liability as provided under Section 27(1) of SEBI Act, 1992 only and do not deal with vicarious liability of directors under Section 27(2) under which the liability of the director-Noticees have been proceeded with in the present order, need not be gone into. I would like to reiterate the observations made by Hon'ble Supreme Court in N. Narayanan case (*supra*), as quoted at para 30 above, in respect of requirement of attribution of specific acts to a director for holding him vicariously liable.

34. Noticee no. 2 has also referred to an order dated May 18, 2022 passed by Adjudicating Officer, SEBI in the matter of Fortis Healthcare Limited wherein he has been exonerated from the charges as he was not in actual and complete control of the relevant company group. As discussed in para 31 and 32 above, Noticee no. 2 has been made a noticee in the present proceedings being a director in VCAL. The fact that Noticee no. 2 was a director in VCAL has not been denied by him. Therefore, a finding in the order relied upon by the Noticee no. 2 to the effect that he was not in control of the relevant company group i.e. Religare is not relevant, for the purposes of determining the liability of Noticee no. 2 in the present proceedings.

35. Noticee no. 2 has also contended that since the term of the Fund was extended by one year and he resigned before the expiry of the revised term, he cannot be held responsible for non-winding up of the Fund. In this regard, as found in para 15 above the term of the Fund expired on April 06, 2013 as no extension of the term, as provided in terms of the PPM, was sought by the investment manager and approved by the requisite majority of investors. I note that Noticee no. 2 continued as director of VCAL till April 02, 2014. Therefore, in the absence of any

extension, Noticee no. 2 is responsible for non-winding up of the Fund and contention of Noticee no. 2 in this regard is untenable.

36. Noticee no. 2 has also contended that when the non-compliance regarding non-submission of quarterly reports occurred from June 2014, he had already resigned as director of VCAL in April 2014. In this regard, I note that violations alleged in the SCN pertains to non-submission of quarterly reports for quarters ending on June, 2014 and onwards. As mentioned above, Noticee no. 2 continued as director of VCAL till April 02, 2014. Therefore, Noticee no. 2 is not liable for the violations regarding non-submission of quarterly reports, after his resignation.

Noticee no. 4:

37. Noticee no. 4 has submitted that he had resigned from the directorship of VCAL sometime in April/May 2008, however, he is unable to locate a copy of his resignation letter. Noticee no. 4 has contended that he did not receive copy of notice, agenda, minutes, resolution of any board meeting and did not participate in any board meeting of VCAL. Therefore, on account of his absence from the board meetings, his directorship should have ended within 2008 itself. In this regard, I note that Noticee no. 4 has been made a Noticee in the SCN on the basis of his directorship of VCAL, as disclosed in the PPM and Annual Report of VCAL for the year 2014-15. I note that the director's report contained in Annual Report for VCAL for FY 2014-15 mentions that Noticee no. 4 resigned w.e.f. July 01, 2014. Noticee no. 4 has not provided any copy of his resignation letter or any other document evidencing severance of his relationship with the company. Therefore, on the one hand his claim of resignation in the year 2008 remains unverified in absence of any corroborating evidence, on the other hand, date of his resignation as mentioned in the SCN stands corroborated by disclosure made in the Annual Report of VCAL for FY 2014-15. Regarding the plea of automatic disqualification upon not attending the board meetings, I note that Annual Returns filed by VCAL with Registrar of Companies shows Noticee no. 4 as a director in VCAL from FY 2008-09 to FY 2014-15. Further, as per annual return for FY 2014-

15 discloses that Noticee no. 4 attended one meeting of the board during the FY 2014-15. There is no material on record to suggest contrary to this disclosure made in the annual return. If it is so, then the claim of Noticee no. 4 that he did not attend any meeting of the board, is incorrect. Further, it is not the case of Noticee no. 4 that upon receipt of the SCN, when he came to know about the fact that he had been shown as director of VCAL till 2014, he has initiated any civil or criminal proceedings against the management of VCAL for wrongly showing him as director in the Annual Report or that he made efforts to obtain documents from registrar of companies, to that effect. In view of the above, I find that the contention of Noticee no. 4 in this regard is not tenable.

Noticee no. 5:

38. Noticee no. 5 has contended that he was a non-executive director on the VCAL board and was not involved in the day-to-day operations of VCAL and have no knowledge or active role in any alleged non-compliance by VCAL. He resigned from the board of VCAL in April 2014 after REL exited VCAL on March 06, 2014 through a share purchase agreement. In terms of clause 7.3 (d) of the said agreement,

“the purchaser [VEVPL] understands that liability arising out of any acts of the Board of the Company and the SPV shall not be attributable to such nominee director appointed by /associated with Seller [REL] and in such an event the Seller have the right to be indemnified against all losses, liabilities, penalties and claims arising from such acts of the Board of the Company and the SPVs.”

39. He has also contended that post exit of REL from the Fund, the responsibility of compliance was in the hands of VCAL, therefore, he cannot be held liable for non-winding up of the Fund on expiry of the term of the Scheme of the Fund. Non-submission of quarterly reports happened after his exit from VCAL and therefore, no liability arises upon him. Further, as per trust deed, the duty of maintaining the books of accounts and filing of reports lied with the trustee. Noticee no. 5 has also contended that no quantifiable gain or unfair advantage accrued to him and no loss was caused to the investors as a result of the violations.

40. In this regard, as discussed above, in the present case the main violation is of not winding up of the Fund on expiry of its term. This is not a matter pertaining to day to day management of VCAL. A violation by a company may arise out of any act or omission pertaining to its day to day affairs i.e. to say in respect of which board of the company has already taken a decision and execution is left to the executive management of the company or it may arise out any act or omission at the board level. Winding up of the Fund in accordance with VCF Regulations was a matter of the policy decision which was to be taken at the board level. Therefore, even though the day to day management of VCAL was not with Noticee no. 5, however, when the Fund was not wound up upon the expiry of its term, it was the responsibility of the board of VCAL to take a decision in this regard. Noticee no. 5 was a director of VCAL when the term of the Scheme of the Fund expired on April 06, 2013. Therefore, the contention of the Noticee no. 5 in this regard is untenable. Further, w.r.t. the contention regarding the right to be indemnified as contained in the share purchase agreement dated March 06, 2014, I find that the same is not relevant for the purpose of these proceedings.

41. Noticee no. 5 has also contended that when the non-compliance regarding non-submission of quarterly reports occurred from June 2014 and he had already resigned as director of VCAL in April 2014, further he has contended that he is not liable for maintenance of books and accounts as the same was to be done by the trustee. In this regard, I note that violations alleged in the SCN pertains to non-submission of quarterly reports for quarters ending on June, 2014 and onwards and the violations regarding non maintenance of books and accounts were alleged as the same were not presented by the Fund at the time of inspection in 2017. As mentioned above, Noticee no. 5 continued as director of VCAL till April 2014. Therefore, Noticee no. 5 is not liable for the violations regarding non-submission of quarterly reports, after his resignation and non-maintenance of books and accounts, noted at the time of inspection of the Fund.

Noticee no. 9:

42. Noticee no. 9 has contended that

42.1. It made all efforts to comply with the duties and obligations but VCAL and their team were highly non-cooperative.

42.2. On several occasions, it received incomplete information and false promises from the investment manager. It has limited authority and therefore, flagged the issues to SEBI.

42.3. In terms of the IMA, the functions were delegated to the investment manager and he was responsible for investment decisions and the trustee has no role. Further, since the investment manager did not file quarterly compliance reports, it was not privy to information regarding real time investment done by the Fund.

42.4. Regarding the investors grievances and non-submission of reports, it followed up with the investment manager and highlighted the matter to SEBI. It was the sponsors, investment manager and its directors and key employees who were responsible for the violations alleged in the SCN and not the trustee.

42.5. Compliance with Regulation 23(1)(a) of the VCF Regulations is subject to the consent of the Investors and Religare Finvest Limited, an entity involved in the governance of the Fund, was creating hurdles for the investment manager in winding up of the Fund. Therefore, the investment manager was unable to wind up the Fund.

42.6. The trustee has not made any gains from the alleged violations nor has the SCN alleged the same and the interest of the investors in the securities market has not been prejudicially affected. The trustee has not even received its fees in the matter.

42.7. Without prejudice, all the alleged violations occurred prior to Vistra Group's acquisition of the trustee and therefore, there is no just lack of intention (*mens rea*) but also *actus reus* on part of the trustee.

43. VCF Regulations enables a company or a trust to carry on any activity as VCF after seeking registration from SEBI. VCF has been defined under Regulation 2(1)(m) of the said regulations as a fund established in the form of a trust or a company including a body corporate and registered under the said regulations which

- I. Has a dedicated pool of capital
- II. Raised in a manner specified in the regulations and
- III. Invests in accordance with the Regulations

In terms of Regulation 11(1) of the VCF Regulations, a VCF may raise monies from any investor, by way of issue of units. In terms of Regulation 15, VCF may receive monies for investment in the VCF only through private placement of its units and in terms of Regulation 12(d) of the VCF Regulations, substantial investment (at least 66.67% of the total corpus) shall be made in VCU, which is defined under Regulation 2(n) of the VCF Regulations. Thus VCF Regulations enable VCFs to raise money from investors through private placement for making investment in VCUs. As the activity involves raising of money from investors, who do not have day-to-day control on the administration or investment decisions of the fund, the regulations allows only trust and corporate structures to register as VCFs for ensuring that the VCF operates in the four corners of the regulations. A trust structure, by its very nature, lends confidence to the investors of VCF as the trustee in accordance with the trust deed ensures compliance with law by the fund. In the present case, the VCF, i.e. Vistaar Religare Media Fund was in the form of a trust wherein Noticee no. 9 was its trustee. The allegation in the SCN, *qua* Noticee no. 9, is not to the effect that it did not make investment decisions in accordance with the regulations or investment decisions turned out to be bad because of its acts or omission. The main violation alleged against the Noticee no. 9 is of non-winding up of the Fund on expiry of its term. Regulation 23(1)(a)

of VCF Regulations unequivocally provides that a VCF set up as a trust when the period of the scheme, if any, mentioned in the PPM is over. It is a matter of fact that the period mentioned in the PPM was five year from the date of initial closing which got over in 2013. It is also a matter of fact that the Fund is still there and it has not been wound up. In such a scenario it was bounden duty of the trustee to ensure that the Fund is wound up as mandated in the law and to do all necessary acts to ensure the same. The contention that it had informed SEBI on numerous occasions regarding non-winding up of the Fund or non-cooperation by investment manager does not absolve Noticee no. 9 from its legal obligation flowing from the trust deed and consequential remedies available in law like bringing civil suit against the investment manager or approaching civil court for winding up the Fund. I note that in terms of Regulation 23(1)(b) of VCF Regulations, a scheme can be wound up if trustee is of the opinion that it should be so wound up. Since in the present case, the Fund was not wound up on expiry of its term, as disclosed in the PPM, Noticee no. 9 being trustee was supposed to proceed under Regulation 23(1)(b) of VCF Regulations which has also not been done and instead Noticee no. 9 suggested to Noticee no. 1 that Noticee no. 1 should proceed under Regulation 23(1)(c) for winding up of the Fund, i.e. seeking approval of the unit holders. As stated above, the present case was the one falling under Regulation 23(1)(a). I note that under Regulation 23(1)(a) no approval from unit holders is required. Thus, defence taken by Noticee nos. 1 and 9 that the Fund could not be wound up as the approval of requisite majority of unit holders could not be obtained, is unjustified. In view of the above, I find that the contentions made by Noticee no. 9 are not tenable. I also note that Noticee no. 9 has contended that all the alleged violations occurred prior to Vistra Group's acquisition of Noticee no. 9 and therefore, there is no just lack of intention (*mens rea*) but also *actus reus* on part of the trustee. In this regard, I note that the contentions to the effect that violations happened under the previous management of Noticee no. 9 seems to be an argument in vain as the Fund has not been wound up even today and the actions which could have been taken by Noticee no. 9, as discussed above, have not been taken even by the new management. Therefore, the said contention of Noticee no. 9 is not tenable.

Noticee nos. 1, 3, 7 and 8:

44. The Noticees have contended that

44.1. the Fund was managed by VCAL which was under the control of REL. VCAL i.e. Noticee no. 1 was set up as a joint venture between VEVPL and REL and it was envisaged that REL would handle regulatory and compliance aspects and VEVPL would handle film production. REL being majority shareholder, holding 74% stake in VCAL was in control of the affairs of the Fund. Representatives of REL were responsible for key functions and the Noticees had no control over these aspects. Even after 2014, when REL exited VCAL, the secretarial and compliance services were to be provided by another REL entity (Finserve Shared Services Limited) in terms of the service agreement signed with VCAL.

44.2. The Noticees do not have access to several documents as the REL entity did not handover the documents and statutory records after expiry of the service agreement in 2017.

44.3. During the inspection period, the Fund was managed by REL and any violations could be addressed only by REL. Due to the outbreak of COVID-19 pandemic, the Fund could not be wound up between March 2020 to March 2022.

44.4. The Noticees made several attempts to liquidate the Fund's assets and wind up the Fund however, the delay was on account of pending income tax cases against investee companies. VCAL requested the trustee to direct winding up of the Fund under Regulations 23 (1)(b) of the VCF Regulations. The trustee advised the Noticees to convene a meeting of the investors and windup the Fund in terms of Regulation 23(1)(c) of the VCF Regulations. Noticee no. 1 engaged an investment banker to conduct valuation of Fund's assets and based on the valuation two offers were received by VCAL. As per the advice

of the trustee, VCAL convened a meeting of the Fund's investors to take their consent to wind up the Fund in terms of Regulation 23(1)(c) but one investor (REL entity) objected to the proposal to liquidate the assets and therefore, the requisite approval of investors was not received for the proposal. VCAL also requested SEBI to issue directions under Regulation 23 of the VCF Regulations to windup the Fund.

45. I note that Noticee no. 1 company is the investment manager of the Fund. Noticee nos. 3, 7 and 8 are the directors of Noticee no. 1 company. Regulation 17 of VCF Regulations requires that the PPM shall, *inter alia*, contain the details of fund manager of asset manager, if any. I note that in the PPM dated April 02, 2008 Noticee no. 1 has been disclosed as the investment manager of the Fund. As investment manager of the Fund, the following were the duties entrusted to the investment manager in terms of the IMA:

“.....7.1.1 identifying potential investment opportunities in Portfolio Companies for investment of the monies of the Contribution Fund, in accordance with the objectives as Laid out in the Private Placement Memorandum
7.1.2 carrying out appraisal and due diligence of such Portfolio Companies and investment proposals;
7.1.3 issuing Drawdown Notices to the Contributors for Drawdown of the Capital Commitments based on the instructions of the Trustee;
7.1.4 issuing Statement of Account or Unit Certificates (if requested) to the Contributors on behalf of the Trustee;
7.1.5 arranging and recording any transfers of Contributors' Interest;
7.1.6 assisting in conducting meetings of the Investment Committee;
7.1.7 making distributions or redemption of any Units;
7.1.8 making recommendations with regard to the extension of the term of the Trust/Schemes;
7.1.9 keeping proper books of account for the Contribution Fund and making the books available to the Trustee at any time;
7.1.10 prudently exercising all due diligence and vigilance in carrying out its duties and in protecting the rights and interest of each Contributor.
7.2 The Investment Manager shall cause the collection of all dividends, interests, properties and other payments due and receivable under the Schemes.

7.3 The Investment Manager shall, in accordance with the provisions of the Private Placement Memorandum, Indenture and the Contribution Agreement, after the decision of the Trustee to disburse any part of the net income of the Scheme for any accrual period, distribute such amount pro rata amongst the Contributors.

7.4 The Investment Manager shall cause payment of any money due to each Contributor by cheque or by demand draft drawn on the Trustee's bankers and cause to be sent to the registered address of each Contributor.

7.5 The Investment Manager shall at all times ensure that the Trust I Schemes assets are segregated from assets of the Investment Manager or any other assets managed by the Investment Manager. The Investment Manager may at its discretion choose to appoint a Custodian to hold all documents evidencing ownership of the assets of the Schemes.

7.6 The Investment Manager shall at all times segregate the assets and liabilities of each Scheme from the assets and liabilities of other Schemes and Trust. The assets held under a Scheme shall be held for the exclusive benefit of the Contributors of that particular Scheme and such assets shall not be subject to the claims of any creditor or any person claiming under any other Scheme.

7.7 The Investment Manager shall at all times conduct its affairs and the affairs of the Schemes in such a manner that no Contributor will have any personal liability with respect to any Scheme liability or obligation.

7.8 The Investment Manager shall devote to each Scheme and to each Contributor, such time and resources as the Investment Manager reasonably determines shall be necessary to conduct the Scheme's affairs in an appropriate manner.....”

The duties mentioned above indicate that investment manager was responsible for almost every aspect of the management of the Fund. In previous paragraphs, it has been found that the Fund was in violation of respective provisions of VCF Regulations. I note that the Fund was set up as a trust. The actions on behalf of the Fund were thus, to be carried out by the trustee. Some of the functions and powers to act on behalf of the Fund were in turn delegated to the investment manager in terms of the IMA dated February 26, 2008. Thus, the trustee and the investment manager were responsible for the conduct of business by the Fund. In view of the same, the contention made in the common reply of Noticee nos. 1, 3, 7 and 8 that even Noticee no. 1 is not responsible for the management of the Fund is not tenable.

46. I also note that the investment manager in the present case is not a natural person but an artificial juristic person, incorporated under the Companies Act, 1956. In this regard, as already noted in previous paragraphs, being an artificial juristic person, a company cannot function on its own and it is the board of directors, who takes actions on behalf of company. The company functions under the control and supervision of the board of directors. By virtue of the powers, functions and duties conferred on the directors and the board of directors, under the Companies Act, 2013, a director can be said to be person who is in charge of and is responsible to the company for the conduct of the business of the company. Therefore, just as other directors of the investment manager, Noticee nos. 3, 7 and 8 being directors of investment manager, are also responsible for the conduct of the investment manager. Being managing director, Noticee no. 3 was given additional responsibilities towards the conduct of business of investment manager. In terms of clause 4.8 of the shareholders' agreement dated February 26, 2008, Noticee no. 3 was appointed as chairman of the board and managing director of investment manager and day-to-day management of the investment manager was to be conducted by the management personnel of investment manager, under the direct control and supervision of the Managing Director i.e. Noticee no. 3. Therefore, being a director and especially being managing director, Noticee no. 3 is responsible for the conduct of business by the investment manager. The respective Noticees have contended that by virtue of holding 74% shares of the investment manager, REL was in control of investment manager and the employees of REL were responsible for statutory compliances related to the Fund flies in the face of the legal provisions, duties of directors as envisaged under the regulatory framework and the explicit clauses in the shareholders' agreement dated February 26, 2008. In this regard, I also note that in terms of the original shareholders' agreement dated February 26, 2008, while the shareholding of the two shareholders was in the proportion of 50:50, however, Noticee no. 3 was to be appointed as managing director. This position regarding appointment of Noticee no. 3 as managing director of the investment manager did not change even when the shareholding ratio between the two shareholders changed vide

the amending agreement dated April 17, 2009, to 74:26 and Noticee no. 3 remained managing director. Further, in terms of clause 4.8 of the shareholders' agreement dated February 26, 2008, the management personnel of the investment manager were working under the supervision of Noticee no. 3. Therefore, even if the said employees were employed with REL, their actions were subject to supervision of Noticee no. 3. The Noticees have contended that even after REL exited from the investment manager, the secretarial compliances were undertaken by an entity of the REL group. I note that in terms of the service agreement entered into amongst the investment manager and Finserve, the investment manager itself has delegated the said functions to the associate of REL and therefore, primary responsibility of compliance remains with IM and it cannot escape the consequence of any shortcoming of the said entity in not adhering to the regulatory requirements.

47. The Noticees have also contended that when the investment manager sought to wind up the Fund by seeking approval of the investors in terms of Regulation 23(1)(c) of the VCF Regulations, its efforts were hampered by an associate of REL who was an investor in the fund. In this regard, I note that the allegation in the SCN is that the Fund was not wound up after the expiry of its term, as required in terms of Regulation 23(1)(a) of the VCF Regulations. I note that the action to wind up the Fund was delayed by the investment manager. Further, this belated action by the investment manager to wind up the Fund in terms of Regulation 23(1)(c) of the VCF Regulations is also misplaced and an eyewash as the investment manager was already required to wind up the fund under Regulation 23(1)(a) of the VCF Regulations and it did not need any approval from the investors for such winding up. Seeking permission of investors to wind up the fund under Regulation 23(1)(c) is nothing but a diversionary tactic of the Noticees to avoid consequences of these proceedings. In view of the above the contention made by the Noticees are untenable.

48. The Noticees have cited various decisions of Hon'ble SAT and Hon'ble Supreme Court in support of their various contentions. Judgments of Hon'ble Supreme

Court in Maksud Saiyed v. State of Gujarat and Others (2007) MANU/SC/7923/2007 [cited in GHCL Employees Stock Option Trust v. Kranti Sinha (2013) 4 SCC 505], Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609, S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Ors., (2007) MANU/SC/ 7125/ 2007, Shailendra Swarup v. The Deputy Director, Enforcement Directorate, (2020) MANU/SC/0544/2020, Chintalapati Srinivasa Raju and Ors. v. Securities and Exchange Board of India, (2018) MANU/SC/0598/2018 have been relied to contend that vicarious liability of directors for the acts of the company must flow from statutory provisions. In this regard, I note that aforesaid observation regarding vicarious liability of the directors was made by the Hon'ble Supreme Court in the context criminal liability and not in the context of civil liability. Moreover, I find that pursuant to amendments made in Section 27 of SEBI Act, 1992 with effect from March 08, 2019, Section 27 of SEBI Act, 1992 provides for vicarious liability in case of both civil and criminal matters. Since, in the present matter, violations continue till the date of this Order, therefore, vicarious liability of directors in the present proceedings is attracted by virtue of amended Section 27 of SEBI Act, 1992.

49. Other set of decisions viz: Sayanti Sen v. SEBI (Appeal no. 163 of 2018) dated August 09, 2019, Rahul H Shah & Anr. v. SEBI dated September 15, 2004 and judgements of Hon'ble Supreme Court in SMS Pharmaceuticals Ltd. v. Neeta Bhalla & Anr (2005) 5 SCC 89 and National Small Industries Corporation Limited v. Harmeet Singh Paintal & Anr. 2010 3 SCC 330, have been cited to contend that to hold a director vicariously liable for the acts of the company, it must be shown that the director was involved in the day to day affairs of the company. The director must be shown to be in charge and responsible to the company for the conduct of the business of the company. In this regard, I note that under sub-section (1) of Section 27 of SEBI Act, 1992, any person who was in charge of and was responsible to the company for the conduct of the business of the company, at the time when the contravention by the company took place, can be held liable for contravention alongwith the company. Whereas, under sub-section (2) of Section 27 of SEBI Act, 1992, *inter alia*, if the contravention by the company is

attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. In the present case, as discussed in para 16 above, the Fund was supposed to be wound up in the year 2013 but it is still in existence has not been wound up. Violations of such nature by VCAL show that these directors did not act with due diligence and the violations are attributable to neglect on the part of these directors and therefore, the directors of VCAL have been found liable by applying the test laid down in Section 27(2) of SEBI Act, 1992. Therefore, the decisions cited by the Noticees are distinguishable as they are based on the interpretation of the provisions of vicarious liability as contained in the provisions *pari materia* to Section 27(1) of SEBI Act, 1992.

50. Another set of decisions viz: State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2005) 4 SCC 530, State of Rajasthan & Anr. Vs. Shamsheer Singh 1985 (Supp) SCC 416 are sought to be relied on by the Noticees particularly, the Noticee no. 1, 3, 7 and 8, to contend that law does not require any body to perform impossible task. It is the contention of the Noticees that since the winding up of the Fund was an impossibility, therefore, they should not be held responsible for non-winding up of the Fund. In this regard, I note that there is no doubt about the law laid down in the decisions relied upon by the Noticees. However, for application of the ratio of these judgments to the present case, it has to be shown on the facts that winding up of the Fund within the time given in the law was in fact an impossible task to perform. As discussed above, the reasons cited by the Noticees for demonstrating such impossibility is pendency of cases with income tax, spread of corona pandemic. These Noticees have not demonstrated or explained as to how pendency of tax litigations rendered the winding up of the Fund impossible. Further, Noticee is relying on Regulation 23(1)(b) to strengthen the argument of impossibility by contending that the trustee did not allow him to wind-up. It is again incomprehensible, as to why investment manager is required to go ahead from the trustee for winding up when in terms of Regulation 23(1)(a), it was his duty to wind up the Fund and winding up under

Regulation 23(1)(a) do not require any approval from trustee or unit holders. Having regard to the provisions of Regulation 23, it is clear that investment manager and its directors were not justified in seeking go ahead from the trustee when it was itself mandated under Regulation 23(1)(a) to wound up the Fund. Therefore, the cases relied upon by the Noticees are not applicable in the facts of the present case.

Noticee no. 6:

51. Noticee no. 6 became a director of VCAL in February 2009 and continued till April, 2014. Noticee no. 6 has not filed any reply in the matter and has not availed the opportunity of hearing. Like Noticee nos. 2 and 5, being director of VCAL during the relevant period, he is responsible for those violations of the Fund for which Noticee no. 1 is responsible.

52. I note that the Noticee no. 1, who is the investment manager of the Fund is a company. Noticee nos. 3, 7 and 8 are the present directors of Noticee no. 1. Noticee no. 3 is the managing director of Noticee no. 1, since its inception. Noticee nos. 7 and 8 became directors of Noticee no. 1 in July 2014 whereas the term of the Fund expired on April 06, 2013. Noticee nos. 2 and 5 became directors of VCAL in February 2008 and continued till April 2014. Noticee no. 6 became director of VCAL in July 2009 and continued till April 2014. Noticee no. 9 is the trustee of the Fund. All these Noticees are responsible for non-winding up of the Scheme of the Fund. Noticee nos. 1, 3, 7, 8 and 9 are responsible for other violations also, viz. non-maintenance of books and records, non-redressal of investor grievance and non-submission of reports to SEBI. I note that as per the Notice dated July 2022 for the meeting of investors dated August 12, 2022 Noticee no. 1 had offered to purchase all the assets of the Fund for a consideration of Rs. 40 lakh.

Directions:

53. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 29 of VCF Regulations, pass the following directions:

- (i) Noticees no. 1, 3, 7, 8 and 9 shall wind up the Scheme/the Fund by providing exit to its investors / unit holders within a maximum period of 6 months from the date of this Order in the following manner:
 - (a) Two separate valuations of all the assets of the Scheme of the Fund shall be obtained from two registered valuers as defined under the Companies (Registered Valuers and Valuation) Rules, 2017;
 - (b) The NAV of the Scheme of the Fund shall be determined on the basis of the higher of the two valuations or forty lakh rupees whichever is higher;
 - (c) Exit to the investors/unit holders shall be provided first, by offering an option to the existing investors / unit holders to take exit by way of in specie distribution of interest / rights / stakes/shares, etc. in the investee companies/projects;
 - (d) The investors / unit holders who do not exercise their option for in specie distribution, shall be given exit on the basis of the NAV determined as per directions stated in paragraph 53(i)(b) above.
 - (e) The entire process of winding up of the Scheme of the Fund and providing exit to the investors / unit holders as per the above directions, shall be completed within a maximum period of 6 months from the date of this Order.
- (ii) The Noticees shall file a report certified by a Chartered Accountant declaring that all the investors/unit holders of the Scheme of the Fund have

been provided an exit and the Fund stands wound up. The said report shall be filed within a period of three weeks after completion of the winding up and exit to the investors/unit holders of the Scheme of the Fund, as directed in 53(i)(a) above.

- (iii) Noticee no. 1 shall not take new assignments as investment manager for a period of 1 year. This direction shall come into force after 45 days from the date of this order.
- (iv) Noticee no. 1 is hereby also restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner, either directly or indirectly, for a period of 1 year from the date of this Order.
- (v) Noticee no. 9, shall not take new assignments as trustee of Alternative Investment Fund of any category, for a period of three months. This direction shall come into force after 45 days from the date of this order.
- (vi) Noticee no. 3 is hereby restrained from associating itself, directly or indirectly with any SEBI registered intermediary including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investors' money in any manner for a period of 1 year from the date of this Order.
- (vii) Noticees no. 7 and 8 are hereby restrained from associating themselves, directly or indirectly with any SEBI registered intermediary including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investors' money in any manner for a period of 1 year from the date of this Order.
- (viii) Noticees nos. 2, 4, 5 and 6 are hereby restrained from associating themselves, directly or indirectly with any SEBI registered intermediary including SEBI registered funds such as Mutual Funds, Alternative

Investment Funds, Portfolio Management Services etc. which deal with investors' money in any manner for a period of 6 months from the date of this Order.

54. This Order comes into force with immediate effect.

55. The direction for winding up and for providing exit to investors/unit holders, as given in para 53(i) above, does not preclude the investors/unit holders of the Fund to pursue other legal remedies available to them under any other law, against the Fund and/or the Noticees regarding their investment or deficiency in service before any appropriate forum of competent jurisdiction.

56. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents to ensure necessary compliance.

Place: Mumbai

Date: April 24, 2023

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA