BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER Ref. No. ORDER/JS/RJ/2025-26/31693-31694]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 19H OF THE DEPOSITORIES ACT, 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Starlog Enterprises Limited	AAACA3293L
2.	Mr. Saket Agarwal	AANPA2136J

(The Noticees are individually referred to by their respective Noticee No. as mentioned above and collectively referred to as 'Noticees')

In the matter of Starlog Enterprises Limited

---

1. Starlog Enterprises Limited (hereinafter referred to as **'SEL'/ 'Noticee No. 1'**) is a company listed on BSE Limited (hereinafter referred to as '**BSE'**).

2. Based on the preliminary examination of complaint received by Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) and financial statements of SEL, a detailed investigation was undertaken by SEBI. In this regard, a forensic auditor was appointed vide letter dated September 23, 2022. The said investigation was carried out for the period FY17 to FY22 (hereinafter referred to as '**IP'/'investigation period'**).

3. It was observed that Mr. Saket Agarwal (hereinafter referred to as **'Noticee No. 2'**) was the managing director of the SEL during the IP. Further, Noticee No. 2 is also the chief executive officer of SEL since September 13, 2017.

4. Pursuant to the investigation, it was alleged in the investigation report (hereinafter referred to as '**IR**') that Noticee No. 1 had violated:
    a. Regulations 4(1)(a), 4(2)(e)(i), 6(1), 24(1), 24A, 33(3), 34 and 48 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR Regulations'**);

b. Regulations 4 (2) (f) and (k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**);
c. Regulation 3 (6) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations'**);
d. SEBI Circular No. SEBI/HO/DDHS/CIR/P/2018/144 dated November 26, 2018 (hereinafter referred to as '**SEBI Circular dated November 26, 2018'**); and
e. Regulations 55A of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 (hereinafter referred to as '**DP Regulations'**).

5. Further, it was alleged that Noticee No. 2 had violated:
   a. Section 27(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**);
   b. Section 21(1) of the Depositories Act, 1996;
   c. Regulations 4(1)(a), 4(2)(e)(i), 6(1), 17(8) read with part B of Schedule II, 24(1), 24A, 33(3), 34 and 48 of the LODR Regulations;
   d. Regulations 4 (2) (f) and (k) of PFUTP Regulations;
   e. Regulation 3 (6) of PIT Regulations;
   f. SEBI Circular dated November 26, 2018; and
   g. Regulation 55A of DP Regulations.

6. In view of the above, SEBI initiated the instant adjudication proceedings against the Noticees.

<u>Appointment of Adjudicating Officer</u>

7. Pursuant to the superannuation of the earlier Adjudicating Officer(hereinafter referred to as '**AO**') who had been appointed so vide communique dated October 15, 2024, the undersigned was appointed as AO in this matter vide communique dated April 04, 2025 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Rules**') and under Section 19H of the Depositories Act, 1996 read with rule 3 of Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, to inquire into and adjudge the aforesaid alleged violations committed by the Noticees.

Show Cause Notice, Reply and Hearing

8. Show Cause Notice Ref. No. SEBI/HO/EAD2/NH/RJ/2024/34197 dated October 30, 2025 (hereinafter referred to as **'SCN'/ 'Notice'**) was issued by the erstwhile AO to the Noticees in terms of rule 4(1) of the Rules read with section 15-I of the SEBI Act and rule 4(1) of Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 read with section 19H of the Depositories Act, 1996 to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, should be not imposed on them in terms of the provisions of the sections 15A(c), 15HA and 15HB of the SEBI Act and section 19A(b) of the Depositories Act, 1996 for the violations alleged to have been committed by the Noticees.

9. The SCN, *inter alia*, alleged the following:

Allegations in the IR against Noticee No. 1

A. Delayed impairment relating to Investment in Alba Asia Private Limited

(i) Starport Logistics Limited (hereinafter referred to as '**Starport'**) was a 100% subsidiary of Noticee No. 1. It was observed that a joint venture by the name of Alba Asia Private Limited (hereinafter referred to as '**Alba Asia'**) was created between Starport and Louis Dreyfus Armateurs SAS, a company registered in France.

(ii) Noticee No. 1 had impaired its investment in Alba Asia in its financial statements for FY20. The reason for impairment as provided in the audited financial statement of Noticee No. 1 for FY20 was as follows:

"The Company had made investment in Alba Asia Private Limited, a joint venture (JV) with a foreign collaborator M/s Louis Dreyfus Armateurs SAS, France of ₹. 7,468.83 lakhs through its subsidiary. The JV has made investments in port businesses through further step down subsidiaries in Government of India owned major ports. The JV and its subsidiaries have been non-operative and have also defaulted in loan repayments. The Company has not received audited financials of the JV for financial years 2017-18 and 2018-19. In view of this uncertainty, the Company has impaired its investment to the extent of Rs. 7,468.83 lakhs which pertains to Starport's holding in the JV."

(iii) In this regard, it was opined in the forensic audit report that the impairment of the investment in Alba Asia should have been done in FY 2018-19 as the conditions for impairment existed in 2018-19 itself.

(iv) In this regard, it is stated in the IR that Noticee No. 2 had resigned from Alba Asia in the February 18, 2019 on account of non-filing of financial statements after FY 2016-17. It is mentioned that the impairment should have been done in FY 2018-19 itself, because as on March 31, 2019, the factors existed that indicated that the impairment testing for investments done in Alba Asia was required to be done as per Ind AS 36.

(v) With respect to Starport, it was observed that the statutory auditor, in the financial statement for FY 19, had reported that as per Ind AS 36 "Impairment of Assets", Starport was required to carry out an impairment study of its investments as on year end and make provisions for any diminution in value of investments. However, it was alleged in the IR that for the aforementioned joint venture, Starport had not carried out an impairment study.

(vi) Further, the statutory auditor, in the financial statement for FY19 of Starport, had reported that:

"…as explained to us, the financial statements of the said joint venture have neither been audited nor approved by the management for financial year ended 31st March, 2018 and 31st March, 2019. In view of this lack of information, we are unable to determine the impact of impairment on the financial statements of the Company."

(vii) It was stated that in view of the lack of information, the statutory auditor was unable to determine the impact of impairment on the financial statements of the Starport. It was stated that the accounts of the subsidiary, Starport, were consolidated with the holding company, i.e., Noticee No. 1, in FY19. In this regard, it was alleged that the financial statement of Noticee No. 1 in the FY19 did not present a true and fair view of the SEL's affairs.

(viii) In terms of regulation 48 of the LODR Regulations, the listed entity shall comply with all the applicable and notified Accounting Standards from time to time. It was alleged that Noticee No. 1 had failed to comply with the Ind AS 36 in relation to impairment for the FY 2018-19. Accordingly, Noticee No. 1 was alleged to have violated regulations 4(1)(a), 4(2)(e)(i), 34 and 48 of the LODR Regulations.

B. <u>Publishing financial statements that did not present a true and fair view of the company's affairs</u>

(ix) It was alleged that the losses of Noticee No. 1 for FY 2018-19 were understated by Rs. 74.69 crore due to non-impairment of investment in Alba Asia. In this context, it was alleged that had Noticee No. 1 impaired the reported losses of Alba Asia for FY 2018-19, the reported loss would have been Rs. 102.72 crore against the loss of Rs. 28.03 crore as mentioned in the financial statement for FY 2018-19.

(x) Accordingly, it was alleged that the non-impairment of the investment in Alba Asia by Noticee No. 1 resulted in the publication of a financial statement for FY 2018-19, which was not true to the extent of non-impairment, thereby misrepresented the true and fair financial position of the company. Thus, it was alleged that Noticee No. 1 violated regulations 4(2)(f) and (k) of PFUTP Regulations.

C. Other Allegations in the IR against Noticee No. 1

(xi) The following other allegations have been leveled against the Noticee No. 1:

a) In terms of regulation 24A of LODR Regulations, every listed entity and its material unlisted subsidiaries has to attach a Secretarial Audit Report with the Annual Report of the listed entity. It was observed that the Noticee No. 1 had three unlisted material subsidiaries, including Starlift Services Private Limited, during the IP. In this regard, it was alleged that the Secretarial Audit Report of the material subsidiary, Starlift Services Private Limited, was not attached with the Annual Report of FY22 of the Noticee No. 1.

b) It was alleged that Noticee No. 1 had not appointed company secretary in FY17 and FY18 in terms of regulation 6(1) of the LODR Regulations.

c) It was alleged that Noticee No. 1 did not appoint an independent director on the board of directors of its three unlisted material subsidiaries, i.e., Starlift Services Private Limited, India Ports & Logistics Private Limited and Dakshin Bharat Gateway Terminal Private Limited, in terms of regulation 24(1) of the LODR Regulations for FY22.

d) It was incumbent on Noticee No. 1 to make the initial disclosure in the capacity of not a large corporate entity in terms of SEBI Circular dated November 26, 2018 on March 31, 2021. However, it was alleged that Noticee had made the disclosure only on July 23, 2021. Accordingly, there was a delay of 84 days on the part of the Noticee No. 1 in the submission of the initial disclosure in terms of SEBI Circular dated November 26, 2018.

e) As per regulation 55A of DP Regulations, the company is required to file a report issued by a practicing company secretary to the stock exchange for the purpose

of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter, within 30 days from the end of the quarter. It is alleged that Noticee No. 1 did not file the report issued by a practicing company secretary to the stock exchange in terms of regulation 55A of the DP Regulations for the quarter ended March 2017.

f) Noticee No. 1 confirmed that it had maintained the structured digital database for FY22 in terms of regulation 3(6) of the PIT Regulations. However, it was found that no system or software, in terms of regulation 3(6) of the PIT Regulations, was maintained by the Noticee No. 1 during the Secretarial Audit for the FY22. In this regard, it was alleged that Noticee No. 1 had failed to maintain proper records in terms of regulation 3(6) of the PIT Regulations.

(xii) Accordingly, Noticee No. 1 was alleged to have violated:

a) Regulations 6(1), 24 (1), 24A and 33(3) of the LODR Regulations;
b) Regulation 55A of the DP Regulations;
c) SEBI Circular dated November 26, 2018; and
d) Regulation 3 (6) of the PIT Regulations.

Allegations in the IR against Noticee No. 2

(xiii) During the IP, Notice No. 2 was the managing director of the Noticee No. 1. Further, Noticee No. 2 had attended all the audit committee meetings of Noticee No. 1 held during FYs 2019-20 to 2021-22.

(xiv) Since Noticee No. 2 was the managing director of the Noticee No. 1 during the IP, the lapses by Noticee No. 1 could not have been possible without his active knowledge and involvement. It was stated that section 27(1) of SEBI Act, *inter alia,* provides that "*where a contravention of any of the provisions of SEBI Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly*".

(xv) In this regard, it was alleged that Noticee No. 2, who was the only executive director on the board of Noticee No. 1, is deemed to be responsible for the non-compliances and violations committed by Noticee No. 1 during the IP.

(xvi) Noticee No. 2, in his capacity as MD and CEO of the Noticee No. 1 had provided the CEO/CFO certification to the board of Noticee No. 1 for FY 2018-19 on the financial statements of the Noticee No. 1. The said CEO/CFO certification stated that the financial statements of Noticee No. 1 were true and fair. It was alleged that Noticee No. 2, despite being aware of the financial statements of the Noticee No. 1 had understated losses, issued a CEO/CFO compliance certificate for FY 2018-19 on the financial statements of Noticee No. 1, stating them to be true and fair.

(xvii) Accordingly, Noticee No. 2 was alleged to have violated:

a) Regulations 4 (1) (a), 4 (2) (e) (i), 6(1), 17 (8) read with Part B of Schedule II, 24 (1), 24A, 33 (3), 34 and 48 of the LODR Regulations read with section 27 (1) of SEBI Act;
b) Regulation 55A of the DP Regulations read with section 21(1) of the Depositories Act, 1996;
c) SEBI Circular dated November 26, 2018 read with section 27 (1) of SEBI Act,
d) Regulations 4 (2) (f) and (k) of the PFUTP Regulations read with section 27 (1) of SEBI Act; and
e) Regulation 3 (6) of the PIT Regulations read with section 27 (1) of SEBI Act.

10. Noticees vide email dated November 13, 2024 sought inspection of documents the same was granted. The ARs of the Noticee conducted an inspection of the documents on January 06, 2025. Pursuant to the completion of the inspection, Noticees were granted another opportunity to submit their reply by January 20, 2025.

11. Noticees vide email dated January 20, 2025 requested for copies of the complaint and the reply received from Axis Bank, Bank of Baroda and Bank of India. The said documents were provided to the Noticees vide email dated January 21, 2025.

12. In response, Noticees submitted their reply vide letter dated April 29, 2025. The relevant extracts of the reply of Noticees are reproduced below:

Allegation (i): Delayed impairment relating to investment in Alba Asia Private Limited allegedly leading to an incorrect depiction of the financials.

(i) *Starport Logistics Limited ("Starport") was a 100% subsidiary of Noticee No. 1. A joint venture by the name of Alba Asia Private Limited ("Alba Asia") was created between Starport and LDA. The SCN states that given that the financial statements of Alba Asia for FY 2018-19 and FY 2019-20 were not received by Starport, Noticee*

No. 1 had impaired its investment in Alba Asia (through Starport) in its financial statements for FY 2019-20. However, the SCN alleges that the impairment of the investment in Alba Asia should have been done in FY 2018-19 as the conditions for impairment existed in FY 2018-19 itself. It is SEBI's case that the reason for resignation of Noticee No. 2 from Alba Asia was that the financial statements for 2018-19 of Alba Asia was not received by Starport, thus the impairment should have been done in FY 2018- 19 itself.

(ii) *The SCN further states that it was observed that the Statutory Auditor of Starport in the financial statement for FY 2018-19 had reported that as per Indian Accounting Standard ("Ind AS") 36 concerning "Impairment of Assets", Starport was required to carry out an impairment study of its investments as on year end and make provisions for any diminution in value of investments. However, in the case of the aforesaid joint venture, Starport had not carried out an impairment study. Furthermore, the SCN states that owing to lack of information, the Statutory Auditor was unable to determine the impact of impairment on the financial statements of Starport. The SCN states that the accounts of the subsidiary, Starport, got consolidated with the holding company i.e., Noticee No. 1, in FY 2018-19 and thus the financial statements of Noticee No. 1 in the FY 2018-19 did not present a true and fair view of Noticee No. 1's affairs. Basis the above, it is alleged that Noticee No. 1 violated Regulation 48 of the LODR Regulations, which mandates a listed company to comply with all the notified accounting standards from time-to-time.*

Preliminary Objection:

(iii) *SEBI lacks jurisdiction to assess violation of accounting standards: Without prejudice to the above, we humbly submit that the jurisdiction to examine an entity's compliance with accounting standards does not vest in SEBI, especially since there already exists a specialised statutory authority to monitor and enforce the compliance with accounting standards and auditing standards, viz. the National Financial Reporting Authority ("NFRA").*

(iv) *NFRA has been constituted in terms of Section 132 of the Companies Act, 2013. The NFRA inter alia discharges the following functions:*

> *"132. Constitution of National Financial Reporting Authority (1)… (2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-- (a) make recommendations to the Central Government on the formulation and laying down of accounting and*

auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be; (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed; (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed."

(v) *Put differently, SEBI cannot proceed against the Noticees for violation of inter alia the LODR Regulations, unless the NFRA has conclusively determined non-compliance, if any, with Ind AS- 36 by Noticee No. 1. In the absence thereof, jurisdictional fact warranting SEBI's examination of Noticee No. 1's compliance with Ind AS-36 does not arise. In this regard, the Hon'ble Supreme Court of India in Arun Kumar and Others v. Union of India and Others [(2007) 1 SCC 732] has held that by erroneously assuming the existence of jurisdictional facts, no authority, such as SEBI in the instant matter can confer upon itself jurisdiction which it otherwise does not possess: "74. A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess."*

"84. From the above decisions, it is clear that existence of "jurisdictional fact" is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of "jurisdictional fact" it can decide the "fact in issue" or "adjudicatory fact" A wrong decision on "fact in issue" or on "adjudicatory fact" would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present." [Emphasis Supplied]

(vi) *Thus, the allegation pertaining to non-compliance with the accounting standards is devoid of any merit and the SCN deserves to be set aside.*

(vii) *The purview of Regulation 48 of the LODR Regulations is limited to listed entities: It is humbly submitted that SEBI erred in invoking Regulation 48 of LODR Regulations qua Noticee No. 1. Regulation 48 of the LODR Regulations mandates listed entities to comply with applicable accounting standards from time-to-time. In the instant case, the SCN has been issued against Noticee No. 1 on account of the alleged non-compliance of accounting standard by Starport. Given that Starport is an unlisted entity, SEBI erred in going ahead with issuing the SCN in respect of alleged non-compliance of accounting standards by an unlisted entity.*

(viii) *The SCN issued in the present matter is vague and abstruse: It is submitted that the SCN issued in the present matter is in the teeth of sacrosanct principles of natural justice. It is submitted that the premise in the SCN for proceeding against the Noticees pertaining to the charge of nonimpairment of investment in Alba Asia is that certain 'factors existed' which indicated that the impairment testing for the said investment was required to be carried out – however, the SCN fails to set out with specificity what such factors were. In fact, at the relevant time, Alba Asia was not only a hugely profitable entity but also completely debt free when Noticee No. 2 resigned in February 2019. Accordingly, it is submitted that there was no reason for impairment of investment in Alba Asia at that point in time.*

(ix) *In support of the above, reliance is placed on the decision of the Hon'ble Supreme Court of India in Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105 wherein the Hon'ble Apex Court observed the following in respect of the contents of a show cause notice:*

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not

satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action. 22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit. We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

(x) *In the instant case, the SCN has failed to state what 'conditions existed' which the Noticees ignored and delayed the impairment exercise in respect of its investment in Alba Asia. Accordingly, it is submitted that the SCN is unclear, vague and in derogation with the sacrosanct principles of natural justice.*

Submissions on Merits:

(xi) *The allegation concerning non-impairment of investments is based on an incorrect fact: It is submitted that the SCN proceeds against the Noticees on an incorrect assumption that Noticee No. 2 resigned from the board of Alba Asia due to non-filing of financial statements after FY 2016-17. However, it is important to clarify that the resignation was not on account of non-filing of financial statements but due to the non-allotment of equity shares to LDA. In fact, for the said reasons, Starport filed a Company Petition before the NCLT Mumbai.*

(xii) *The relevant extracts from the resignation letter of Noticee No. 2 are reproduced below:*

"I draw your attention to letter dated 10th August, 2018, from Mr. Gurpreet Malhi (erstwhile CEO of the Company) addressed to the Board of Directors of ALBA Asia Private Limited ('the Company') regarding allotment of equity shares

against share application money received from Louis Dreyfus Armateurs SAS ('LDA'). In the said letter it was proposed to allot equity shares to LDA against the share application money received from LDA, in order for the Company to be compliant with the regulations under Foreign Exchange Management Act ('FEMA') and the Companies Act, 2013. Pursuant to the said letter, Starport Logistics Limited ('Starport') had given its approval for allotment of shares vide email dated 12th August, 2018. However, the shares are still not allotted to LDA and, therefore, the Company remains non-compliant with the FEMA and Companies Act provisions. As the Company continues to remain non-complaint with the statutory and regulatory provisions regarding allotment of shares to LDA in spite of approvals from Starport, I hereby tender my resignation from the position of Director of ALBA Asia Private Limited with immediate effect."

(xiii) *Therefore, it is submitted that the basis on which the SCN alleges that Noticee No. 2 was aware of factors necessitating the impairment of investments is fundamentally flawed. On this ground alone, the SCN deserves to be set aside. No factors warranting impairment of investment in Alba Asia existed in FY 2018-19: Without prejudice to the submissions made above, it is submitted that no factors existed in FY 2018-19 that necessitated impairment of investments made in Alba Asia. It is humbly submitted that the SCN fails to accurately capture the true facts relating to the financial status of Alba Asia. It is pertinent to mention that the management of Alba Asia shared its unaudited accounts for the purposes of consolidation with Starport vide email dated November 12, 2018. The standalone financial statements shared by the management clearly demonstrated that Alba Asia was earning profits and therefore there was no requirement to conduct an impairment study let alone the requirement of actually impairing the investments. A copy of the email dated November 12, 2018 is annexed hereto as Annexure – C. Further, Noticee No. 2 was himself a Director of Alba Asia till February 2019. Being so, Noticee No. 2 was well aware of the fact that Alba Asia's operations were robust and therefore, there was no requirement of impairing the investments in the FY ending March 2019.*

(xiv) *It is further submitted that the French joint venture partner LDA, continued to infuse funds in Alba Asia to purchase equity shares at a huge premium implicitly recognizing its inherent value. In fact, even in May 2018, LDA injected cash to the tune of INR 5,30,00,000 into Alba Asia. This fact is evident from the letter dated*

August 10, 2018 addressed by Chief Executive Officer of Alba Asia to its Board of Directors, a copy of which is annexed hereto as Annexure – D.

(xv) *The continuous infusion of funds by the French joint venture partner in the shares of Alba Asia at huge premium, reinforces the fact that the value of shares of Alba Asia was very high. Additionally, such infusion of funds in Alba Asia during FY 2018-19 at huge premium further improved the value and net worth of Alba Asia. The consistent infusion of funds by LDA in Alba was also testament to the fact that LDA was committed to keep Alba Asia as a solvent and well capitalized company.*

(xvi) *In this regard, reference is drawn to the relevant paragraph of Ind AS 36 dealing with impairment of Assets:*

> *"Para 9. An entity shall assess at the end of each reporting period whether there is any indication that an asset may be impaired. If any such indication exists, the entity shall estimate the recoverable amount of the asset."*

(xvii) *Paragraphs 12-14 of Ind AS 36 lays down indications which help in determination of whether an impairment loss may have occurred. If any of those indications are present, an entity is required to make a formal estimate of recoverable amount. In respect of the investments made in Alba Asia, the table below analyses each of such indications:*

S. No	Indication	Existence of such indication in FY 2018-19
External sources of information		
1.	*During the period, an asset's market value has declined significantly more than would be expected as a result of the passage of time or normal use*	*No indication in respect of decline in the value (more than expected) of any of the assets of Alba Asia existed as per the knowledge of the Noticees and the subsidiary of SEL. On the contrary, LDA was injecting cash for purchase of equity at premium, which would not have been done if there were a decline in asset value. Even SEBI has not made out any case of decline in the asset value of Alba Asia which could lead to impairment of the investments made by Starport in Alba Asia.*
2.	*Significant changes with an adverse effect on the entity have taken place during the period, or will take place in the near future, in the technological, market, economic or*	*Neither the Noticees nor Starport were aware of any indications demonstrating any adverse effect on Alba Asia due to significant changes in the technological, market,*

	legal environment in which the entity operates or in the market to which an asset is dedicated.	*economic or legal environment in which Alba Asia operates. Even SEBI in the SCN has not identified any such indications.*
3.	*Market interest rates or other market rates of return on investments have increased during the period, and those increases are likely to affect the discount rate used in calculating an asset's value in use and decrease the asset's recoverable amount materially.*	*This factor is not applicable in the facts of the instant case.*
4.	*The carrying amount of the net assets of the entity is more than its market capitalisation.*	*Alba Asia had huge reserves balance and accordingly its net equity remained positive.*
Internal sources of information		
5.	*Evidence is available of obsolescence or physical damage of an asset.*	*No evidence of obsolescence or physical damage of any asset of Alba existed.*
6.	*Significant changes with an adverse effect on the entity have taken place during the period, or are expected to take place in the near future, to the extent to which, or manner in which, an asset is used or is expected to be used. These changes include the asset becoming idle, plans to discontinue or restructure the operation to which an asset belongs, plans to dispose of an asset before the previously expected date, and reassessing the useful life of an asset as finite rather than indefinite.*	*No such indications existed.*
7.	*Evidence is available from internal reporting that indicates that the economic performance of an asset is, or will be, worse than expected.*	*Standalone management accounts for FY 2017-18 received from Alba Asia on November 12, 2018 reflected huge profits in comparison to FY 2016-17, which is in fact a contra indicator for impairment. Additionally, till February 2019, Noticee No. 2 was himself on the Board of Alba Asia. Till then the operations were all running smoothly, and there was no reason to even contemplate impairment of investments in Alba Asia.*

(xviii) *Since there were no indications that impairment loss may have occurred, as a corollary, there was no requirement to make a formal estimate of recoverable*

amount. In any case, as stated above, the indications based on information and documents provided to Starport were quite the opposite, indicating that Alba Asia was making profits and was also debt free even at the time when Noticee No. 2 resigned from its Board.

(xix) *Merely because Noticee No. 1 impaired investments in Alba Asia in FY 2019-20, SEBI with the benefit of hindsight stated that such impairment should have been done in FY 2018-19 as well. However, SEBI fails to appreciate the factors that differentiate the situation in FY 2018-19 visà- vis in FY 2019-20. In respect of FY 2018-19, Starport had received the unaudited financials for FY 2017-18 in November 2018 which reflected sizeable profits. Further, till February 2019, Noticee No. 2 was on the Board of Alba Asia and therefore, was aware of its operations. It is reiterated that the non-filing of audited financial statements was viewed only as procedural lapse. Further, during this period LDA was injecting more funds in Alba Asia at a huge premium. Such infusion of funds in fact increased the net worth of Alba Asia at that point in time. Additionally, Alba Asia had filed its GST returns including Annual Returns up to FY 2018-19. However, it stopped filing GST returns since February 2020. The Noticees crave leave to refer to and reply upon the documents during the course of hearing. Also, Axis Bank with whom the accounts of Alba Asia were maintained, was classified as Standard Asset and was not NPA at any point in time. Despite being aware of the upward trend in performance of Alba Asia, any attempt to impair investments in Alba Asia would have belied logic and invariably resulted in an incorrect representation of the true and fair facts. However, in FY 2019-20, the Noticees decided to impair the investment in Alba Asia as neither the audited financial statements were received, nor Noticee No. 2 was a part of Alba Asia any longer to gauge Alba Asia's true performance. Further, there was no information about further infusion of funds by the LDA as well which could provide any indication to the Noticees. No adjustments were made to the carrying value of investment in FY 2018-19, based on the information available at the relevant time. Continuing the same in FY 2019- 2020, even in the absence of such information, would not have shown a true and fair view of Noticee No. 1's financial position. As a matter of abundant caution, the entire value of investment was impaired in FY 2019-20.*

(xx) *Adequate disclosure given to the investors in FY 2018-19: It is submitted that the charge against the Noticees in the SCN arises from the alleged non-impairment of investments in Alba Asia. However, the SCN fails to acknowledge that even the*

auditor of Noticee No. 1 in its audit report never outlined any concerns in respect of the audited accounts not being true and fair. In any event, a clear disclosure was made in the Annual Report for FY 2018-19, stating that the consolidated financial statements do not reflect the actual position of investments in Alba Asia as on the date of signing of the financial statement. The relevant extracts from the Annual Report of FY 2018-19 are reproduced hereunder:

(b) Alba Asia Private Limited (AAPL)

"Investment in ALBA Asia Private Limited, a Joint Venture between Starport Logistics Limited (a subsidiary of the Company) and Louis Dreyfus Armateurs SAS, is measured as per Equity Method in terms of Ind AS 28. The invesetment is initially measured at cost and the carrying amount is decreased to recognise the Group's share in profit or loss of the joint venture. Accordingly, the carrying value of the investment in AAPL has been reduced by Rs.134,16,58,992 based on unaudited Ind AS consolidated financial statements of AAPL for the year ended 31st March, 2018, which were unapproved by the management of AAPL till the date of signing of the consolidated financial statements of the Company for the year ended 31st March, 2018. Out of the total adjustment of Rs. 134.16 crores, Rs. 100.35 crores was adjusted in the opening Retained Earnings as on 1st April, 2016, while Rs. 18.12 crores and Rs. 15.68 crores were reduced from the carrying value of investment as on 31st March, 2017, and 31st March, 2018, respectively and the losses routed through the profit and loss of the Company.

For financial year 2018-19, the Company has not received financial statements (standalone/consolidated) of AAPL for period ended 31st March, 2019. In absence of these financial statements, the Company has continued with the same balance of investment in AAPL which was appearing in the consolidated financial statements of the Company for year ended 31st March, 2018. Accordingly, the consolidated financial statements of the Company for year ended 31st March, 2019, do not reflect the actual position of investment in AAPL as on that date since the equity method for FY 2018-19 has not been applied. No profit/loss for the FY 2018-19 has been accordingly considered in the consolidated financial statement."

(xxi) *In light of the above, it is submitted that even when the auditor of Noticee No. 1 did not flag any concerns with respect to the investment in Alba Asia, the Noticees in the interest of investors ensured that there is no information asymmetry and adequately informed its stakeholders about true and accurate position with respect to its investment in Alba Asia. Thus, it is submitted that the Noticees throughout acted in the interest of its investors and no wrongdoing ought to be alleged against the Noticees for its investment in Alba Asia.*

Allegation – (ii): The SCN alleges that Noticee No. 1 failed to attach the secretarial audit report of its material subsidiary i.e. Starlift in its Annual Report for FY 2021-22. The SCN further alleges that Noticee No. 1 has not appointed an independent director on the board of directors of its three unlisted material subsidiaries, i.e. Starlift , India Ports & Logistic Private Limited and Dakshin Bharat Gateway Terminal Private Limited in terms of Regulation 24(1) of the LODR Regulations for FY 2021-22.

(xxii) *The SCN alleges that Noticee No. 1 failed to attach the secretarial audit report of its material subsidiary Starlift in the Annual Report for FY 2021-22. It is submitted that*

in view of the second wave of the COVID-19 pandemic, the engagement of secretarial auditor for Starlift during FY 2021-22 was not possible. During such time, the Noticees were not in a position to effectively run their operations in an orderly manner due to the restrictions imposed due to the onset of the pandemic.

(xxiii) *Similarly, it is alleged that the Noticees failed to appoint independent director(s) on the board of three of its material unlisted subsidiaries, namely, IPL, DBGT and Starlift. In respect thereof, it is submitted that the non-appointment of independent directors as alleged in the SCN was on account of the operational difficulties faced by the Noticees due to the onset of the pandemic. Thus, it is submitted that non-compliance, if any, was not intentional and the same ought to be considered by SEBI in the present matter.*

(xxiv) *In this regard, it is pertinent to note that it is a settled principle of law that where the law creates a duty, but a party is disabled from performing such duty without any fault on its part, then the law would in general, excuse such an entity for non-performance, as observed in the case of Raj Kumar Dey v. Tarapada Dey [AIR 1987 SC 2195] and by the Hon'ble Securities Appellate Tribunal in the case of UBS Securities v. SEBI [Appeal No. 97 of 2005, decided on September 9, 2005]. Given that the Noticees were unable to comply with the requirements on account of impossibility, SEBI ought to be lenient in adjudicating the present matter.*

Allegation (iii): The SCN alleges that Noticee No. 1 failed to appoint company secretary in FY 2016-17 and 2017-18 in terms of Regulation 6(1) of the LODR Regulations.

(xxv) *The SCN alleges that Noticee No. 1 failed to appoint a company secretary in FY 2016-2017 and FY 2017-18 in terms of Regulation 6(1) of LODR Regulations. In this regard, it is humbly submitted that at the relevant time Regulation 6(1A) of the LODR Regulations was not in effect. Thus, there was no statutory timeline laid down for filling up the vacancy of compliance officer under the LODR Regulations. As per Section 203 of the Companies Act, 2013, the vacancy in the office of compliance officer was required to be filled in within a period of six months. It is pertinent to mention that from February 17, 2017 to May 24, 2017, Noticee No. 1 was being managed by the IRP appointed by NCLT Mumbai. The management of Noticee No. 1 had no right in any of its operations, let alone appointment of compliance officer. Pursuant to the transition of SEL from the IRP to the present management, Ms. Aditi Shah was appointed as its Compliance Officer with effect from December 01, 2017.*

It is thus submitted that in FY 2017- 18, SEL was in compliance with the relevant laws pertaining to appointment and filling up of vacancy of the compliance officer.

(xxvi) *In respect of the period between April 01, 2016 to February 16, 2017, while Noticee No. 1 made consistent attempts to appoint a competent compliance officer, however, given no suitable candidate was found, the compliance function of SEL for the relevant period was outsourced. It is submitted that the entire purpose of the appointment of a compliance officer is to ensure that Noticee No. 1 remains in compliance with all applicable rules and regulations. Given that Noticee No. 1 by way of outsourcing such responsibilities ensured that it is in compliance with all applicable provisions, it is submitted that such procedural non-compliance ought to be viewed leniently.*

Allegation (iv): The SCN erroneously alleges that Noticee No. 1 failed to comply with the SEBI Circular dated November 26, 2018.

(xxvii) *The SCN alleges that Noticee No. 1 failed to make timely initial disclosure required to be made under the Circular concerning "Fund raising by issuance of Debt Securities by Large Entities" dated November 26, 2018 in respect of large corporate entity. The SCN alleges that such disclosure was made by SEL only on July 23, 2021 i.e., after a delay of 84 days*

(xxviii) *It is respectfully submitted that the said allegation is erroneous and completely based on an incorrect understanding of the requirements of the circular dated November 26, 2018. A bare perusal of the said circular makes it abundantly clear that the said circular is only applicable to listed companies that meet the necessary thresholds set out in paragraph 2.2 thereof. Further, the title of the format of initial disclosure i.e. "Format of the Initial Disclosure to be made by an entity identified as a Large Corporate" also confirms the fact that the disclosure is for an entity that qualifies as a large corporate.*

(xxix) *In light of the above, it is humbly submitted that Noticee No. 1 was not required to make any disclosure under the said circular in the first place. Being so, any allegation that Noticee No. 1 has delayed in making any disclosure in terms of the said circular only goes on to reflect nonapplication of mind in advancing such a charge against Noticee No. 1 in the SCN.*

(xxx) *It is further submitted that the disclosure made by Noticee No. 1 on July 23, 2021 also categorically mentions that the SEBI Circular dated November 26, 2018 is not applicable to it. Despite making such a disclosure, SEBI has gone ahead and made*

unfounded allegations against Noticee No. 1 concerning failure to comply with a circular which does not even apply to it. It is significant to mention that precisely on account of the same reason, BSE Limited, being the stock exchange where the shares of SEL are listed, has also not taken any action against it in this regard. A copy of the disclosure made by SEL on July 23, 2021 is annexed hereto and marked as Annexure – E.

Allegation (v): Non-compliance with the requirement to publish a report by practicing company secretary furnishing details of change in share capital.

(xxxi) *The SCN states that all listed entities are required to file a report issued by a practicing company secretary to the stock exchange for the purpose of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, and the details of the changes in share capital during the quarter, within 30 days from the end of the quarter. SEBI has alleged that Noticee No. 1 has not filed this report for the quarter ending March 2017. In this regard, it is pertinent to mention that on account of a frivolous application preferred by ICICI Bank Limited before the NCLT Mumbai, Noticee No. 1 was admitted into corporate insolvency resolution process on February 17, 2017. On account of the same, an IRP was appointed to manage the affairs of Noticee No. 1 and the management of SEL did not have any ability to oversee the functions/affairs of Noticee No. 1. It is submitted that the current management of SEL challenged the Order of NCLT Mumbai before the Hon'ble NCLAT. The Hon'ble NCLAT vide its order dated May 24, 2017, set aside the Order of NCLT Mumbai. It is thus submitted that during the period between February 17, 2017 till May 24, 2017, SEL was under the control of a court appointed IRP. It is humbly submitted that for the default on part of the IRP to comply with the requirement of filing a certificate of a practicing company secretary, the Noticees ought not to be penalized.*

Allegation (vi): The SCN alleges that the Company failed to maintain the Structured Digital Database.

(xxxii) *The SCN alleges that while Noticee No. 1 confirmed that it has maintained Structured Digital Database ("SDD") for FY 2021-22 in terms of Regulation 3(6) of PIT Regulations, however, no such systems or software was found during the secretarial audit for FY 2021-22. Thereby, it has been alleged that the Noticees violated Regulation 3(6) of the PIT Regulations for not maintaining proper records.*

(xxxiii) *It is submitted that the Noticees did in fact take active steps for implementation of SDD insofar as was possible during the relevant point in time. Needless to add, the time period in question was during the phase when the entire country was crippled due to the 2nd wave of the COVID-19 pandemic. Noticee No. 1 being located in Mumbai was badly hit from the adversities of the pandemic and the accompanying public lockdown. Despite the same, the Noticees endeavored to comply with all applicable rules and regulations, including the requirement of maintaining a SDD, to the extent it was possible. It is submitted that SEL attempted to find out and research on the available SDD tools, for the purposes of meeting the regulatory requirements introduced under the PIT Regulations. However, as a result of the COVID-19 pandemic, Noticee No. 1 was facing operational difficulties in evaluating the efficiency of such software or exploring other alternative software for effectively implementing the SDD.*

(xxxiv) *It is further submitted that SEBI while alleging the non-maintenance of SDD ought to have considered that the requirement to implement an SDD was inserted in the PIT Regulations only from April 01, 2019. Several listed entities like Noticee No. 1 faced difficulties in implementation of the SDD during such time. Analysis of effective tools, procuring the same to maintain an SDD and implementation thereof was time consuming not only for SEL but for various other companies as well. It is pertinent to mention that SEBI itself in the case of non-maintenance of SDD by Hikal Limited and Infosys Limited, closed the matter by issuing administrative warnings. Copies of the disclosure made by Hikal Limited and Infosys Limited in this regard are annexed and marked as Annexure – F.*

(xxxv) *It is humbly submitted that companies of the stature of Infosys Limited, despite being in the IT business, found it difficult to implement SDD, which abundantly displays that implementation thereof was mired by confusion and was time consuming. Further, the administrative warning in the case of Hikal Limited was also for lapses in relation to the SDD as late as in the year 2023. Being so, it is submitted that no penalty ought to be issued against the Noticees, especially in light of the fact that it did purchase InsiderLens LCO Module software and have implemented the same as well subsequently.*

Additional Submissions

(xxxvi) *The Object of inspection is not to impose penalty: It is submitted that the instant proceeding originates from anonymous complaints filed with SEBI alleging*

diversions of fund from SEL. Needless to add, neither the report of the forensic auditor appointed by SEBI nor the SEBI Investigation Report concludes any form of diversion of funds from SEL or fraud on the shareholders of SEL. However, despite the same, the entire process has been converted into an inspection and fault-finding exercise to somehow fasten some liability on the Noticees. It is humbly submitted that it is a settled position of law that the object of conducting inspection of a regulated entity is not to impose penalty, especially in the instances of procedural irregularities, if any. In this regard, reference is drawn to the decision of the Hon'ble Securities Appellate Tribunal ("SAT") in UPSE Securities Limited v. SEBI [Appeal No. 109 of 2011], wherein the following was observed: "5.…the object of carrying out inspection of books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity / deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity."

(xxxvii) *Similarly, in the matter of Religare Securities Limited v. SEBI [Appeal No. 23 of 2011], the Hon'ble SAT held that the purpose of routine inspection is to highlight the irregularities in the system and recommend changes therein; the intent should not be to initiate any kind of punitive action. The relevant portion of Hon'ble SAT's order is set out below for ease of reference: "5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant..."*

(xxxviii) *In addition to the above, the Hon'ble SAT recently in the case of IDBI Trusteeship Services Limited v. SEBI [Appeal No. 186 of 2023] has observed that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. The relevant portion of aforesaid Hon'ble SAT order is set out below for ease of reference: "We may also point out that every irregularity or deficiency noticed during the course of inspection does not call for initiation of*

penalty proceedings. The purpose of inspection is to advise the entity to cure the lapse that have been found. If any serious lapse is discovered, then penalty action can be taken."

(xxxix) *In light of the above, it is submitted that it is well settled that the purpose of conducting an inspection or examination is to identify procedural lapses or irregularities and not to impose penalties. Thus, it is submitted that the Noticees have already taken all possible steps to rectify procedural lapses and SEBI ought to consider the same in adjudicating the present matter.*

(xl) *Without Prejudice, the alleged violations are at best merely technical and venial in nature: Without prejudice to the submissions contained hereinafter, it is submitted that the SCN seeks to penalize the Noticees for technical violations that no longer subsists. In view of the same, reliance is placed on the Hon'ble Securities Appellate Tribunal's order in P.G Electroplast Limited v. SEBI [Appeal No.281 of 2017], whereby it was observed that in cases of venial / technical violations, an authority, exercising its discretion under Section 15J of the SEBI Act would be justified in refusing to impose any penalty.*

(xli) *It is further submitted that the Hon'ble Securities Appellate Tribunal in Cabbot International Corpn. v. SEBI held that where the violation is of technical nature and due to a bona fide error, the Tribunal should not consider imposing heavy penalty and should help in pointing out the defect to the appellant so that it does not recur again and the Tribunal declined to impose any penalty as there was substantial compliance. Notably, the said order of the Hon'ble Tribunal was confirmed by the Hon'ble High Court of Bombay.*

(xlii) *It is humbly submitted that the allegations, at best, merely amount to procedural irregularities. In view thereof, it is submitted that since the alleged violations are technical or venial breach, no gain has been made by the Noticees and the Noticees had no mala fide intent, the facts of the matter do not merit imposition of penalty. In this regard, reliance is placed on SEBI's Ld. WTM's Order In the matter of acquisition of shares of Refex Refrigerants Limited dated February 02, 2017, whereby considering the aforesaid factors, the Ld. WTM disposed the proceedings without any adverse directions against the notice therein observing as under: "13. On an overall assessment of the facts and circumstances of the case, I am inclined to arrive at the following conclusions: • that there is a violation of regulation 11(2) of the Takeover regulations, 1997 by the Noticee; • that the violation is un-intentional and*

not for consolidation • that the violation is technical and venial in nature; and • that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation. 14. In view of the above, in exercise of powers conferred upon me under section 11B of the SEBI Act, 1992, I do not find this to be a fit case warranting a direction as proposed in the show cause notice dated February 26, 2016 and the show cause notice stands disposed accordingly."

(xliii) *It is submitted that even in the instant matter, any non-compliance for a short period of time, resulting in some technical violations, ought to be looked at with leniency, in line with the precedent mentioned above.*

Prayer

(xliv) *In light of the submission made hereinabove, it is prayed that no penalty under Section 15A(c), 15HA and 15HB of the SEBI Act be imposed on the Noticees, as a consequence of the alleged violations which, without prejudice to the aforesaid are non est, or taken at the highest are only technical and venial in nature. Reliance is placed on the Hon'ble Securities Appellate Tribunal's order in P.G Electroplast Limited v. SEBI [Appeal No.281 of 2017] whereby it was observed that in cases of venial / technical violations, an authority, exercising its discretion under Section 15J of the SEBI Act would be justified in refusing to impose any penalty.*

(xlv) *Without prejudice to anything stated hereinabove, it is submitted that in case SEBI decides to levy any penalty on Noticee, it must take into account factors specified in Section 15J of the SEBI Act.*

(xlvi) *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings in the SCN do not allege that Noticees have made any disproportionate gain or gained any unfair advantage on account of the alleged violations. With regard to Clause (b):- "the amount of loss caused to an investor or group of investors as a result of the default": It is submitted that there is no document on record to suggest that any quantifiable loss has been caused to any investor as a result of the allegations levelled in the SCN. With regard to Clause (c):- "the repetitive nature of the default." it is submitted that the alleged violations, if any were not repetitive and thus the same were in isolation, and hence there is no question of repetitive nature of the default.*

(xlvii) *Further, the Hon'ble Supreme Court of India in Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari, [(2019) 5 SCC 90], held that the provisions of Clauses (a), (b) and (c) of Section 15-J are only illustrative in nature and have to be taken into account whenever such circumstances exist. The Hon'ble Supreme Court further held that factors other than those enumerated in Clauses (a), (b) and (c) of Section 15-J can also be considered by the Adjudicating Officer. Therefore, in light of the submissions made out by us hereinabove, including without prejudice that the alleged violations were, taken at the highest only technical/venial in nature and the Noticees are in substantial compliance with the intent of the law, the SCN be revoked and no penalty be imposed on the Noticees.*

13. After receipt of the written reply, in compliance with the principle of natural justice, an opportunity of personal hearing was granted to the Noticees on May 15, 2025. The Noticees were represented by their authorised representatives, Mr. Tomu Francis, Ms. Ankita Roy and Mr. Apoorva Upadhyay for Khaitan & Co on the said date of hearing. Noticees filed their post hearing submissions on May 22, 2025. In the post hearing submissions, the Noticees reiterated the submissions made by them vide letter dated April 29, 2025.

CONSIDERATION OF ISSUES

14. After careful perusal of the material on record, I note that the issues that arise for consideration in the present case are as follow:

I. Whether the Noticee No. 1 delayed impairment relating to investment in Alba Asia Private Limited and thereby violated regulations 4(1)(a), 4(2)(e)(i), 33(3), 34 and 48 of the LODR Regulations?

II. Whether the Noticee No. 1's financial statement of FY19 did not present a true and fair view of the company's affairs and understated the losses and thereby violated regulations 4 (2) (f) and (k) of the PFUTP Regulations?

III. Whether Noticee No. 1 failed to attach Secretarial Audit Report of its material subsidiary, Starlift Services Private Limited with its Annual Report of FY22 and thereby violated regulation 24A of the LODR Regulations?

IV. Whether Noticee No. 1 failed to appoint independent directors in its material subsidiaries in FY22 and thereby violated regulation 24 of the LODR Regulations?

V. Whether Noticee No. 1 failed to appoint company secretary in FYs 17 and 18 and thereby violated regulation 6(1) of the LODR Regulations?

VI. Whether Noticee No. 1 failed to make initial disclosure in the capacity of not a large corporate entity in terms of SEBI Circular dated November 26, 2018 on March 31, 2021 and thereby violated SEBI Circular dated November 26, 2018?

VII. Whether Noticee No. 1 failed to file report issued by a practicing company secretary to the Stock Exchange in terms of regulation 55A of the DP Regulations for the quarter ended March 2017 and thereby violated DP Regulations?

VIII. Whether Noticee No. 1 failed to maintain SDD for FY22 and thereby violated regulation 3(6) of the PIT Regulations?

IX. Whether Noticee No. 2, in his capacity as managing director of the Noticee No. 1, has violated regulations 4 (1) (a), 4 (2) (e) (i), 6(1), 17 (8) read with Part B of Schedule II, 24 (1), 24A, 33 (3), 34 and 48 of the LODR Regulations read with section 27 (1) of SEBI Act, regulation 55A of the DP Regulations read with section 21(1) of the Depositories Act, 1996, SEBI Circular dated November 26, 2018 read with section 27 (1) of SEBI Act, regulations 4 (2) (f) and (k) of the PFUTP Regulations read with section 27 (1) of SEBI Act and regulation 3 (6) of the PIT Regulations read with section 27 (1) of SEBI Act?

X. Does the violation, if any, on the part of Noticees attract a monetary penalty under sections 15A(c), 15HA and 15HB of the SEBI Act and section 19A(b) of the Depositories Act, 1996?

XI. If so, what would be the monetary penalty that can be imposed upon Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act and section 19I of the Depositories Act, 1996?

15. The text of the aforementioned alleged violations, *inter alia*, is read under:

SEBI Act

*"**27.** (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention."

PFUTP Regulations

"4. ….

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

….

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;"

LODR Regulations

"4.*(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*

(a)Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(e)Disclosure and transparency: The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:

(i)Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.

6.*(1) A listed entity shall appoint a qualified company secretary as the compliance officer.*

…

17. *…*

(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

24.*(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.*

Explanation -For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

…

24A. *(1) Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity.*

(2) Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.

33.

….

(3) The listed entity shall submit the financial results in the following manner:

(a)The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b)In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity shall also submit quarterly/year-to-date consolidated financial results

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion:

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(e) The listed entity shall also submit the audited or limited reviewed financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.

(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.

(i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.

(j) The listed entity shall, subsequent to the listing, submit its financial results for the quarter or the financial year immediately succeeding the period for which the financial statements have been disclosed in the offer document for the initial public offer, in accordance with the timeline specified in clause (a) or clause (d) of this sub-regulation, as the case may be, or within 21 days from the date of its listing, whichever is later.

34.(*1) The listed entity shall submit to the stock exchange and publish on its website-*

(a)a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;

(b)in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting.

(2) The annual report shall contain the following:

(a)audited financial statements i.e. balance sheets, profit and loss accounts etc, and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable;

(b)consolidated financial statements audited by its statutory auditors;

(c)cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable;

(d)directors report;

(e)management discussion and analysis report -either as a part of directors report or addition thereto;

(f) for the top one thousand listed entities based on market capitalization, a Business Responsibility and Sustainability Report on the environmental, social and governance disclosures, in the format as may be specified by the Board from time to time:

Provided that the assurance of the Business Responsibility and Sustainability Report Core shall be obtained, with effect from and in the manner as may be specified by the Board from time to time:

Provided further that the listed entities shall also make disclosures and obtain assurance as per the Business Responsibility and Sustainability Report Core for their value chain, with effect from and in the manner as may be specified by the Board from time to time:

Provided further that the remaining listed entities, including the entities which have listed their specified securities on the SME Exchange, may voluntarily disclose the Business Responsibility and Sustainability Report or may voluntarily obtain the assurance of the Business Responsibility and Sustainability Report Core, for themselves or for their value chain, as the case may be.

Explanation-1: For the purpose of this clause:

…

(ii) Business Responsibility and Sustainability Report Core shall comprise of such key performance indicators as may be specified by the Board from time to time;

(iii) "value chain" for the listed entities shall be specified by the Board from time to time.

(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.…

***48.** The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.*

DP Regulations

"55A.*(1) Every issuer shall submit audit report on a quarterly basis, starting from September 30, 2003, to the concerned stock exchanges audited by a qualified Chartered Accountant or a practicing Company Secretary, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and the in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.*

(2) The audit report under sub-regulation (1) shall also give the updated status of the register of members of the issuer and confirm that securities have been dematerialized as per requests within 21 days from the date of receipt of requests by the issuer and where the dematerialization has not been effected within the said stipulated period, the report shall disclose the reasons for such delay.

(3) The issuer shall immediately bring to the notice of the depositories and the stock exchanges, any difference observed in its issued, listed, and the capital held by depositories in dematerialised form."

PIT Regulations

"3. …

(6) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings."

<u>Findings on Preliminary Objections</u>

Whether SEBI has the jurisdiction to initiate the present proceedings?

16. Noticees have contended that SEBI lacks jurisdiction to assess violation of accounting standards as there exists a specialised regulator, National Financial Reporting (hereinafter referred to as '**NFRA**') to monitor and enforce compliance with the accounting and auditing standards. Noticees have further asserted that the determination of a violation of the accounting standard by NFRA is a condition

precedent for SEBI to proceed. Further, Noticees have cited the judgment of the Hon'ble Supreme Court of India in *Arun Kumar and Others v. Union of India*[1] to contend that by erroneously assuming the existence of jurisdictional facts, no authority, such as SEBI in the instant matter, can confer upon itself jurisdiction which it otherwise does not possess.

17. I note that regulations 4 (2)(e) and 48 of the LODR Regulations read as under:

"(e)Disclosure and transparency: The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:

(i)Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure

48.The listed entity shall comply with all the applicable and notified Accounting Standards from time to time."

18. On perusal of the said provisions of LODR Regulations, it is evident that SEBI is well within its right to take steps to ensure compliance of listed entities with the Accounting Standards.

19. In this regard, I would like to place reliance on the order of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of *Oasis Securities v. SEBI*[2] wherein the following was observed:

"…9. As regards allegations of violation of Clause 50 and the various Accounting Standards (3, 18 and 24) it is the contention of the appellant that SEBI has no power to adjudicate on these matters…

16. From a reading of Section 21 of the SCRA as above which states that "such person shall comply with the conditions of the listing agreement" and the language of Clause 50 of the Listing Agreement that "the company will mandatorily comply with the accounting standards issued by ICAI", we do not find any merit in the appellants' submission that SEBI does not have any

[1](2007) 1 SCC 732.
[2]Appeal No. 316 of 2018.

mandate / jurisdiction on ensuring that accounting standards are followed in compliance with the listing obligations.

18. … Similarly, the submission that Clause 50 is not violated because SEBI has no mandate on the accounting standards has no merit. A reading of Clause 50 makes it clear that the stated accounting standards have to be mandatorily followed by a listed entity. Accordingly, we uphold the finding in the impugned order that the appellants have violated Clause 36 and Clause 50, alongwith the stated accounting standards. …"

20. The aforesaid judgement of the Hon'ble SAT further substantiates the view that SEBI has the jurisdiction to initiate action for non-compliance with the applicable accounting standards by listed entities. Therefore, I find that SEBI is not jurisdictionally barred from examining the compliance with accounting standards by listed companies.

21. In this background, I note that section 132 of the Companies Act cannot be read in isolation rather it has to be harmoniously read along with regulation 4(2)(e) and 48 of the LODR Regulations. On a conjoint reading of the said provisions, it is apparent that prior determination by NFRA is not essential for SEBI to take action *qua* non compliance by listed entities with accounting standards in consonance with the LODR Regulations. Further, section 132 of the Companies Act, 2013 in no manner usurp the power of the SEBI to initiate proceedings when it finds the listed entity to be in violation of accounting standards.

22. As it has been established that SEBI is well within its power to deal with the present matter, the judgment of the Hon'ble Supreme Court of India in *Arun Kumar and Others v. Union of India* has no bearing whatsoever in the facts of the present case. Accordingly, I find the reliance placed by the Noticees on the said judgment is misplaced. Therefore, this contention of the Noticees cannot be accepted.

Whether the SCN makes any incorrect assumption regarding the reason for resignation of Noticee No. 2?

23. Noticees submitted that the SCN assumes that Noticee No. 2 resigned from the board of Alba Asia due to non-filing of financial statements after FY17. Noticees stated that the resignation of Noticee No. 2 was not on account of non-filing of financial statements

by Alba Asia, rather it was due to the non-allotment of equity shares to Louis Dreyfus Armateurs SAS, France (hereinafter referred to as '**LDA'**) which according to Noticees has been duly captured in the resignation letter tendered by Noticee No. 2.

24. At the outset, I note that though Noticees have quoted an extract from the resignation letter of Noticee No. 2 relating to his resignation from Alba Asia, the said resignation letter has not been adduced as exhibit by the Noticees.

25. Further, it is pertinent to note that in the course of the forensic audit, Noticees, vide email dated January 23, 2023 (Issue – 10, Merge Set 01 of the Forensic Report which was shared with the Noticees during the course of inspection), had submitted the following regarding resignation of Noticee No. 2 from Alba Asia:

> *"Firstly, it is crucial to note that Mr. Saket Agarwal when he was a director in Alba Asia, actively voiced his concerns and made repeated efforts to persuade the management of Alba & its subsidiaries to prepare & file the financial statements after FY 2016- 17. However, the management of Alba & its subsidiaries did not take necessary action in this regard. Consequently, due to the lack of cooperation and progress, Mr. Saket Agarwal was compelled to resign from his position as director of Alba Asia on February 18, 2019 as noncompliance was mainly on two accounts, (a) Non-filing of Annual Returns since FY 2017 & (b) Non allotment of shares equivalent to capital injection by LDA. Such Non-Compliances would have led to disqualification of Mr. Saket Agarwal u/s 164(2) of Companies Act, 2013.*
>
> *As an investment intermediary, Alba Asia received funds from Starport and LDA, subsequently invested those funds in its subsidiaries. Whilst it is true that audited financial statements were filed until FY 2016-17, it is important to note that the non- availability of financial statements beyond this period does not imply any impropriety on the part of Starlog or Starport. The responsibility for filing financial statements rests with the management of Alba & its subsidiaries. Admittedly the management of Alba is the French directors nominated by LDA. The understanding of Forensic Auditor that Mr. Saket Agarwal could have accessed the books of account till date of his resignation is incorrect. Mr. Saket Agarwal resigned on 18.02.2019 which is admitted by the Forensic Auditor. Prior to the resignation of Mr. Saket Agarwal on 18.02.2019, Alba and its*

subsidiaries did not prepare the financial statements for FY 2018. It was for this reason that Mr. Saket Agarwal resigned on 18.02.2019. Thereafter (i.e. after 18.02.2019), Mr. Saket Agarwal is no longer a director and therefore cannot have access to any data including books of accounts of the Company. The reference to sub-section (3) of section 128, which allows inspection of records by directors; does not apply to Mr. Saket Agarwal as he is not a director in Alba and its subsidiaries since 2019. The Forensic Auditor is within his rights to seek information about Alba and its subsidiaries from the management of respective companies directly." (Emphasis Supplied)

26. In this context, I note that Noticees have not raised any contention *qua* the veracity of the forensic audit report or the submissions made by them during the forensic audit.

27. Therefore, I note that the contradictions and inconsistencies in the submission of Noticees along with the lack of supporting material undermine the averment of Noticees that the resignation of Noticee No. 1 was only due to the non-allotment of equity shares to LDA. Consequently, it is apparent that the SCN makes no assumptions regarding the resignation of Noticee No. 2 from Alba Asia rather, it is based on the submission of Noticees during the course of the forensic audit. Hence, it is not proper on the part of Noticees to contend that SCN makes an incorrect assumption regarding the reason for the resignation of Noticee No. 2 from Alba Asia.

28. Accordingly, I find that inconsistent positions adopted by the Noticees render the present contention unsustainable in law.

Whether the SCN is vague?

29. Noticees argued that the SCN vaguely states that certain 'factors existed' which indicated that the impairment for the said investment was required to be carried out. However, Noticees contended that SCN fails to clarify what such factors were.

30. In this regard, it is crucial to take note of the following extract of SCN:

"9. In this regard, it was noted in the IR that the Noticee No. 1 had impaired its investment in Alba Asia in its financial statements for FY 2019-20. The reason for impairment as provided in the audited financial statement of Noticee No. 1 for FY 2019-20 was as follows:

"The Company had made investment in Alba Asia Private Limited, a joint venture (JV) with a foreign collaborator M/s Louis Dreyfus Armateurs SAS, France of ₹. 7,468.83 lakhs through its subsidiary. The JV has made investments in port businesses through further step down subsidiaries in Government of India owned major ports. The JV and its subsidiaries have been non-operative and have also defaulted in loan repayments. The Company has not received audited financials of the JV for financial years 2017-18 and 2018-19. In view of this uncertainty, the Company has impaired its investment to the extent of Rs. 7,468.83 lakhs which pertains to Starport's holding in the JV."

10. *In this regard, it was opined in the said forensic audit report that the impairment of the investment in Alba Asia should have been done in FY 2018-19 as the conditions for impairment existed in 2018-19 itself."*

31. From the aforesaid, it is evident that issue at hand pertains to whether the impairment of the investment in Alba Asia Private Limited (hereinafter referred to as '**Alba Asia'**) by Noticee No. 1 should have been done in FY19 as the conditions, which formed basis for impairment subsequently, existed in FY19 itself. Adding to that, I note that Noticees have not disputed the reason for the impairment as mentioned in the audited financial statement of Noticee No. 1 for FY20.

32. In this context, I note that the judgments cited by the Noticee would not apply to the extant matter, as the SCN clearly lays out the allegations and provides details thereof, including supporting documents.

33. Therefore, the instant submission of the Noticees cannot be accepted.

Whether regulation 48 of the LODR Regulations can be invoked in the present case?

34. Noticees have argued that SEBI erred in invoking regulation 48 of LODR Regulations, which is applicable to listed entities for the alleged non-compliance of the accounting standard by Starport Logistics Limited (hereinafter referred to as '**Starport'**), an unlisted entity.

35. I note that Starport was a 100% subsidiary of the Noticee No. 1. Alba Asia was a joint venture between Starport and Louis Dreyfus Armateurs SAS, France (hereinafter referred to as '**LDA'**).

36. The moot issue in the present case, *inter alia,* pertains to non-impairment of Noticee No. 1's investment in Alba Asia in FY19 when the conditions for impairment existed in FY19 itself. Further, it has been alleged that as the impairment was not undertaken in FY19, the losses of Noticee No. 1 for FY19 were understated by Rs. 74.69 crore. Hence, it is evident that the violations alleged in the SCN have a clear nexus with the accounting standards applied by Noticee No. 1.

37. Therefore, the instant submission of the Noticees lacks merit and hence, cannot be accepted.

Determination of the Issues

I. Whether the Noticee No. 1 delayed impairment relating to investment in Alba Asia Private Limited and thereby violated regulations 4(1)(a), 4(2)(e)(i), 33(3), 34 and 48 of the LODR Regulations?

II. Whether the Noticee No. 1's financial statement of FY19 did not present a true and fair view of the company's affairs and understated the losses and thereby violated regulations 4 (2) (f) and (k) of the PFUTP Regulations ?

38. It was alleged in the SCN that the impairment of Noticee No. 1's investment in Alba Asia which was done in FY20 should have been done in FY19, as the conditions for impairment existed in FY19 itself.

39. At the outset, I note that Noticees has not disputed the conditions for impairment which has been mentioned by the statutory auditor in the audited financial statement of Noticee No. 1 for FY20. In this regard, the recital of the opinion of the statutory auditor in the audited financial statement of Noticee No. 1 for FY20 is given below:

> "*The Company had made investment in Alba Asia Private Limited, a joint venture (JV) with a foreign collaborator M/s Louis Dreyfus Armateurs SAS, France of ₹. 7,468.83 lakhs through its subsidiary. The JV has made investments in port businesses through further step down subsidiaries in Government of India owned major ports. The JV and its subsidiaries have been non-operative and have also defaulted in loan repayments. The Company has not received audited financials*

of the JV for financial years 2017-18 and 2018-19. In view of this uncertainty, the Company has impaired its investment to the extent of ₹. 7,468.83 lakhs which pertains to Starport's holding in the JV."

40. In their response, Noticees have contended that no factors existed in FY19 that necessitated impairment of investments made in Alba Asia rather positive factors existed which demonstrated otherwise. Noticees contended that such factors include: (a) the accounts shared by Alba Asia in November 2018 clearly demonstrated that it was earning profits; (b) Noticee No. 2 was himself a director of Alba Asia till February 2019. Being so, Noticee No. 2 was well aware of the fact that Alba Asia's operations were robust; (c) LDA implicitly recognised the inherent value of Alba Asia and consequently infused funds to the tune of INR 5,30,00,000 into Alba Asia to acquire equity at a huge premium in May 2018; (d) Alba Asia continued to file its GST Returns till FY19. These contentions of the Noticees are addressed in the following paragraphs for brevity.

41. Firstly, Noticees have argued that the financial accounts were shared by Alba Asia on November 12, 2018 which clearly demonstrated that it was earning profits. In this regard, I note that Noticees have merely provided a copy of the email November 12, 2018 without providing the purported attachment named "AAPL Financial – Mar 18_V3" which allegedly contained the unaudited financials for FY18. In the absence of the supporting document being provided, no inference regarding Alba Asia being in profit can be drawn. Moreover, it is also an admitted fact that the said accounts referred to in the said email dated November 12, 2018 were unaudited financial accounts and were not even approved by the concerned management[3]. Therefore, any reliance placed on such unaudited and unapproved financial statements is specious. Further, it is pertinent to highlight that during the course of the forensic audit Noticees had submitted the following *qua* the receipt of financials from Alba Asia post 2017 that: *"We are not receiving any data from Alba Asia Private Limited beyond FY 2017 and no data is uploaded on the MCA website beyond FY 2017"*[4]. Therefore, it is apparent that Noticees for the reasons best known to them had not shared the said email dated November 12, 2018 with the forensic auditor and suddenly deemed it proper to place reliance on such document. However, without the attachment that could have proved

[3] Comments of the Statutory Auditor in their report for FY 2018-19.
[4] Letter of Noticee No. 1 dated October 08, 2022 (merge Set 1, 438).

the veracity of the claim. In light of the foregoing, it is noted that it cannot be said that Alba Asia was in profit based on the email dated November 12, 2018.

42. Further, Noticees have asserted that as Noticee No. 2 was the director of Alba Asia till February 2019, he was well aware of the fact that Alba Asia's operations were robust. In this regard, I note that Noticees, except for assertion in general terms, have not provided any credible evidence in support of their submission. I note that a bare assertion without any supportive evidence/documents cannot be accepted as a credible explanation. Therefore, in the absence of any supporting documents, it cannot be discerned as to what material made Noticee No. 2 believe about the robustness of the operations of Alba Asia when the facts pointed otherwise. Here, it is important to take note of the email dated January 23, 2023 of Noticees to the forensic auditor:

> *"The understanding of Forensic Auditor that Mr. Saket Agarwal could have accessed the books of account till date of his resignation is incorrect. Mr. Saket Agarwal resigned on 18.02.2019 which is admitted by the Forensic Auditor. Prior to the resignation of Mr. Saket Agarwal on 18.02.2019, Alba and its subsidiaries did not prepare the financial statements for FY 2018. It was for this reason that Mr. Saket Agarwal resigned on 18.02.2019."*

Consequently, this submission of the Noticees appears to be an afterthought and hence, cannot be accepted.

43. Furthermore, Noticees have argued that LDA implicitly recognised the inherent value of Alba Asia and consequently infused funds to the tune of Rs. 5,30,00,000 into Alba Asia to acquire equity at a huge premium in May 2018. In this regard, it is noted that the nominal value of the share allocated to LDA post the infusion (post January 23, 2015) has not been provided by the Noticees. In the absence of the said data, it cannot be discerned whether the investment by LDA was at premium or not. *Arguendo*, even if the LDA had infused funds at a huge premium does not guarantee the profitability of Alba Asia. It is a fact that the extant law does not prohibit a loss making company from allotting shares at a premium under certain circumstances. It is also evident that post the receipt of the infusion amounts from LDA in Alba Asia, shares were not allocated to LDA. Therefore, the instant contention of the Noticees lacks merit and hence, cannot be accepted.

44. With respect to the submission of Noticees that Alba Asia continued to file its GST returns till FY19, I note that the Noticees have failed to adduce any material including, the GST returns to substantiate their contention. Moreover, it is noted that Noticees had taken an opposite stand during the forensic audit. In the course of the forensic audit, Noticees submitted the following regarding GST returns filed by Alba Asia: *"… Moreover, the entire management of the company rests with the French Directors (attached Master Data from MCA website – Exhibit - 3). As such we do not have access to the GST Returns maintained by Alba and its subsidiaries. …".* I find that no explanation or justification has been forthcoming from the reply of the Noticees regarding this contradiction. Hence, the present contention of the Noticees, being unsubstantiated and inconsistent, cannot be accepted.

45. In view of the discussions in preceding paragraphs, I note that Noticees have failed to establish that positive factors existed in FY19 that did not necessitate impairment of investments made by Noticee No. 1 in Alba Asia.

46. In this context, I proceed to analyze whether the factors for impairment mentioned in the financial statement of FY20 were existing in FY19.

47. Noticee No. 2 had resigned from the position of director of Alba Asia on February 18, 2019. As noted above, one of the primary reason for the resignation of the Noticee No. 2 was the non-filing of Annual Returns since FY17 by Alba Asia. In this regard, I take note of Noticees's email dated January 23, 2023 (Issue – 10, Merge Set 01 of the forensic audit report which was shared with the Noticees during the course of inspection) wherein it was stated: *"Firstly, it is crucial to note that Mr. Saket Agarwal when he was a director in Alba Asia, actively voiced his concerns and made repeated efforts to persuade the management of Alba & its subsidiaries to prepare & file the financial statements after FY 2016- 17. However, the management of Alba & its subsidiaries did not take necessary action in this regard. Consequently, due to the lack of cooperation and progress, Mr. Saket Agarwal was compelled to resign from his position as director of Alba Asia on February 18, 2019 as noncompliance was mainly on two accounts, (a) Non-filing of Annual Returns since FY 2017…."*.(Emphasis supplied)

48. Adding to that, it is crucial to take note of the following extract of the forensic audit report: *"Further it is observed that in immediate next financial year, the management of SEL claims that Alba Asia ceased to carry out its operations as the financial statements are not filed from FY 2017- 18 onwards, nor the same have been provided to forensic auditor by the management of the company and non-operative in FY 2017-18 & 2018- 19 and on account of this reason, the total investments amounting to INR 185.94 Crores have been impaired/written off in FY 2019-20."* Therefore, it is evident that Alba Asia was non-operative from FY18 onwards.

49. Furthermore, the statutory auditor of Starport in the financial statement for FY19 had stated that as per Ind AS 36 "Impairment of Assets", Starport was required to carry out an impairment study of its investments as on year end and make provisions for any diminution in value of investments for Alba Asia. Further, the said auditor stated as under:

> *"…as explained to us, the financial statements of the said joint venture have neither been audited nor approved by the management for financial year ended 31st March, 2018 and 31st March, 2019. In view of this lack of information, we are unable to determine the impact of impairment on the financial statements of the Company."* (Emphasis supplied)

50. It is a fact that despite these observations of the statutory auditor of Starport, the impairment study was not carried out by Noticee No. 1. These facts gain more importance considering the fact that Starport was a wholly owned subsidiary of Noticee No. 1 and the accounts of Starport were consolidated with the accounts of Noticee No. 1.

51. Noticees have also contended that none of the indicators mentioned in paragraphs 12-14 of Ind AS 36 which help in the determination of whether an impairment loss may have occurred, were present in FY19 for Alba Asia. In this regard, I note that the issue here deals with whether the impairment of the investment in Alba Asia by Noticee No. 1 should have been done in FY19 as the conditions, which formed the basis for impairment subsequently, existed in FY19 itself. I note that the Noticees have not disputed the conditions for impairment which has been mentioned by the statutory auditor in the audited financial statement of Noticee No. 1 for FY20. As the Noticees have not disputed the indicators mentioned by the statutory auditor in the audited financial statement of Noticee No. 1 for FY20, it is not open for the Noticees to contend

that the indicators that help in the determination of whether an impairment loss may have occurred were absent in FY19 for Alba Asia. Even otherwise, I note that factors, viz. non-filing of annual report, resignation of Noticee No. 2, Alba Asia being non-operative were in existence in FY19 which indicates that significant changes with an adverse effect on for Alba Asia had taken place during the period. Further, the non-preparation of financial statements of Alba Asia and the consequent need for impairment was highlighted by the statutory auditor of Starport in the financial statement for FY19.

52. Therefore, it is apparent that the factors/indicators, which formed the basis of impairment in FY20 and which have not been contested by the Noticees, were present in FY19 itself. Hence, it was incumbent on the Noticee No. 1 to comply with the Ind AS 36 in relation to impairment for investment made in Alba Asia in the FY19 which admittedly was not undertaken by the Noticee No. 1. In this regard, I take note of the order of the NFRA in the matter of *Santosh Deshmukh, Khandelwal Kakani and Co.*[5] wherein it was held as under:

> *"… Para 9 of Ind AS 36, Impairment of Assets, requires that an entity shall assess at the end of each reporting period whether there is any indication that an asset may be impaired. If any such indication exists, the entity shall estimate the recoverable amount of the asset and shall impair the assets with the difference of its carrying amount over recoverable amount. …"*

53. Noticees have stated that SCN fails to acknowledge that even the auditor of Noticee No. 1 in its audit report never outlined any concerns in respect of the audited accounts not being true and fair. I note that any failure of the statutory auditors to ensure that Noticee No. 1's financial statements were true and fair would not absolve the Noticees from their alleged infraction. The primary responsibility under the LODR Regulations of ensuring that the financial statements give a true and fair view is on the listed company. Therefore, this contention of the Noticees is bereft of any merit.

54. The Noticees have further contended that a clear disclosure was made in the Annual Report for FY19 stating that the consolidated financial statements do not reflect the actual position of investments in Alba Asia as on the date of signing of the financial statement. In this regard, I note that the concerned auditor in its report for the FY19 had stated the following:

[5] 09.09.2024 - NFRA

"Investment in ALBA Asia Private Limited, a Joint Venture between Starport Logistics Limited (a subsidiary of the Company) and Louis Dreyfus Armateurs SAS, is measured as per Equity Method in terms of Ind AS 28. The invesetment is initially measured at cost and the carrying amount is decreased to recognise the Group's share in profit or loss of the joint venture. Accordingly, the carrying value of the investment in AAPL has been reduced by Rs.134,16,58,992 based on unaudited Ind AS consolidated financial statements of AAPL for the year ended 31st March, 2018, which were unapproved by the management of AAPL till the date of signing of the consolidated financial statements of the Company for the year ended 31st March, 2018. Out of the total adjustment of Rs. 134.16 crores, Rs. 100.35 crores was adjusted in the opening Retained Earnings as on 1st April, 2016, while Rs. 18.12 crores and Rs. 15.68 crores were reduced from the carrying value of investment as on 31st March, 2017, and 31st March, 2018, respectively and the losses routed through the profit and loss of the Company.
For financial year 2018-19, the Company has not received financial statements (standalone/consolidated) of AAPL for period ended 31st March, 2019. In absence of these financial statements, the Company has continued with the same balance of investment in AAPL which was appearing in the consolidated financial statements of the Company for year ended 31st March, 2018. Accordingly, the consolidated financial statements of the Company for year ended 31st March, 2019, do not reflect the actual position of investment in AAPL as on that date since the equity method for FY 2018-19 has not been applied. No profit/loss for the FY 2018-19 has been accordingly considered in the consolidated financial statement."
(Emphasis supplied)

55. Hence, I note that in the absence of any quantitative information about the carrying amount, fair value, recoverable value or impairment loss, if any, the financial impact of the above on the financial statements of the Starlog was not ascertainable. The above said disclosure appears to be ambiguous and obscures relevant and material information, therefore, the abovementioned information mentioned in the FY19 does not help the users with such attributes that could reasonably be expected to be influenced in making economic decisions. Further, I find that while recognising the Noticee No. 1's shares in profit or loss of the joint venture (Alba Asia), Noticee No. 1 reduced the carrying value of the investment in Alba Asia in FY18 based on unaudited Ind AS consolidated financial statements of AAPL for the year ended 31st March, 2018, which were unapproved by the management of AAPL. However, when Noticee No. 1 did not receive financial statements of Alba Asia in FY19, it deemed appropriate to continue with *"the same balance of investment in AAPL which was appearing in the consolidated financial statements of the Company for year ended 31st March, 2018"* despite auditor of Starport stating in the financial statement for FY19 that Starport was required to carry out an impairment study of its investments as on year end and make provisions for any diminution in value of investments for Alba Asia and Noticee No. 2's

resignation. Therefore, despite there being clear indications *qua* impairment, Noticee No. 1, for reasons best known to them, refrained from undertaking any impairment.

56. Based on the foregoing discussions, I find that the impairment of Noticee No. 1's investment in Alba Asia should have been undertaken in FY19, as the factors for impairment existed in FY19 itself.

57. In light of the foregoing, I conclude that the Noticee No. 1 has violated regulations 4(1)(a), 4(2)(e)(i), 33(3), 34 and 48 of the LODR Regulations.

Publishing financial statements which do not present a true and fair view of the company's affairs

58. It was alleged that the losses of Noticee No. 1 for FY19 were understated by Rs. 74.69 crore due to non-impairment of investment in Alba Asia.

59. As noted in the previous issue, Noticee No. 1 had not impaired the investment made in Alba Asia in FY19 when it was supposed to be undertaken. Had Noticee No. 1 undertaken impairment, the reported losses of Noticee No. 1 for FY19, the reported loss would have been Rs. 102.72 crore against the loss of Rs. 28.03 crore as mentioned in the financial statement for FY19.

60. Therefore, non-impairment of the said investment resulted in the publication of the financial statement of Noticee No. 1 which was not true to the extent of non-impairment for the FY19, thereby misrepresenting to true and fair financial position of Noticee No. 1.

61. Accordingly, it is established that the Noticee No. 1 has violated regulations 4 (2) (f) and (k) of the PFUTP Regulations.

III. Whether Noticee No. 1 failed to attach Secretarial Audit Report of its material subsidiary, Starlift Services Private Limited with its Annual Report of FY22 and thereby violated regulation 24A of the LODR Regulations?

IV. Whether Noticee No. 1 failed to appoint independent directors in its material subsidiaries in FY22 and thereby violated regulation 24 of the LODR Regulations?

62. It was alleged that the Secretarial Audit Report of the material subsidiary, Starlift Services Private Limited, was not attached with the Annual Report of FY22 of the Noticee No. 1. Further, it was alleged that Noticee No. 1 has not appointed an independent director on the board of directors of its three unlisted material subsidiaries, i.e., Starlift Services Private Limited, India Ports & Logistics Private Limited and Dakshin Bharat Gateway Terminal Private Limited, in terms of Regulation 24(1) of the LODR Regulations for FY22.

63. Noticee No. 1 has acknowledged its failure to attach the Secretarial Audit Report of the material subsidiary, Starlift Services Private Limited with the Annual Report of FY22 and to appoint an independent director on the board of directors of its three unlisted material subsidiaries for FY22. In this regard, Noticees have attributed the lapses to the second wave of the COVID-19 pandemic. Here, I note that the second wave of COVID-19 was not prevalent for the entire duration of FY22. It is a fact that even after the pandemic-related restrictions had ceased, no steps were undertaken by the Noticees to the ensure Secretarial Audit Report of the material subsidiary, Starlift Services Private Limited, was made available or an independent director was appointed on the board of directors of its three unlisted material subsidiaries. Thus, this contention of the Noticees is not accepted.

64. As the Noticee No. 1 was not entirely disabled from performing its legal duty, reliance placed by the Noticees on the orders of *Raj Kumar Dey v. Tarapada Dey*[6] and *UBS Securities v. SEBI*[7] is misplaced.

65. Therefore, it is established that the Noticee No. 1 has neither attached the Secretarial Audit Report of the material subsidiary, Starlift Services Private Limited, with the Annual Report of FY22 nor appointed an independent director on the board of directors of its three unlisted material subsidiaries for FY22. Accordingly, I conclude that the Noticee No. 1 has violated regulations 24 and 24A of the LODR Regulations.

[6] AIR 1987 SC 2195.
[7] Appeal No. 97 of 2005.

V. Whether Noticee No. 1 failed to appoint company secretary in FYs 17 and 18 and thereby violated regulation 6(1) of the LODR Regulations?

66. It was alleged in the SCN that Noticee No. 1 had not appointed a company secretary in FYs 17 and 18 in consonance with the mandate of regulation 6(1) of the LODR Regulations.

67. Noticee No. 1 has acknowledged that it failed to appoint a company secretary in terms of regulation 6(1) of the LODR Regulations in the period from April 01, 2016 until December 01 2017. Noticee No. 1 has stated that the then regulation 6(1) of the LODR Regulations did not provide any statutory timeline for filing up vacancy and as per section 203 of the Companies Act, 2013, the vacancy in the office of the compliance officer has to be filled within a period of six months. In this regard, Noticees have stated that Noticee No. 1 was under CIRP in the period from February 17, 2017 to May 24, 2017 and pursuant to the transition from CIRP, the compliance officer was appointed on December 01, 2017.

68. I note that Noticee No. 1 cannot justify its lapses for FY17 and FY18 by merely taking the refugee under CIRP which persisted for just three months in FY17. I take note of the order of Hon'ble NCLT Mumbai in the matter of *Roofit Industries Ltd. v. BSE Limited*[8] wherein it was held as under:

> *"11. Another argument propounded by the Professional is, that the notice dated 21.8.2017 given by Bombay Stock Exchange is repugnant to the prohibition declared under section 14 of the Code, therefore the impugned notice dated 21.8.2017 issued by Bombay Stock Exchange shall be void in view of Sections 14/238 of the I&B Code.*
>
> *….*
>
> *12. When this Bench has put it to this RP as to under what sub-section of section 14 is applicable to stay the notice issued by BSE, to which his answer is, it is covered u/s. 14(1) of I&B Code. On reading this provision, it appears that this provision is in respect to institution of suits, continuation of pending suits or proceedings against the Corporate Debtor including mentioning of any judgment, decree or order in any Court of law, Tribunal, Arbitration panel and other Authorities. If at all combined reading is given to the prohibition given under the said sub-section, it appears it is a prohibition to proceed against the company in respect to the dues payable by the company, not in respect to other violations under various enactments. <u>All actions envisaged there, are of same kind. There cannot be any omnibus applicability of prohibitions or restrictions</u>*

[8] M. A. 373/2017 in C. P. No. 1055/I&BP/2017.

given under any enactment, including this Code as well. There are two tests to be looked into, one is strict application or prohibitory law, it can't be liberally and freely applied like any other beneficiary legislation, two is the doctrine of Ejusdem generis, which is applicable to understand these prohibitions given in section 14(1)(a) of the Code, because this Code is basically a Code dealing with debts payable by the company, there-fore what all prohibitions and overriding effect speaking of under section 238 is to be conceived as an effect to be given in respect to the laws dealing with dues payable by the Company, but not to arrest the effect of all enactments working under respective domains. 13. Companies are governed by various enactments, they have to run in compliance of laws of this country, and it can't be that companies running under CIRP are free enough to flout all other laws. It cannot be the intention of any enactment and it is in fact not so…." (Emphasis supplied)

69. In this regard, I note that the requirement of having a compliance officer is a mandatory one as per LODR Regulations. The Hon'ble SAT in the matter of *RSC International Ltd. v. BSE Ltd. and Ors.*[9] has held as under:

"3. It is not in dispute that the penalty can be levied as per the relevant provision of regulations for non-compliance of the Regulation 6 of the LODR Regulations. …..
6. Considering the rival submissions of the parties, in our view, there is no merit in the appeal. The admitted facts are that since 2nd July 2019 the appellant has appointed the company secretary and therefore penalty for partial period of the relevant financial quarter was levied. The relevant provisions of LODR Regulations would show that the listed company is required to appoint a qualified company secretary as the compliance officer. The obligations of the compliance officer are also enumerated. It is an important and mandatory requirement from the listed entity. There were no exceptional grounds for waiving the penalty and, therefore, the impugned order can not be faulted. The appeal is therefore dismissed without any order as to costs." (Emphasis supplied)

70. As noted above, it is an admitted fact that Noticee No. 1 failed to appoint a compliance officer from April 01, 2016 to December 01, 2017. Though the Noticee No. 1 has contended that it had appointed a compliance officer on December 01, 2017, the relevant supporting document *qua* the said appointment has not been adduced by the Noticees.

71. Noticees have asserted that the compliance function of Noticee No. 1 for the relevant period was outsourced is also untenable for the reason that as per regulation 6(1) of the LODR Regulations, Noticee No. 1 was mandatorily required to appoint a compliance officer.

[9]Appeal No. 585 of 2019.

72. Consequently, I find that the Noticee No. 1 has violated regulation 6(1) of the LODR Regulations.

VI. Whether Noticee No. 1 failed to make initial disclosure in the capacity of not a large corporate entity in terms of SEBI Circular dated November 26, 2018 on March 31, 2021 and thereby violated SEBI Circular dated November 26, 2018?

73. As per the SCN, Noticee No. 1 was required to make an initial disclosure in the capacity of not a "large corporate entity" in terms of SEBI Circular dated November 26, 2018 on March 31, 2021. However, it was alleged that the Noticee had made the said disclosure only on July 23, 2021. Accordingly, it was alleged that there was a delay of 84 days by the Noticee No. 1 in the submission of the relevant initial disclosure in terms of SEBI Circular dated November 26, 2018.

74. Noticees contended that the said SEBI Circular dated November 26, 2018 is only applicable to listed companies that meet the necessary thresholds set out in paragraph 2.2 of the said SEBI Circular. Further, Noticees argued that the title of the format of initial disclosure, i.e., "Format of the Initial Disclosure to be made by an entity identified as a Large Corporate" also confirms the fact that the disclosure is for an entity that qualifies as a large corporate. On perusal of the said SEBI Circular dated November 26, 2018, it is evident that the disclosure under the said SEBI Circular has to be made exclusively by a "large corporate entity". From the material on record, it is apparent that Noticee No. 1 does not fall within the purview of "large corporate entity". Consequently, there was no obligation on the Noticee No. 1 to make initial disclosure as per SEBI Circular dated November 26, 2018.

75. In light of the above discussion, Noticee No. 1 cannot be held liable for the violation of SEBI Circular dated November 26, 2018.

VII. Whether Noticee No. 1 failed to file report issued by a practicing company secretary to the Stock Exchange in terms of regulation 55A of the DP Regulations for the quarter ended March 2017 and thereby violated DP Regulations?

76. It was alleged that Noticee No. 1 had not filed the report issued by a practicing company secretary to the Stock Exchange in terms of regulation 55A of the DP Regulations, for the quarter ended March 2017.

77. Regulation 55A of the DP Regulations requires a company to file a report issued by a practicing company secretary to the stock exchange for the purpose of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter, within 30 days from the end of the quarter. Noticees have admitted the default, whereby confirming that the relevant report under regulation 55A of DP Regulations was not filed for the quarter ended March 2017.

78. Noticee No. 1 stated that it was admitted into CIRP on February 17, 2017 and a resolution professional was appointed to manage the affairs of Noticee No. 1. Noticee No. 1 submitted that the current management of Noticee No. 1 challenged the said order before Hon'ble NCLAT and Hon'ble NCLAT vide its order dated May 24, 2017, set aside the said order of NCLT. In this regard, Noticee No. 1 has contended that the compliance for the period from February 17, 2017 to May 24, 2017 has shifted due to CIRP, and the default cannot be attributed to the Noticees.

79. In this regard, I note that the corporate debtor is required to be in compliance with the applicable laws during the CIRP. The mere initiation of CIRP does not exempt the corporate debtor, i.e., Noticee No. 1, from undertaking compliance under regulation 55A of the DP Regulations as noted from the order of NCLT in the matter of *Roofit Industries Ltd. v. BSE Limited*[10].

80. Therefore, the contention of the Noticee No. 1 that it was under CIRP during that period cannot be accepted.

81. Based on the above, it is established that Noticee No. 1 failed to file a report under regulation 55A of the DP Regulations for the quarter ended March 2017. Therefore, I find that the Noticee No. 1 has violated regulation 55A of the DP Regulations.

[10] M. A. 373/2017 in C. P. No. 1055/I&BP/2017.

VIII. Whether Noticee No. 1 failed to maintain SDD for FY22 and thereby violated regulation 3(6) of the PIT Regulations?

82. It was alleged in the SCN that no system or software, in terms of regulation 3(6) of the PIT Regulations, was maintained by the Noticee No. 1 during the Secretarial Audit for the FY22.

83. It is clear from the response of the Noticees that Noticee No. 1 did not comply with the mandate of SDD, which was a legal requirement with effect from April 1, 2019. As the violation pertains specifically to FY22, it cannot be argued that the requirement was a recent one. The argument of the Noticee No. 1 that it was hampered by the second wave of COVID 19 to implement SDD cannot be accepted as the obligation to maintain such a database is a mandatory one and COVID was not an impediment for the entirety of FY22. Further, it is noted that the subsequent compliance, if any, can in no manner exonerate the Noticee from the present violations.

84. With regard to the administrative warning issued by SEBI against Infosys and Hikal for non-implementation of SDD, I note that the said administrative warnings have to be seen in terms of the overall context of the case. I note that the administrative warning was issued against Infosys as 'certain entries which were logged with a delay in the SDD'. The said instance pertained to FY21 and not FY22. Furthermore, it is pertinent to note that in the said case of Infosys, the defense of COVID 19 was not accepted by SEBI. Similarly, the issue in Hikal pertained to 'lacuna in maintaining SDD' and not 'non maintaining of SDD'. Hence, it is apparent that both cases emanate from factual matrices that are not similar to those of the present case. Consequently, the cases cited by the Noticees have no bearing in the present case.

85. Therefore, I find that Noticee No. 1 has violated regulation 3(6) of the PIT Regulations.

IX. Whether Noticee No. 2, in his capacity as managing director of the Noticee No. 1, has violated regulations 4 (1) (a), 4 (2) (e) (i), 6(1), 17 (8) read with Part B of Schedule II, 24 (1), 24A, 33 (3), 34 and 48 of the LODR Regulations read with section 27 (1) of SEBI Act, regulation 55A of the DP Regulations read with section 21(1) of the Depositories Act, 1996, SEBI Circular dated November 26, 2018 read with section 27 (1) of SEBI Act, regulations 4 (2) (f) and (k) of the PFUTP

Regulations read with section 27 (1) of SEBI Act and regulation 3 (6) of the PIT Regulations read with section 27 (1) of SEBI Act?

86. During the IP, Notice No. 2 was the managing director (hereinafter referred to as '**MD'**) of the Noticee No. 1. Further, it is stated in the IR that Noticee No. 2 had attended all the audit committee meetings of Noticee No. 1 held during FYs 20 to 22.

87. It is, further, stated that Noticee No. 2, in his capacity as MD and CEO of the Noticee No. 1, had provided the CEO/CFO certification to the board of Noticee No. 1 for FY19 on the financial statements of the Noticee No. 1. The said CEO/CFO certification had stated that the financial statements of Noticee No. 1 were true and fair.

88. Thus, I find that Noticee No. 2, despite being aware that the financial statements of Noticee No. 1 had understated losses, issued a CEO/CFO compliance certificate for FY19 on the financial statements of Noticee No. 1, stating them to be true and fair.

89. I note that Noticee No. 1 was under CIRP February 17, 2017 to May 24, 2017. In this regard, I note that regulation 17(1) of the Insolvency and Bankruptcy Code reads as under:

"(1) From the date of appointment of the interim resolution professional,—
(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;
(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;
(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;
(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional…."

90. Therefore, Noticee No. 2 cannot be held liable for infractions committed by Noticee No. 1 during the CIRP, i.e., from February 17, 2017 to May 24, 2017. Consequently, Noticee No. 2 cannot be held liable for the failure of Noticee No. 1 to file a report issued by a practicing company secretary to the stock exchange for the quarter ended March 2017 as per regulation 55A of DP Regulations.

91. Further, as the violation of SEBI Circular dated November 26, 2018 has not been established *qua* Noticee No. 1, no liability can be imputed on Noticee No. 2.

92. Based on the discussions, I find that Noticee No. 2 is liable for the delay in impairment relating to investment in Alba Asia Private Limited by Noticee No. 1, Noticee No. 1's financial statement of FY19 not presenting a true and fair view of the company's affairs, failure of Noticee No. 1 to attach Secretarial Audit Report of its material subsidiary, Starlift Services Private Limited with its Annual Report of FY22, to appoint independent directors in its material subsidiaries in FY22, to appoint company secretary in FY17 and FY18 and to maintain SDD for FY22. Consequently, Noticee No. 2 has violated the following provision of law:

a. Regulations 4 (1) (a), 4 (2) (e) (i), 6(1), 17 (8) read with Part B of Schedule II, 24 (1), 24A, 33 (3), 34 and 48 of the LODR Regulations read with Section 27 (1) of SEBI Act;
b. Regulations 4 (2) (f) and (k) of the PFUTP Regulations read with Section 27 (1) of SEBI Act; and
c. Regulation 3 (6) of the PIT Regulations read with Section 27 (1) of SEBI Act.

X. Does the violation, if any, on the part of Noticees attract a monetary penalty under sections 15A(c), 15HA and 15HB of the SEBI Act and section 19A(b) of the Depositories Act, 1996?

XI. If so, what would be the monetary penalty that can be imposed upon Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act and section 19I of the Depositories Act, 1996?

93. From the previous paragraphs, it has been established that Noticees had violated the following provisions as specified in the Table below:

Table 1

Noticee No.	Name of the Noticee	Violations

1.	Starlog Enterprises Limited	a. Regulations 4(1)(a), 4(2)(e)(i), 33(3), 34 and 48 of the LODR Regulations;
		b. Regulations 4 (2) (f) and (k) of the PFUTP Regulations;
		c. Regulation 6(1), 24 and 24A of the LODR Regulations;
		d. Regulation 55A of DP Regulations and
		e. Regulation 3(6) of the PIT Regulations

2.	Mr. Saket Agarwal	a. Regulations 4 (1) (a), 4 (2) (e) (i), 6(1), 17 (8) read with Part B of Schedule II, 24 (1), 24A, 33 (3), 34 and 48 of the LODR Regulations read with section 27 (1) of SEBI Act; b. Regulations 4 (2) (f) and (k) of the PFUTP Regulations read with section 27 (1) of SEBI Act; and c. Regulation 3(6) of the PIT Regulations read with section 27 (1) of SEBI Act.

94. I note that the Noticees have stated that the object of the inspection is not to impose a penalty, especially in the instances of procedural irregularities, if any. In this regard, Noticees have placed reliance on the order of Hon'ble SAT in the matter of *UPSE Securities Limited v. SEBI*[12], *Religare Securities Limited v. SEBI*[13] and *IDBI Trusteeship Services Limited v. SEBI*[14]. In this regard, I note that in the matter of *UPSE Securities Limited* and *IDBI Trusteeship Services Limited*, Hon'ble SAT had observed that if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law. Similarly, in the matter of *Religare Securities Limited,* it was opined by the Hon'ble SAT that *"we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent".* As noted above, the violations committed by the Noticees which includes disclosing financial statement which were not true and fair cannot be considered minor breaches. In this regard, I would like to rely upon the findings of the Hon'ble SAT in the matter of *V. Natarajan v. SEBI*[15] wherein the Hon'ble SAT held as follows:

> *".....It is by now well understood that unaudited financial results that are required to be published by every listed company on a quarterly basis do form the basis for the investing public to take informed decisions. Any false information or false accounts depicting inflated revenues and profits by fictitious entries in accounts is, indeed, a very serious wrong doing which directly impacts the securities market and the investors..."*

[12]Appeal No. 109 of 2011.
[13]Appeal No. 23 of 2011.
[14]Appeal No. 186 of 2023.
[15]Appeal No. 104 of 2011.

95. I further note that the facts of the cases cited by the Noticee do not pertain to investigations, while the cases cited by the Noticees emanate from inspection. Accordingly, I note that the submission of the Noticee lacks merit and hence, cannot be accepted.

96. Noticees have contended that violations are at best merely technical and venial in nature. Noticees cited the case of *P.G Electroplast Limited v. SEBI*[16] to contend that in cases of venial / technical violations, an authority, exercising its discretion under Section 15J of the SEBI Act, would be justified in refusing to impose any penalty. Adding to that, Noticees placed reliance on the order of *Cabbot International Corpn. v. SEBI* to argue that where the violation is of a technical nature and due to a *bona fide* error, the Tribunal should not consider imposing a heavy penalty and should help in pointing out the defect to the appellant so that it does not recur again and the Tribunal declined to impose any penalty as there was substantial compliance. In this regard, I note that the order of *P.G Electroplast Limited* and *Cabot International Corpn* pertained to provisions of the SEBI Act that existed prior to its amendment by the Securities Laws (Amendment) Act, 2014. I note that the said amendment which came into effect from September 08, 2014 had introduced a minimum penalty for violations under sections 15A(c), 15HA and 15HB of the SEBI Act and section 19A(b) of the Depositories Act, 1996. As the present proceedings pertains to infractions after the said amendment, the reliance on the said orders is misplaced. Further, as noted above, the violations committed by the Noticees cannot be regarded as merely technical or venial breach as it, *inter alia,* includes misstatement in financial statement.

97. Therefore, Noticees are liable for payment of a monetary penalty in terms of sections 15A(c), 15HA and 15HB of the SEBI Act and section 19A(b) of the Depositories Act, 1996. Relevant detail in this regard is mentioned below:

Table 2

Noticee No.	Name of the Noticee	Violations	Charging Provision
1.	Starlog Enterprises Limited	• Regulations 4 (2) (f) and (k) of the PFUTP Regulations	Section 15HA of the SEBI Act
		• Regulations 4(1)(a), 4(2)(e)(i), 33(3), 34 and 48 of the LODR Regulations	Section 15HB of the SEBI Act

[16]Appeal No.281 of 2017.

		• Regulation 6(1), 24 and 24A of the LODR Regulations	
		• Regulation 3(6) of the PIT Regulations.	Section 15A (c) of the SEBI Act
		• Regulation 55A of DP Regulations	Section 19A(b) of the Depositories Act, 1996
2.	Mr. Saket Agarwal	• Regulations 4(1) (a), 4 (2) (e) (i), 17(8) read with Part B of Schedule II, 33 (3), 34 and 48 of the LODR Regulations read with section 27(1) of SEBI Act • Regulations 6(1), 33 (3) and 34 of the LODR Regulations read with section 27(1) of SEBI Act	Section 15HB of the SEBI Act
		• Regulation 3(6) of the PIT Regulations	Section 15A (c) of the SEBI Act
		• Regulations 4 (2) (f) and (k) of the PFUTP Regulations read with section 27(1) of SEBI Act	Section 15HA of the SEBI Act

98. The text of the aforementioned sections is reproduced below:

SEBI Act

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

…

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

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

Depositories Act, 1996

"19A. *Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder,—*

…

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or bye-laws, fails to file return or furnish the same within the time specified therefor, he or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents] shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

…"

99. While determining the quantum of penalty under the aforesaid sections, the following factors stipulated in section 15J of the SEBI Act have been given due regard:

SEBI Act

15J. While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;"

Depositories Act, 1996

19I. While adjudging the quantum of penalty under section 19 or section 19H, the Board or the adjudicating officer shall have due regard to the following factors, namely:—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

100. The available records neither specify disproportionate gains/unfair advantages made by Noticees nor the loss, if any, suffered by the investors due to such violations. As regards the repetitive nature of the default, I note that the material on record has not brought to the fore any penalty imposed by SEBI in the past against the Noticees.

101. The aforementioned factors have been taken into consideration while adjudging the penalty.

ORDER

102. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Rules and under section 19H of the Depositories Act, 1996 read with rule 5 of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, I, hereby, impose the following penalty on Noticees:

Table 3

Noticee Name	Charging Provision	Penalty (in Rs.)
Starlog Enterprises Limited and Mr. Saket Agarwal	Section 15HA of the SEBI Act	Rs. 5,00,000/- (Rupees Five Lakh only) Noticees are jointly and severally liable to pay the said penalty.
Starlog Enterprises Limited and Mr. Saket Agarwal	Section 15HB of the SEBI Act	Rs. 3,00,000/- (Rupees Three Lakh only) Noticees are jointly and severally liable to pay the said penalty.
Starlog Enterprises Limited and Mr. Saket Agarwal	Section 15A(c) of the SEBI Act	Rs. 1,00,000/- (Rupees One Lakh only) Noticees are jointly and severally liable to pay the said penalty.
Starlog Enterprises Limited	Section 19A(b) of the Depositories Act, 1996	Rs. 1,00,000/- (Rupees One Lakh only)

103. The said penalty is commensurate with the lapses/omissions on the part of Noticees.

104. Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order through the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT > Orders > Orders of AO > PAY NOW.

105. In terms of the provisions of rule 6 of the Rules and rule 6 of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, a copy of this order is being sent to Noticees.

JAI SEBASTIAN
Digitally signed by JAI SEBASTIAN
Date: 2025.09.29 17:07:44 +05'30'

Date: September 29, 2025 **JAI SEBASTIAN**

Place: Mumbai **ADJUDICATING OFFICER**