BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BM/JR/2023-24/ 30038 – 30040

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Kotak SEAF India Fund
PAN: AAATK8360K

Kotak Alternate Asset Managers Limited
(formerly known as Kotak Investment Advisors Limited)
PAN: AAACK5933H

Kotak Mahindra Trusteeship Services Limited
PAN: AABCK4227B

In the matter of India Growth Fund, a Scheme of Kotak SEAF India Fund

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Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") was in receipt of an online application no. 997457 dated May 10, 2022 for surrender of registration, from Kotak SEAF India Fund (Venture Capital Fund) (hereinafter referred to as "**VCF"/ "Noticee 1**") SEBI Registration No. IN/VCF/04-05/055 and a letter dated October 06, 2022 in which the fund inter-alia intimated that the fund has wound-up the scheme India Growth Fund as on March 31, 2022. It is alleged that it is beyond the period specified in their Private Placement Memorandum (hereinafter referred to as "**PPM**"). Therefore, Noticee 1, the investment manager viz. Kotak Alternate Asset Managers Limited (formerly known as Kotak Investment Advisors Limited) (hereinafter referred to as "**Noticee 2**") and the trustee of the fund, viz. Kotak Mahindra Trusteeship Services Limited (hereinafter referred to as "**Noticee 3**") (collectively known as "**Noticees**") allegedly violated regulation 23(1)(a) of SEBI (Venture Capital Funds) Regulations, 1996 (hereinafter referred

to as "**VCF Regulations**") (now repealed) r/w regulation 39 of SEBI (Alternate Investment Fund) Regulations, 2012 (hereinafter referred to as "**AIF Regulations**").

Appointment of Adjudicating Officer:

2. SEBI appointed the undersigned as Adjudicating Officer (**AO**) vide communique dated December 6, 2023 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge under the provisions of section 15HB of the SEBI Act the aforesaid alleged violations committed by the Noticees.

Show Cause Notice, Reply and Personal Hearing:

3. Show Cause Notice dated December 7, 2023 (hereinafter referred to as 'SCN') was issued in terms of rule 4(1) of the Rules read with section 15-I of the SEBI Act to the Noticees alleging, inter alia, the following:

   a) The details of the scheme - India Growth Fund as on September 04, 2023 are as follows:

Name of Scheme	**Type of scheme (open ended / closed ended)**	**Target Corpus *(in Rs. crore)***	**Corpus *(in Rs. crore)***	**Investible Funds *(in Rs. crore)***	**Cumulative funds raised *(in Rs. crore)***	**Sponsor Contribution *(in Rs. crore)***	**No. of investors**	**Date of initial closing**	**Date of Final Closing**	**Total Tenure of scheme as per PPM**	**No of term extensions**
India Growth Fund	Closed Ended	1000	698.50	572.91	675.43	Class A Units - 23.92 Class B Units - 0.03	73	March 30, 2005	September 30, 2005	9 years from the Initial Closing Date and extended by one year.	4 Extensions including the one as per the provisions of the PPM.

b) It is alleged that as per PPM, term of the VCF was for a period of 9 years from the date of First Closing i.e. March 30, 2005, extendable by 1 year. The funds tenure was supposed to end on March 30, 2014. The fund has submitted vide email dated April 07, 2023 and September 04, 2023 that it has taken 4 extensions which includes 1 extension of 1 year (till March 30, 2015- first extension) as per the PPM of the scheme and then 3 extensions of 7 years (till March 30, 2022). The manager had approached and received Super Majority consent (greater than 75% of value of investment) from contributors for all these extensions of the fund till March 30, 2022 (fourth extension). The tabulated summary is mentioned below.

Type of Extension	Extension Duration	Extension Period
First Extension	1 year	March 31, 2014 to March 30, 2015
Second Extension	2 years	March 31, 2015 to March 30, 2017
Third Extension	2 years	March 31, 2017 to March 30, 2019
Fourth Extension	3 years	March 31, 2019 to March 30, 2022
Total	**8 Years**	

c) The corpus of VCF was Rs 698.50 crores. VCF had invested Rs 577.15 crores in 18 portfolio companies. As per the submission of the fund vide email dated June 2, 2023, all the investments have been exited.

d) In view of the above, it is alleged that the VCF failed to wind up the scheme upon completion of its tenure as disclosed in the original PPM. The fund also extended its tenure beyond the PPM of the fund on three occasions.

4. The SCN was duly delivered to the Noticees. Noticee 1 vide letter dated January 4, 2024 replied to the SCN stating, inter alia, the following:

i) *The initial term of the Scheme, which was to expire on March 30, 2014(9 years from the initial closing), was extended to March 30, 2015, in accordance with the powers granted in the Scheme documents.*

ii) *It is to be noted that at the time of the Fund formation there were two main documents viz. the PPM and the Contribution Agreement. The PPM containing the Term of the Fund was duly approved by SEBI. The PPM contained reference to the Contribution Agreement and stated that in the event of any conflict between the terms of the PPM and the Contribution Agreement, the latter shall prevail. The Contribution Agreement laid down the process to amend the terms (by Super Majority approval of the Contributors) of the Contribution Agreement* *and consequently the PPM. For the ease of reference we are reproducing the relevant extract of the Contribution Agreement.*

"Clause 16: Amendments

16.1. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated except with the concurring vote of the Super Majority of Class A Unitholders. And, any amendment, change or waiver of any provisions of this Agreement on which the concurring vote of the Super Majority of Class A Unitholders has been obtained, shall be effective from the date of such approval, as if such amendment, change or waiver has been an integral part of this Agreement."

iii) *It is to be noted that the Contribution Agreement provides for amendments to be made to the terms of the Contribution Agreement by approval of Super Majority of Investors. Following due process of approval pf supermajority of investors. the Contribution Agreement was amended to extend the term of the Fund. It is to be further noted that the PPM specifically also provides that the Contribution Agreement shall supersede the terms of the PPM, in the event of any conflict between the two documents i.e PPM and the Contribution Agreement. Consequently, as explained in the earlier paragraphs we believe that the extension of the Term duly made in accordance to the terms of the Contribution Agreement shall prevail over the Term mentioned in the PPM and did not violate the terms of the Regulations as alleged in the SCN.*

iv) *As already pointed out in the replies previously submitted, the Scheme was prevented from divesting certain investments during the original and even extended term,* ***due to pending litigation*** *regarding the investments made by the Scheme; therefore, the term had to be extended beyond March 30, 2015.*

v) *In the alternative, the investments that were being litigated would have had to be transferred to the contributors in specie, in proportion to their investment, and the investors substituted in the litigation. This would not only have been impractical, but also not in the contributors' interest. It may be appreciated that the ongoing arbitration claims themselves are actionable claims and the proceeds therefrom (in the event of a successful outcome) are classified as assets that would be required to be distributed to such a large number of investors. Consequently, it is a legal impossibility to truly wind up the Scheme without concluding the arbitration proceedings.* ***It may also be appreciated that investors already received distributions from*** *all the investments that were not the subject matter pf litigation,* ***Further****, no* ***investor has expressed any grievance regarding*** *the* ***extensions on the SCORES platform.***

vi) *As a result, on March 23, 2015, a meeting of the contributors was convened to vote on the proposed two-year extension of the term through an* *amendment to the Contribution Agreement. In order for the proposed amendment to be approved, a supermajority of the Class A contributors was required. Contributors were also provided with the opportunity to cast their votes on the said amendment to the Contribution Agreement via electronic voting (facilitated by NSDL}. The votes cast during the meeting and through electronic voting were considered in the computation of the contributors' supermajority consent. In order to facilitate wider investor participation and in the absence of specific process under the VCF Regulations for voting, we have implemented the procedure outlined in the Companies Act, 2013 for determining the contributors' supermajority consent. In accordance with the supermajority contributors' consent, the term was extended until March 30, 2017. An independent practicing Company Secretary was designated to supervise the electronic voting process as well as the in-person voting conducted by the investors during the meeting.*

vii) *Due to the ongoing litigation that persisted until the conclusion of the extended term, Class A Contributors of the Scheme, at their meetings convened on March 14, 2017 and March 22, 2019, once again by a super majority consent of Contributors, granted further extension to the term until March 30, 2022.* ***The procedure for obtaining super majority of contributor's consent was identical to that of the March 23, 2015 meeting as stated herein above.***

viii) *Since the aforesaid litigation concluded, the concerned investments were divested within the extended timeline granted by the super majority of the contributor's, the Scheme was wound up w.e.f. March 31, 2022.*

ix) *There was no complaint received from any contributors with respect to the Scheme extension and its winding up on SCORES platform.*

x) *Therefore we humbly submit given the ongoing litigation perta ining to the investm ents made by the Scheme and the resulting inability to divest specific investments. it is submitted that the extension of the Scheme's Term, which was approved in accordance with the Scheme document by taking super majority consent and with the contributors' best interests in mind, was necessary and was not in contravention of the VCF Regulations.*

5. Similar submissions were made by Noticee 2 and 3 vide separate letters dated December 28, 2023. In the interest of natural justice, an opportunity of personal hearing was given to the Noticees on January 11, 2024 vide notice dated January 3, 2024. The Authorised Representative (hereinafter referred to as "**AR**") of the Noticees appeared on the scheduled date and reiterated the submissions made earlier in their respective replies. The AR undertook to make further submissions

and vide letter dated January 12, 2024 made, inter alia, the following submissions:

"1. Extension of the term was within the power under the Scheme documents:

*a) As per Regulation 16 of the VCF Regulations, the Venture Capital Fund is required to issue a placement memorandum OR enter into a contribution agreement with the investors, which shall specify the terms and conditions subject to the monies which are proposed to **be** raised. Accordingly, the Investment Manager had executed the Contribution Agreement, which was binding upon the investors. Additionally, the Investment Manager also issued the placement memorandum.*

The relevant extract of the VCF Regulation reads as under:

"Regulation 16. (1) The venture capital fund shall (a) issue a placement memorandum which shall contain details of the terms and conditions subject to which monies are proposed to be raised from investors; or

(b) enter into contribution or subscription agreement with the investors which shall specify the terms and conditions subject to which monies are proposed to be raised."

b) Clause 16.l of the Contribution Agreement, (page no. 41) states that the Contribution Agreement cannot be inter alia amended except with the concurring vote of the Super Majority of Class A Unitholders, and any amendment, change or waiver of any provision of this Agreement on which the concurring vote of the Super Majority of Class A Unitholders has been obtained, shall be effective from the date of such approval, as if such amendment has been an integral part of the Contribution Agreement.

c) Clause 20 (Entire Agreement) of the of the Contribution Agreement states that the Contribution Agreement will supersede the confidential PPM and other documents etc. Furthermore, it also states that in the event of any inconsistency or conflict between the confidential Private Placement Memorandum or any information, writing or documents exchanged between the Investor and the Trustee or the Investment Manager. provision in the Contribution Agreement shall prevail.

d) Further, in the PPM (Page 9) of the India Growth Fund, under the "Summary of Principal Terms" any conflict between any statement made in the PPM and any provisions of the Contribution Agreement of the India Growth Fund shall be resolved in favour of the latter document.

To summarize, the Contribution Agreement provides for amendments to be made to the terms of the Contribution Agreement by approval of Super Majority of Investors. Following the due process of approval by the supermajority of investors, the Contribution Agreement was amended to extend the term of the Fund. It is to be further noted that the PPM specifically also provides that the Contribution Agreement shall supersede the terms of the PPM, in the event of any conflict between the two documents, i.e PPM and the Contribution Agreement. Besides, on each occasion when the extension was sought from the Investors before the expiry of the term, the investors were duly informed that all the relevant provisions of the PPM and the Contribution Agreement would also be amended suitably to capture the revised Term of the scheme. Consequently, as explained in the earlier paragraphs, we believe that the extension of the Term duly made in accordance with the terms of the Contribution Agreement shall prevail over the Term mentioned in the PPM and did not violate the terms of the Regulations as alleged in the SCN.

2. ***No provision for reporting amendments in PPM:*** *There is no specific provision in the VCF Regulations that requires reporting of any changes to PPM or the Contribution Agreement. Nevertheless, we carried out the amendment to the Term of the Scheme by supermajority approval.*

3. ***No Investor Complaints:*** *There was no complaint received from any contributors with respect to the Scheme extension and its winding up on SCORES platform.*

4. ***Impossibility to truly wind up the Scheme:***

a) As explained on earlier occasions, the Scheme was prevented from divesting owing to ongoing litigations/ arbitrations with investee entities relating to the investments made by the Scheme; therefore, the term had to be extended beyond March 30, 2015.

b) the ongoing arbitration claims themselves are actionable claims, and the proceeds therefrom (in the event of a successful outcome) are classified as assets that would be required to be distributed to such a large number of investors. Consequently, it is a legal impossibility to truly wind up the Scheme without concluding the arbitration proceedings. Further, in the event of distribution in specie, the Noticee would no longer have any role to play in the litigation; rather, we would be required to replace each investor in the litigation. It is impossible for the legal proceedings to have been concluded in a logical manner under such circumstances.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration in the instant matter are:
   (a) Whether the Noticees have violated regulation 23(1)(a) of the VCF Regulations r/w regulation 39 of AIF Regulations;
   (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB of SEBI Act?; and,
   (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

7. The relevant provisions are mentioned hereunder:

Regulation 23 of VCF Regulations: - Winding Up

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

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

Section 39 of AIF Regulations: - Repeal and Saving

(1) The Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 hereby shall stand repealed.
(2) Notwithstanding such repeal:
(a) Anything done or any action taken or purported to have been done or taken, including suspension or cancellation of certificate of registration, any inquiry or investigation commenced or show cause notice issued under the repealed regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
(b) All venture capital funds or schemes launched by such venture capital funds prior to date of notification of these regulations shall continue to be governed by provisions of Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 till the fund or Scheme is wound up:
Provided that such funds shall not launch any new Scheme after notification of these regulations;
(c) Any application made to the Board under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 and pending before it shall be deemed to have been made under the corresponding provisions of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

(3) After the repeal of Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996, any reference thereto in any other regulations made,

guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

FINDINGS

8. Venture Capital Funds (VCFs) were privately pooled investment vehicles which collected funds from investors, whether Indian or foreign, for investing such funds in accordance with a defined investment policy for the benefit of their investors. Noticees floated the VCF by the name, India Growth Fund and the details as on September 4, 2023 is as follows:

Name of Scheme	**Type of scheme (open ended / closed ended)**	**Target Corpus *(in Rs. crore)***	**Corpus *(in Rs. crore)***	**Investible Funds *(in Rs. crore)***	**Cumulative funds raised *(in Rs. crore)***	**Sponsor Contribution *(in Rs. crore)***	**No. of investors**	**Date of initial closing**	**Date of Final Closing**	**Total Tenure of scheme as per PPM**	**No of term extensions**
India Growth Fund	Closed Ended	1000	698.50	572.91	675.43	Class A Units - 23.92 Class B Units - 0.03	73	March 30, 2005	September 30, 2005	9 years from the Initial Closing Date and extended by one year.	4 Extensions including the one as per the provisions of the PPM.

9. It is observed that copy of the PPM was filed with SEBI wherein it was stated: "*The term of the fund will be nine years from the Initial Closing date and may be extended by one year through an annual extension to take effect respectively on the 9th anniversary of the Initial Closing Date at the discretion of the Investment Manager subject to prior consent of the Super-majority of the Class A Unit holders.*" The term of the fund was for a period of 9 years from the date of First Closing i.e. March 30, 2005, extendable by 1 year. The funds tenure was supposed to end on March 30, 2014. Vide email dated April 07, 2023

and September 04, 2023 it was submitted that the fund had taken 4 extensions which includes 1 extension of 1 year (till March 30, 2015- first extension) as per the PPM of the scheme and then 3 extensions of 7 years (till March 30, 2022). The manager had approached and received Super Majority consent (greater than 75% of value of investment) from contributors for all these extensions of the fund till March 30, 2022 (fourth extension). The tabulated summary is mentioned below.

Type of Extension	Extension Duration	Extension Period
First Extension	1 year	March 31, 2014 to March 30, 2015
Second Extension	2 years	March 31, 2015 to March 30, 2017
Third Extension	2 years	March 31, 2017 to March 30, 2019
Fourth Extension	3 years	March 31, 2019 to March 30, 2022
Total	**8 Years**	

10. Noticees submitted that the scheme was unable to divest some of its investments during the extended term since these investments were under litigation and hence it was necessary to extend the term beyond March 30, 2015. Noticees further submitted that the PPM was approved by SEBI. Noticees also submitted that the PPM contained reference to the Contribution Agreement and stated that in the event of any conflict between the terms of the PPM and the Contribution Agreement, the latter shall prevail.

11. I note from regulation 16(2) of VCF Regulation that Fund "*shall file with the Board **for information** a copy of placement memorandum or contribution or subscription agreement….*" In the present case, the Noticees had submitted only a copy of the PPM with SEBI. Further, the contention of the Noticees that the PPM was submitted for approval is not tenable as the VCF Regulations itself states that the copy of the PPM or contribution agreement shall be submitted to SEBI only for information.

12. It is also relevant to note that regulation 17 (1) of VCF Regulations which prescribes the requisite contents of Placement Memorandum, uses the word "*namely*".
The said regulation is quoted hereunder:

"***Contents of placement memorandum.***

17. (1) The placement memorandum or the subscription agreement with investors

referred to in sub-regulation (1) of regulation 16 shall contain the following, namely:

—

(a) details of the trustees or trustee company and the directors or chief executives of the venture capital fund;

(b) (i) the proposed corpus of the fund and the minimum amount to be raised for the fund to be operational;

(ii) the minimum amount to be raised for each scheme and the provision for refund of monies to investor in the event of non-receipt of minimum amount;

(c) details of entitlements on the units of venture capital fund for which subscription is being sought;

(d) tax implications that are likely to apply to investors;

(e) manner of subscription to the units of the venture capital fund;

(f) the period of maturity, if any, of the fund;

(g) the manner, if any, in which the fund shall be wound up;

(h) the manner in which the benefits accruing to investors in the units of the trust are to be distributed;

(i)details of the fund manager or asset management company if any, and the fees to be paid to such manager;

(j) the details about performance of the fund, if any, managed by the Fund Manager;

(k) investment strategy of the fund;

(l) any other information specified by the Board."

13. From the above, it is pertinent to understand the meaning of the word "namely" in this regulatory context. In this reference, it will be appropriate to refer to the order of the Hon'ble High Court of Andhra Pradesh in the matter of Balaji General Stores vs. Deputy Commissioner of Commercial Taxes wherein it was held as follows:
"8. ... The meaning of the word "namely" is given in the Webster's Third New International Dictionary as "that is to say: to wit, specifically, especially, expressly. In Stroud's Judicial Dictionary (Fourth Edition) "namely" means "by name" or "that is to say". It is stated that the word "namely" indicates "what is included in the previous term" in constradistinction to the word "including" which imports "addition, i.e., indicates something not included".

Explaining the meaning of the words "namely" it is stated in Venkatramaiya's Law Lexicon, 2nd Edition, 1983 that "it is restrictive in the sense that the general expression which precedes the word 'namely' is confined to the itemised expressions that follow the word 'namely'. Consequently, the meaning of the word 'namely' can only be restrictive and can be neither illustrative nor expansive.

….

Thus, where it was intended that the enumerated goods specified after the general expression were to be only illustrative but not exhaustive, the word "including" was used and where the intention of the legislature was that the enumerated commodities should be exhaustive, they used the word "namely" or "that is to say". In those circumstances, we have no hesitation in holding that the word "namely" followed by the enumerated commodities was incorporated in the entry to clearly covey the intention of the legislature that the enumerated list of goods was exhaustive and not illustrative."

14. In the light of the aforesaid observation of the Hon'ble High Court of Andhra Pradesh, it is noted that the contents of a PPM cannot be different from what has been mentioned under regulation 17 (1) of VCF Regulations. Therefore, when regulation 17 (1) of VCF Regulations does not provide for making any amendment of the period of operation of the Fund, once the period of maturity has been fixed including the extension of period of maturity of the Fund as specifically provided under the Regulation, it is not open for the Trustees or the Investment Manager of the Fund to further extend the period of maturity of Fund by taking the consent of the unit holders / beneficiaries.

15. Moreover, neither there is any provision under the VCF Regulations which provides for obtaining such further extension of the period of maturity of a scheme of a Fund post the expiration of its term nor any situation has been envisaged under VCF Regulations so as to enable the Trustees or the Investment Manager of the Fund to further extend the term of the Scheme of the Fund, post expiry of its maturity period as declared under its PPM including the Extended Period as permissible in terms of the PPM and thus cannot go beyond what is required by law.

16. I note that the Noticees have submitted that due to pending litigation, they

considered it appropriate to extend the term of the fund. I find that pending litigation cannot be a valid ground for not complying with mandatory obligation prescribed under VCF Regulations with respect to winding up of the scheme of the fund at the expiry of its term. Moreover, the fund in its PPM under Appendix 9 had already foreseen and had disclosed all the relevant risk factors associated with the scheme. The disclosure of adequate and material risk factors in the PPM coupled with the fact that the investors in the Scheme of the Fund were well-informed who had invested in the Scheme knowing very well the associated risks involved in the scheme, leads to an undeniable inference that the investors had read the terms and conditions of the PPM and then have made an informed decision to invest in the said Scheme of the Fund.

17. The Noticees submitted that the PPM contained reference to the Contribution Agreement and stated that in the event of any conflict between the terms of the PPM and the Contribution Agreement, the latter shall prevail. Clause 16 of the Contribution Agreement laid down the process to amend the terms of the same. Clause 16 is quoted hereunder:

"*Neither this Agreement nor any term hereof may be changes, waived, discharged or terminated except with the concurring vote of the Super Majority of Class A Unitholders. And, any amendment, change or waiver of any provisions of this Agreement on which the concurring vote of the Super Majority of Class A Unitholders has been obtained, shall be effective from the date of such approval, as if such amendment, change or waiver has been an integral part of this Agreement*."

18. Accordingly, the term was extended taking the majority opinion of the unitholders as stated in the Contribution Agreement. I find that the aforesaid submission of the Noticees is legally not sustainable. Under the extant Regulatory framework prescribed under the VCF Regulations, it was the venture capital fund who had issued the PPM (regulation 16 (1)(a) of VCF Regulations) and keeping in mind the objective of the Scheme of the Fund (for which PPM was issued) and their proposed investment strategy, the Trustees and the Investment Manager had pre-decided the term of the Fund including any probable extensions to the term of the Fund that may be required for closure of the Scheme. The unit holders had agreed to the said terms and conditions of the PPM as the same suited to their investment objective.

One should be clear in mind that the unit holders had no say in deciding the term of the Fund at the initial stage of launching of the Scheme and they only subscribed to the Scheme as the terms of the Scheme suited their investment objective. It cannot be considered that the unit holders are supreme authority to decide the tenure of the Scheme of the Fund, even beyond the further period of one year of extension permitted as per the terms of PPM. Having gone through the records including the terms of PPM, I see that the unit holders have initially consented for one extension of one year, beyond the normal schedule of tenure of the Scheme of the Fund of nine years. There is no denying the fact that being a beneficiary to the Scheme of the Fund, does give some rights to the unit holder of the Scheme, but the same cannot be stretched to mean that it also gives a right to the unit holders to alter the very material document of the Fund, especially when the VCF Regulations do not give any such right to the unit holders of a Scheme floated by a VCF.

19. In view of the above, I find that the Noticees failed to wind up the scheme upon completion of its tenure as disclosed in the original PPM. The fund also extended its tenure beyond the PPM of the fund on three occasions. Therefore, the allegation violation of regulation 23(1)(a) of the VCF Regulations r/w regulation 39 of AIF Regulations by the Noticees stand established.

Issue II: Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB of SEBI Act?

20. In view of the violation as established above, I refer to the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…"*.

21. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticees under the provisions of section 15HB of the SEBI Act, which reads as under:

SEBI Act

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

Issue III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

    Factors to be taken into account while adjudging quantum of penalty.

    15J.While adjudging quantum of penalty under 15-I or section 11 or section 11B, 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.

23. I note that the available records do not quantify the amount of profits made by the Noticees or losses suffered by the investors due to violations by the Noticees in the instant case. I note that the Fund that filed an online application dated May 10, 2022, has wound up the scheme on March 31, 2022 and all unitholders are paid back. However, as a registered entity, the fund, fund manager and the trustees should have complied with the provisions as laid down in the VCF Regulations which the Noticees have failed and this calls for penalty.

ORDER

24. Having considered all the facts and circumstances of the case, the material

available on record, the submissions made by the Noticees and also the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the AO Rules, I hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) jointly and severally on the Noticees under the provisions of section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

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

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

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

Date: February 21, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**