**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**
**[ADJUDICATION ORDER NO. Order/SV/DP/2024-25/30287]**

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**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**

**In respect of:**

**Asian Hotels North Limited**

**[PAN: AAACA0125H]**

**In the matter of Asian Hotels North Limited**

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## FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**), conducted an examination to find out whether Asian Hotels North Limited (hereinafter referred to as "**Noticee/the company**") has violated any provision(s) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") with respect to disclosures related to default on payment of interest/ repayment of loans taken from bank/ financial institutions.

## APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed undersigned as the Adjudicating Officer (hereinafter referred to as '**AO**') in the matter vide communique dated December 29, 2023 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the

provisions of the Section 15A(b) of the SEBI Act, for the following violations alleged to have been committed by the Noticee:

*a.* Regulation 30(7) read with Regulation 4(1)(d),(e) and (h) of LODR Regulations (Para 3(i) of the extant order)

*b.* Regulation 30 (6) read with Schedule III – Part A: Para A clause 9 (iv) of LODR Regulations (Para 3(j) of the extant order)

*c.* Regulation 30(7) read with Regulation 4(1) (e) and (h) the LODR Regulations (Para 3(k) of the extant order)

**<u>SHOW CAUSE NOTICE, REPLY AND HEARING</u>**

3. Based on the findings by SEBI, Show Cause Notice dated February 08, 2024 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15A(b) of SEBI Act for the alleged violation of the provisions mentioned at para 2. The SCN, inter alia, alleged the following:

    *a. The Noticee had proposed a One Time Restructuring (OTR)/ Resolution Plan dated 06.08.2020, to its lenders under the Reserve Bank of India Resolution Framework due to Covid-19.*

    *b. The Noticee vide its announcement dated November 13, 2020 disclosed the reasons and effects of the Restructuring Plan proposed by the Company and the same was submitted to the lenders which was approved by the Audit Committee and Board of the Company. The Inter-Creditors Agreement was signed between the Noticee and the lenders on December 23, 2020. It was material development with respect to the Restructuring Plan proposed by the Noticee to the lenders and disclosed to the exchanges through intimation dated November 13, 2020.*

*c. Further, the Noticee vide its announcement dated July 06, 2021 disclosed the approval and implementation of the One Time Restructuring for credit facilities by Lenders which was availed by the Company, including Yes Bank and Bank of Maharashtra.*

*d. Subsequently, the Noticee and its lenders executed the Master Amendment Agreement in June 2021. The Master Amendment Agreement formed an integral part of the OTR scheme which laid down the amended terms based on which the loan facilities were availed by the Noticee, as per the OTR Scheme. Clause 2.1.1 of the Master Amendment Agreement imposed a moratorium on any instalments due and payable by the Company to lenders for the period between September 1, 2020 and March 30, 2022.*

*e. Further, Yes Bank had issued a Loan Recall Notice dated 17.02.2022 against the Noticee, and declared the Noticee's account as NPA with effect from 20.12.2020. The Noticee assailed this action of Yes Bank before Hon'ble Delhi High Court vide CS (COMM) No. 128/2022 (the 'Suit'). After hearing both the parties, Hon'ble Delhi High Court vide order dated 24.02.2022 restrained Yes Bank from acting upon the said Notice and stayed the purported default of the Company based on which Yes Bank declared the Company's accounts as Non Performing Asset. This interim order is in force as on date.*

*f. Vide orders dated 02.03.2023 and 03.03.2023, Hon'ble Delhi High Court has impleaded the lenders in the Suit, and extended the order dated 24.02.2022 to all the lenders, including the assignee of Yes Bank i.e. JC Flower Asset Reconstruction Pvt. Ltd. ('JC Flower').*

*g. Further, vide order dated 02.03.2023, Hon'ble Delhi High Court has also stayed the recovery action by Lenders against the Company pursuant to Joint Lenders Meeting held on 23.01.2023.*

*h. Owing to the difference in positions taken by the Company and the lenders regarding the implementation of the OTR Scheme, this issue is now pending adjudication before the Hon'ble Delhi High Court. Even the application for interim relief filed along with the Suit (I.A. 3102/2022 in CS (COMM) 128/2022) had not been finally decided by the Court.*

*i. Against the aforesaid facts in the matter, it was alleged that the Noticee did not disclose the signing of Inter-Creditor Agreement dated December 23, 2020 and therefore violated Regulation 30(7) read with Regulation 4(1)(d),(e) and (h) of LODR Regulations.*

*j. It was further observed that the lenders had approved the OTR for credit facilities availed by the Noticee on June 07, 2021. However, it is observed that the Noticee disclosed the same with delay on July 06, 2021. The Noticee made the disclosure to the stock exchange(s) with a delay of 28 days as against within the timeline of twenty-four hours from the occurrence of event. Therefore, it was alleged that the Noticee has failed to comply with the provisions of Regulation 30 (6) read with Schedule III – Part A: Para A clause 9 (iv) of LODR Regulations.*

*k. It was further alleged that the Noticee did not disclose the material developments like the Loan Recall Notice dated February 17, 2022 issued by Yes Bank as well as litigation and orders of the Hon'ble Delhi High Court with respect to the Loan Recall Notice and declaration of NPA by the lenders and therefore it is alleged that Noticee has violated Regulation 30(7) read with Regulation 4(1) (e) and (h) the LODR Regulations.*

4. Vide letter dated February 28, 2024, Noticee filed its reply to the SCN and *inter alia* submitted that following:

    *a. The Supreme Court of India, by various orders dated 23.03.2020, 27.04.2021, 23.09.2021 and 10.01.2022 ("**Limitation Orders**") has directed* *that the period from 15 March 2020 till 28 February 2022 shall be excluded for the purpose of calculating any limitation period under general or special law. This includes the limitation period prescribed under the LODR Regulations for making any disclosures to the Exchange. The Supreme Court has directed that if any limitation period to do any act under the general or special laws, expired during 15 March 2020 till 28 February 2022, a balance period of 90 days from 1 March 2022 shall be granted to all persons and entities for their respective compliances. Therefore, the last date to make any such disclosures was 29 May 2022.*

b. *Notably, all requisite disclosures under the LODR Regulations to the Exchange have been made by the Company prior to 29 May 2022. These disclosures have been made during the excluded period from 15 March 2020 till 28 February 2022. This is in accordance with the directions of the Supreme Court. Accordingly, there is no delay on part of the Company in making any disclosure to the Exchange. There is therefore no merit in the allegations of non-compliance or violation by the Company under the LODR Regulations.*
c. *Without prejudice, it is pertinent to note that the from March 2020, the Government and Delhi Disaster Management Authority restricted the daily movement of public to avoid spread of the virus. In these exigencies and sensitive circumstances, the employees and consultants of the Company could not attend office and perform their regular duties. The pandemic not only affected the business of the Company, but also impacted the compliances of the Company. Accordingly, the delay, if any, on part of the Company, is unintentional and owing to the difficulties faced by the Company in managing its affairs during the brutal first and second wave of the Covid-19 pandemic in India.*
d. *It is incorrect that the Company has not disclosed execution of the Inter-Creditor Agreement ("**ICA**") by all lenders on December 23, 2020 for implementing the Resolution Plan submitted by the Company. The*

*disclosure regarding the execution of the ICA was duly disclosed to the Exchange on 6 July 2021.*

e. *In respect of the disclosure regarding the OTR approval by the lenders, it is stated that by letter dated 7 June 2021, a provisional OTR approval was said to have been granted by majority lenders, which was to be followed with revised OTR Sanction Letters. However, the letter was signed by Bank of Maharashtra alone. The OTR Sanction Letters were required to be issued by majority of the lenders to the Company for the OTR to be approved. Notably, upon receiving the OTR Sanction Letters from the majority banks, it was communicated to the Board of the Company and the Audit Committee for confirmation that the OTR has in-fact been implemented and approved by the majority of the banks. The Audit Committee recorded the confirmation of the execution of the ICA, OTR approval and implementation by majority banks on 5 July 2021. Accordingly, relevant disclosures were made by the Company to the Exchange on 6 July 2021, within the stipulated time period of 24 hours under the LODR Regulations.*

f. *Owing to the onset of the Covid-19 pandemic, the Reserve Bank of India ("**RBI**") introduced a moratorium on payment of loan instalments to the banks of for the period March 01, 2020 till August 31, 2020, through various circulars under the Covid-19-Regulatory Package. Pursuant to this, on 06.08.2020, RBI notified the Resolution Framework for all borrowers stressed due to Covid-19. This RBI Framework enabled borrowers and lenders to implement the OTR Plan for inter alia restructuring loans and granting concessions to borrowers. To avail the benefit of this Resolution Framework, the Company proposed a OTR/ Resolution Plan to all the lenders.*

g. *This Resolution Plan was discussed during joint meetings of all lenders ('JLM') of the Company, including the Bank and finally invoked on 09.12.2020.* In pursuance of the Resolution/ OTR Plan, an Inter-Creditor Agreement ('ICA') was executed by all lenders on 23.12.2020 for implementing the said Plan submitted by the Company. As per the terms of the ICA, all the lenders, admitted that there was no default on the date of invocation of the Resolution Plan or on the date of execution of the ICA. The relevant recitals of the said ICA states:

"*The borrower is facing financial stress due to COVID-19 pandemic and its accounts have been classified as standard but not in default for more than 30 (Thirty) days with any of the lending institutions as on March 1, 2020 and continues to remain standard as on the invocation date*."

h. *Clause 6.2 of the ICA further stipulates that all lenders undertook to be bound by the Resolution Plan and not to initiate any legal action against the Company during the implementation of the same. It is also clear from Clause 6.2 that the approval of the resolution plan constitutes an amendment, modification, waiver, release, discharge of all the existing facilities availed by the Company, as may be necessary for the implementation of the Resolution Plan.*

i. *Subsequently, the Company and the lenders executed the Master Amendment Agreement ('Master Amendment Agreement') in June 2021. The Master Amendment Agreement formed an integral part of the OTR scheme which laid down the amended terms on the basis of which the loan facilities, as revised in accordance with the OTR Proposal, were availed by the Company.*

j. *Clause 2.1.1 of the Master Amendment Agreement stipulates that the lenders agreed that there shall be a moratorium on any instalments due and payable by the Company to lenders for the period between September 1, 2020 and March 30, 2022. Therefore, there cannot be any default of the Company during this period on re-payment of principal instalments till 30.03.2022.*

*k. Clearly therefore, declaration of the Company's loan accounts as NPA during the moratorium by all the Lenders inter alia on 20.12.2020, 31.12.2020, 28.01.2021, 10.01.2022, is ex-facie invalid.*

*l. In terms of the OTR scheme, two additional agreements were executed between the parties (i) Trust and Retention Account Agreement and (ii) Funded Interest Term Loan Agreement ('FITL Agreement'). Under the FITL Agreement, the lenders undertook to fund the interest liability on behalf of the Company in respect of the current running term loans during the effective moratorium period. Therefore, it was expressly agreed that the Company would not have any interest liability during the moratorium period. All Lenders acted upon this FITL Agreement and funded the interest liability on behalf of the Company. However, this funding was stopped arbitrarily by all Lenders, thereby acting in default of the OTR Scheme and the Resolution Plan*.

*m. It is plain and clear from the express terms of the Master Amendment Agreement, the FITL Agreement, and the conduct of the Lenders, that the Company has not defaulted in respect of any repayment liability on account of the moratorium period from 01.09.2020 till 30.03.2022.*

*n. Clearly therefore, it is inconceivable that the Company can be said to have defaulted in its repayment obligations of the principal and interest liability under the loans availed from the Lenders. The default, if any, is only attributable to all the Lenders. The Company cannot be made liable for the Lenders' default.*

*o. However, despite this position, one of the lenders Yes Bank, issued a Loan Recall Notice dated 17.02.2022 against the Company, and declared the Company's account as NPA with effect from 20.12.2020.*

*p. The Company assailed this action of Yes Bank before the Delhi High Court vide CS (COMM) No. 128/2022 (the "**Suit**"). After hearing both the parties, the High Court by order dated 24.02.2022 restrained Yes Bank from acting upon the said Notice and staying the purported default of the Company on* *the basis of which Yes Bank declared the Company's accounts as NPA. The Court observed that prima facie Yes Bank has been placing roadblocks in the consummation of the OTR Scheme. This interim order is in force as on date.*

q. *By orders dated 02.03.2023 and 03.03.2023 in the Suit, the High Court has impleaded the lenders in the Suit, and extended the order dated 24.02.2022 to all the lenders, including the assignee of Yes Bank i.e. JC Flower Asset Reconstruction Pvt Ltd. ('JC Flower'). Further, by order dated 02.03.2023, the High Court has also stayed the recovery action by Lenders against the Company pursuant to JLM held on 23.01.2023.*

r. *Clearly therefore, the purported default of the Company and declaration of NPA as alleged by all Lenders, has been principally stayed by the Court and is sub judice before the High Court. Even the interim stay applications, in respect of which the orders dated 24.02.2022, 02.03.2023 and 03.03.2023 have been passed, are yet to be decided finally. Therefore, there is no final adjudication on this interim relief.*

s. *Besides this issues, the High Court of Delhi is also seized of the following issues:*

   *(a) Default of the Company, if any, in implementation of the OTR*
   *(b) Default of the Lenders, if any, in implementation of the OTR*
   *(c) Declaration of the loan accounts of the Company as NPA*
   *(d) Final adjudication on the interim reliefs to be granted in favour of the Company and whether ad-interim stay should be continued till the outcome of the Suit*

t. *In view of the fact that the aforesaid issues are yet to be adjudicated by the High Court, even at the interim stage, there is no occasion to make any disclosure regarding declaration of the Company's accounts as NPA. It is in view of this position that the Company states that no material event has occurred in the opinion of the Board of the Company, or which is likely to result in discontinuity or alteration of event or information already available publicly or result in significant market reaction if disclosed at a later date.*

u. *In this view of the matter, at this stage, no disclosure is required to be made by the Company as per the LODR Regulations. There is no non-compliance by the Company of any SEBI, regulations, guidelines or circulars.*

5. Subsequently, vide Notice dated March 12, 2024, the Noticee was granted an opportunity of personal hearing on March 19, 2024.

6. The Authorised Representatives of the Noticee namely Shri Amritesh Jatia, Chairman and Managing Director, Asian Hotels North Limited, Shri Tarun Srivastava, Compliance Officer and Ms. Manyaa Chandok, Advocate (hereinafter referred to as "**ARs**") appeared for the hearing on March 19, 2024 and reiterated the submissions made vide reply dated February 28, 2024. The ARs of the Noticee further submitted that due to Covid 19, Hon'ble Supreme Court had relaxed the limitation period. Further, the OTR was disclosed within 24 hours of confirmation from the Audit Committee. Further, the suit filed before the Hon'ble Delhi High Court is in interim stage and is sub-judice, therefore, the same was not disclosed.

## CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the allegations levelled against the Noticee in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

***I.*** **Whether *Noticee has violated following provisions :***

***a. Regulation 30(7) read with Regulation 4(1)(d),(e) and (h) of LODR Regulations (Para 3(i) of the extant order)***

***b. Regulation 30 (6) read with Schedule III – Part A: Para A clause 9 (iv) of LODR Regulations (Para 3(j) of the extant order)***

***c. Regulation 30(7) read with Regulation 4(1) (e) and (h) the LODR Regulations (Para 3(k) of the extant order)***

II. ***Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?***

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?***

8. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

*"**Principles governing disclosures and obligations.***

*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: …*

*(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.*

*(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*

*…*

*(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.*

***30. Disclosure of events or information.***

*…*

*(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.*

*(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).*

*(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:*

*(a)the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or*

*(b)the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;*

*(c)In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.*

*…*

*(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:*

*Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay*

*(7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.*

***SCHEDULE III***

***PART A: DISCLOSURES OF EVENTS OR INFORMATION:***

*A.* ***Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):***

*…*

*9.* ***** *Resolution plan/ Restructuring in relation to loans/borrowings from banks/financial institutions including the following details:*

*(i) Decision to initiate resolution of loans/borrowings;*

*(ii) Signing of Inter-Creditors Agreement (ICA) by lenders;*

*(iii) Finalization of Resolution Plan;*

***(iv) Implementation of Resolution Plan;***

*(v) Salient features, not involving commercial secrets, of the resolution/ restructuring plan as decided by lenders.*

*(* w.e.f. 5.5.2021. Substituted for “Corporate debt restructuring”)*

*B.* ***Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):***

*…*

*8. Litigation(s) / dispute(s) / regulatory action(s) with impact.”*

9. Now I deal with the allegations levelled against the Noticee.

***Issue No. 1: Whether Noticee has violated following provisions :***

- ***a. Regulation 30(7) read with Regulation 4(1)(d),(e) and (h) of LODR Regulations (Para 3(i) of the extant order)***
- ***b. Regulation 30 (6) read with Schedule III – Part A: Para A clause 9 (iv) of LODR Regulations (Para 3(j) of the extant order)***
- ***c. Regulation 30(7) read with Regulation 4(1) (e) and (h) the LODR Regulations (Para 3(k) of the extant order)***

10. It was alleged that the Noticee failed to disclose the signing of ICA and there has been a delay of 28 days in disclosure of the approval of the lenders to the One-Time Restructuring (OTR) in respect of the Company. In this regard, the Noticee has submitted that the disclosure regarding the execution of the ICA was duly disclosed to the Exchange on 6 July 2021. Further, with respect to the disclosure of the OTR, the Noticee submitted that the Audit Committee and the Board of the Company recorded the confirmation of the execution of the ICA, OTR approval and implementation by majority banks on 5 July 2021. Accordingly, relevant disclosures were made by the Company to the Exchange on 6 July 2021, within the stipulated time period of 24 hours under the LODR Regulations. It was further submitted that the disclosures are well within limitation period prescribed by the Supreme Court under the Limitation Orders, applicable to special laws including LODR Regulations.

11. Hon'ble Supreme Court vide its order dated March 23, 2020 extended the limitation prescribed under general laws of limitation or under Special Laws and observed the following:

"*This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).*

*To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."*

12. Therefore, in my understanding the purpose of extending the limitation was to ensure that no one has to travel physically to do the filings, on account of Covid 19 pandemic. Hence, the same was made applicable to petitions/applications/suits/ appeals/all other proceedings within the period of limitation under the general law of limitation or under special laws. In this regard, it may be noted that a Proceeding includes action and special proceedings before judicial Tribunals as well as proceedings pending before quasi-judicial officers and boards[1]. I am of the opinion that the disclosures to be made to the stock exchanges under LODR Regulations, do not qualify as the other proceedings. Therefore, I do not agree with the submissions of the Noticee that the limitation was extended by the Hon'ble Supreme Court with respect to the compliance

[1] Kailash Moudgil vs. Deputy Commissioner Of Income Tax (02.12.1999 - ITAT Delhi) : MANU/ID/0182/1999

of disclosures under LODR Regulations. The said limitation was extended only for the legal proceedings before any court of law.

13. The Noticee also had submitted that the Covid 19 restrictions had affected the business of the company and also compliances by the company. Delay, if any, was thus unintentional. In this context it is noted that pandemic cannot absolve the company of any defaults it has made, at best it can be a mitigating factor while considering quantum of penalty.

14. It is further observed that the Noticee had disclosed on November 13, 2020 about the restructuring plan considered and approved by its Board of Directors based on the recommendation of its Audit Committee, to be submitted to its Bankers. Subsequently, the Inter-Credit Agreement (ICA) by its lenders was signed on December 23, 2020. This signing of ICA is a deemed material event and this material development with regard to the earlier disclosure made on November 13, 2020, was required to be disclosed by the company as per Regulation 30(7) of LODR Regulations. Hence, I am of the view that same was not disclosed to the Stock Exchange in timely manner as when ICA was signed on December 23, 2020 ,it is seen that the Noticee disclosed the same only on July 06, 2021. Therefore, I am of the opinion that by making delayed disclosure of the ICA, the Noticee has violated Regulation 30(7) read with Regulation 4(1)(d), (e) and (h) of LODR Regulations.

15. With regard to disclosure of OTR approval, the Noticee has submitted that only a provisional OTR approval letter signed by Bank of Maharashtra was received on June 07, 2021, which was to be followed by the revised OTR sanction letters to be signed by the majority of lenders of the company for the OTR to be approved. Further, majority of the lenders signed and the Audit Committee and the Board of Company recorded the confirmation of the OTR approval and implementation by majority banks on July 05, 2021 and accordingly the same was disclosed to Stock Exchange on July 06, 2021, within the stipulated time period of 24 hours.

16. I note that that Schedule III – Part A: Para A clause 9 (iv) read with Regulation 30(6) of LODR Regulations stipulates that the "Implementation of Resolution Plan" shall be disclosed without any application of the guidelines of materiality within twenty four hours from the occurrence of event or information. From the submissions made by Noticee, I note that the Noticee had made the disclosure within 24 hours from the Audit Committee and the Board of Company recording the confirmation of the OTR approval and implementation of the same by majority banks on July 05, 2021. Therefore, I am of the opinion that the violation of Regulation 30 (6) read with Schedule III – Part A: Para A clause 9 (iv) of LODR Regulations does not stand established.

17. With regard to the non disclosure of the Loan Recall Notice by Yes Bank Ltd. dated February 17, 2022 as well as related litigation and orders passed by the Hon'ble High Court of Delhi, in addition to declaration of NPA by other lenders, it was submitted by the Noticee that the purported default of the Company and declaration of NPA as alleged by all Lenders, has been principally stayed by the Hon'ble High Court and is *sub judice* before the High Court. Even the interim stay applications, in respect of which the orders dated 24.02.2022, 02.03.2023 and 03.03.2023 have been passed, are yet to be decided finally. Therefore, there is no final adjudication on this interim relief. Besides this issues, the High Court of Delhi is also seized of the following issues:

(a) Default of the Company, if any, in implementation of the OTR
(b) Default of the Lenders, if any, in implementation of the OTR
(c) Declaration of the loan accounts of the Company as NPA
(d) Final adjudication on the interim reliefs to be granted in favour of the Company and whether ad-interim stay should be continued till the outcome of the Suit

18. It was further submitted by the Noticee that the aforesaid issues are yet to be adjudicated by the High Court, even at the interim stage, thus, there is no occasion to make any disclosure regarding declaration of the Company's accounts as NPA. It is in view of this position that the Noticee stated that no material event had occurred in the opinion of the Board of the Company, or which is likely to result in discontinuity

or alteration of event or information already available publicly or result in significant market reaction if disclosed at a later date. In this view of the matter, at this stage as per the Noticee, no disclosure is required to be made by the Company as per the LODR Regulations. There is thus, no non-compliance by the Company of any SEBI, regulations, guidelines or circulars.

19. In this regard, Regulation 30(7) of the LODR Regulations, needs to be carefully looked into. Regulation 30(7) clearly provides that the listed entity shall make the disclosure updating material developments on a regular basis, till such time the event is resolved/closed. The Loan recall Notice, declaration of loan as NPA by the lenders and filing of suit by company in this regard before Hon'ble High Court of Delhi etc are intricately linked with the implementation of the Restructuring Plan which had been disclosed earlier by the Company and were a material development in this regard. Therefore, as per the requirement of Regulation 30(7), Noticee was required to make the disclosures regarding the same and make the such disclosure regarding developments on a regular basis until the event is resolved. Further, the suit filed by the company against the Loan Recall Notice by the lenders and declaration of its pending loan as NPA makes an impact, the said suit was also required to be disclosed under Schedule III – Part B: Clause 8. Therefore, I tend to disagree with the submissions of the Noticee that the said developments were at interim stage and sub judice and no material event had occurred which needed to be disclosed under LODR Regulations. The Noticee ought to have disclosed all the details to its shareholders. The company could have also clarified its views/perspective about the action/stand taken by lenders and about the disputes being under consideration of the Hon'ble High Court of Delhi. While the Hon'ble High Court of Delhi would decide on the matter, the shareholders have a right to know about the stand taken by the company and the lenders.. As per Regulation 30(7), even the said litigation, though sub judice, is required to be disclosed until decided by the court or final resolution is there. Therefore, I am of the opinion that the Noticee has violated Regulation 30(7) read with Regulation 4(1) (e) and (h) the LODR Regulations.

20. In this regard, it is pertinent to note the observation of Hon'ble SAT in the matter of B Renganathan vs. SEBI (Appeal no 272 of 2020 decided on March 24, 2021) wherein it was observed that "...*A disclosure-based regulatory regime is founded on timely and adequate disclosure of all events material to a company or to its securities in any manner. Further hair-splitting will result in confusion; so the best way to deal with the event is to disclose without doing further analysis*".

21. Further, in the matter of Ankur Chaturvedi vs. SEBI (Appeal no. 434 of 2014 decided on August 04, 2015), the Hon'ble SAT observed that "*As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty..*."

22. In view of the above discussion, I hold that the allegations mentioned at para 3(i) and 3(k) have been established and thus, the Noticee has violated Regulations 4(1)(d), (e) and (h) read with Regulation 30(7) of LODR Regulations.

***Issue No. 2: Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?***

23. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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......".*

24. In view that the violations committed by the Noticee have been established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

"***Penalty for failure to furnish information, return, etc.***

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

*…*

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations 66[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], 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;"*

***Issue No. 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?***

25. While determining the quantum of penalty under Section 15EB of the Act, it is important to consider the factors stipulated in Section 15J of SEBI Act, which read as under:-

"15J - Factors to be taken into account by the adjudicating officer while adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

26. From the material available on record, I observe that any quantifiable gain or unfair advantage accrued to the Noticee or loss cause to investors is not available on record. With regard to the Restructuring Plan the relevant details regarding developments in the matter need to have been disclosed in a timely manner for the benefit of all stakeholders by the Noticee. However, it is noted that no investor complaints is on record with respect to the established violations. Further, the Noticee is not a repeated offender. However, I also note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision.

27. The said violations by the Noticee attract monetary penalty. Hence, I feel it appropriate to levy a penalty which is commensurate with the nature of violation, which acts as a deterrent factor for the Noticee and others in protecting the interest of investor in Securities market. Therefore, taking into account the facts and circumstances of this matter, submissions of the Noticee and the mitigating factors, I am of the view that suitable penalty under Section 15A(b) need to be levied on the Noticee.

## ORDER

28. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticee as well as the factors mentioned in section 15J of 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 Adjudication Rules 1995, I hereby impose a penalty of Rs.6,00,000/- (Rupees Six Lakh only) under section 15A(b) on the Noticee for having violated Regulations 4(1)(d), (e) and (h) read

with Regulation 30(7) of LODR Regulations. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

29. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

    ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

    In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

30. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee 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.

31. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee, viz., Asian (Hotels) North Ltd. and also to the Securities and Exchange Board of India.

**Date : April 25, 2024**
**Place : Mumbai**

**Shashikumar Valsakumar**
**Adjudicating Officer**