BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BS/YK/2023-24/29296]

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:

Noticee No.	Noticee	PAN
1	Mr. Hans Kumar Verma	ACZPV9909Q
2	Mr. Surendra Kumar Jain	AAPPJ6328P
3	Mr. Shyam Babu Agrawal	AATPA9977F

*(The above-mentioned entities are individually referred to by their respective Noticee No. as assigned in the Show Cause Notice dated May 08, 2023 and collectively referred to as **'Noticees'**)*

In the matter of Sanwaria Consumer Ltd.

FACTS OF THE CASE

1. Pursuant to receipt of certain complaints alleging *inter alia* financial fraud in Sanwaria Consumer Ltd. (hereinafter referred to as "**Sanwaria**" or "**Company**"), Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had initiated an investigation in to the affairs of the Company for the period from April 01, 2017 to September 30, 2019. Investigation was primarily based on the Forensic Audit Report (hereinafter referred to as **"FAR"**) dated February 26, 2020, for the period April 01, 2013 to September 30, 2019 submitted by M/s. M.K. Aggarwal & Co. to Punjab National Bank (hereinafter referred to as **"PNB"**) (consortium Lead bank) which was sent to SEBI by PNB.

2. It was observed that the company's annual report to the stock exchanges contained various irregularities such as Inflated Revenue, Inflated Receivables, Inflated Advances, Inflated Inventories, Non-consolidation of Financial Statement, Provision of various expenses not created etc. It was observed that Noticees were Independent directors and Members of the Audit Committee of Sanwaria and have attended maximum Audit Committee meetings during the Investigation Period. Thereby, it was alleged that Noticees have overlooked numerous red flags such as significant rise of debtors, timely payments to creditors but significant delay in receipts from the debtors, poor maintenance of stock records, non-consolidation of accounts, change of the Statutory auditor, internal auditor and secretarial auditor almost every year, poor internal control system etc. and failed to independently evaluate the accuracy of the financial statements.

3. In view of the above, it was alleged that Noticees have violated the provisions of Regulation 18(3) read with Para A of Part C of Schedule II of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**"). The above violations make the Noticees liable for monetary penalty under section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide an order of the Competent Authority dated March 16, 2023, SEBI initiated adjudication 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'**), to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act the violations alleged to have been committed by the Noticees. Subsequently, the undersigned was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') vide communique dated April 20, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref no. SEBI/EAD-1/BS/YK/18439/2/2023 dated May 08, 2023 (hereinafter referred to as **'SCN'**) was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of the Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticees. The aforesaid SCN was served upon the Noticees through Speed Post with Acknowledgement Due (hereinafter referred to as **"SPAD"**).

6. As regards the facts of the case, during to the course of investigation by SEBI, the following was observed and accordingly the said facts were alleged in the SCN:

6.1. Related Party Transactions (RPTs):

Sanwaria indulged in huge number of RPTs which were shown on gross basis instead of Party-wise details in the annual accounts of the company for the Financial Years (FY) 2017-18 & 2018-19. Hence, it was alleged that the company had not complied with the provisions of Indian Accounting Standards (IND AS) 24 with regard to RPTs for the FY 2017 -18 and 2018-19. Therefore, it was further alleged that company failed to comply with the para A (1) of schedule V of the Regulation 34 (3) of SEBI (LODR), 2015 which inter-alia states that the listed entity shall make disclosures in compliance with the accounting standards on related party transactions.

6.2. Provisions for various expenses not created:

6.2.1. *Statutory Auditor of the Company for FY 2017-18 had qualified his opinion with regard to provision for Gratuity for FY 2017-18 as "the Company has provided the liability towards Employee's Gratuity on estimated basis as on 31st March 2018 instead of based on valuation determined by the Actuarial as required under IND-AS19- "Employee Benefits". Company also failed to provide actuarial valuation report for FY 2017-18 to SEBI. Hence, it was alleged that Company had not complied with the provision of IND AS 19 with regard to Employee Benefits.*

6.2.2. *Exchange rates fluctuations on foreign debtors were not recognised as required under IND AS 21 for FY 2018-19. Also, the Company failed to provide the said details for FY 2018-19 despite* *that it had foreign debtors as on March 31, 2019. Hence, it was alleged that company had not complied with the provisions of IND AS 21 with regard to exchange rates fluctuation on the debtors for FY 2018-19. Hence, it was alleged that Company had violated the provisions of Regulation 48 of the LODR Regulations.*

6.3. Non-consolidation of financial statements:

6.3.1.*The provisions of Ind AS 28 and/or IND AS 110 inter-alia require that a company should prepare the consolidated financial statements when it has an investment in an associate company. Further, Section 129(3) of the Companies Act, 2013 also inter alia states that a company having subsidiaries including associate company and joint venture, shall prepare a consolidated financial statements.*

6.3.2.*It was alleged that non-consolidation of financial of Sanwaria Energy Ltd. by Sanwaria led to misrepresentation of the company's net profit/losses for FY 2017-18 in following manner:*

(Rs. in Crores)

Particulars	*FY 2017-18*
Standalone Net Profit/Loss of Sanwaria after tax (Without consolidation) (A)	*84.69*
Net Profit/Loss of Sanwaria Energy Ltd. (100% Subsidiary company of Sanwaria) (B)	*(0.582)*
Sanwaria Net Consolidate Profit/ Loss of after Tax (A+B) (after consolidation)	*84.11*

6.4. Irregularities in Stock/inventories valuation:

It was alleged that the company had not complied with the provision of IND AS 02 with regard to the valuation of stock for FYs 2017-18 and 2018-19 which requires the company to value inventory at cost or market value, whichever is lower and the same had resulted in overstatement of inventory for the FY 2017-18 and FY 2018-19 by Rs. 6.21 Crores and Rs. 5.48 Crores respectively which led to misrepresentation of book of accounts. Therefore, it was also alleged that Company had violated the provisions of Regulation 48 of the LODR Regulations.

6.5. Inflated/overstated Revenues:

6.5.1.*Company had booked a loss of Rs. 18.42 crore and Rs. 39.18 crore in FY 2015-16 and 2017-18 respectively due to fire occurrence at the C&F Godown at Kandla Port of Soya DOC. Based on the Surveyor's report, the Insurance company rejected the claim and the company* *accordingly, booked total loss of Rs. 57.60 crore. Subsequently, the company filed a complaint before the Consumer Dispute Redressal Commission, New Delhi against the insurance company - United India Insurance Co. Ltd. On the basis of the same, Sanwaria written back the amount of insurance claim for Rs. 108.25 crores against the write off amount of Rs. 57.60 crore by charging interest thereon in FY 2019-20.*

6.5.2. *It was alleged that recognizing revenue in the books of accounts based on the filing of complaint with NCDRC was non-compliance of IND AS 37, since there was no certainty that NCDRC will award the decision in favor of the company. Hence, it was alleged that Sanwaria had overstated its revenue in FY 2019-20 to the tune of Rs. 108.25 crore which includes the interest amount of Rs. 50.75 crore. Moreover, Insurance claim amount of Rs. 108.25 crore was included in the company's debtors for FY 2019-20. Hence, it was alleged that company had also overstated its debtors by Rs. 108.25 crores for FY 2019-20.*

6.5.3.*Sanwaria showed inter-unit/plant sales in the revenue from operations in its Audited Financial Statements to the extent of Rs. 68.80 crores and Rs. 33.67 crores for FY 2017-18 and 2018-19 respectively. Hence, it was alleged that Sanwaria had overstated the revenue from operations in FY 2017-18 and 2018-19 to the tune of Rs. 68.80 crores and Rs. 33.67 crores respectively.*

6.6. Inflated/overstated Advances:

6.6.1. *Advances amounting to Rs. 6.08 crores are outstanding for last three years. It was observed that supporting documents were not provided for which advances were given. Moreover, it was stated by the company that goods sold and amount not received was also included in advances, however, same should have been recorded as debts not as advances. It was further observed that despite the advances pending for three years, no provision was made. It was also observed that no amount had been received against these advances till date. The company should have made impairment in terms of provision of IND AS 36. Hence, considering the absence of supporting documents, no provision, and further no money was received against these advances, it was alleged that Sanwaria had overstated/inflated its advances to the tune of Rs. 6.08 crores.*

6.7. Overstated/inflated Trade Receivable/debtors:

6.7.1.*It was observed that on an average Rs. 350 crores towards advances to Suppliers were included in the Trade Receivables reported by the company in the audited financial statement for FYs 2017-18, 2018-19 and 2019-20. Hence, it was alleged that the company had overstated the Trade Receivables by Rs. 350 crores in FY 2017-18, 2018-19 and 2019-20.*

6.7.2.*Company provided Trade Receivables statement amounting to Rs. 883.12 crores as on 30.06.2019 to the bank which took up the top 25 parties of the list and sent confirmations letters/emails to these parties. It was observed that out of these 25 parties, confirmations letter were returned from six parties, not received by 11 parties, refused any dealing with the company by four parties, two parties showing credit balance and remaining two entities confirmation received but not relied by the bank. It was further observed from FAR that third parties confirmation to 51 debtors were also sent by the forensic auditor, however, no confirmation was received from those Trade Receivables also.*

6.7.3.*It was observed from Company e-mail dated November 28, 2022 that legal notice was issued during FYs 2015 to 2020 and the recovery letter was issued in FY 2018-19 against the pending Trade Receivables. However, Company did not mention any reference of the earlier legal notice in the recovery letter. Also, the company failed to provide the details of communication in respect of the legal notices and recovery letters. Further, the recovery letters don't have details of broker from whom the debtors had purchased goods, details of goods, even the letters don't have full signature. It was further observed that no legal action is taken by the company against the major Trade Receivables (top 25 debtors parties).*

6.7.4.*It was further observed that Company failed to provide the basic details of brokers through whom goods were sold to customers. Further, it also failed to provide the basic details of Trade Receivables including the invoice issued to them by the broker.*

6.7.5.*In view of the aforesaid coupled with the fact that company had written off Trade Receivables in FY 2019-20 to the tune of Rs. 946.65 crores, it was alleged that the company had overstated the Trade Receivables through overstatement of sales.*

6.7.6. *The list of gross Trade Receivables amounting to Rs. 1049.68 crores as on September 30, 2019 submitted by the company includes the following:* (Rs. in Crores)

Particulars	***As on September 30, 2019***
Insurance claim included in debtors	*108.25*
Other debtors	*941.43*
Total	***1049.68***

6.7.7. *In view of aforesaid observations and considering i) absence of underlying documents relating to sales; ii) unusual credit period and high outstanding receivable; iii) failure to provide complete details of Trade Receivables and brokers; iv) absence of documents with regard to recovery efforts made by the company; v) Negative/no confirmation by the Trade Receivables to PNB and forensic auditor; vi) Noncompliance of IND AS 115; vii) failure to provide third party confirmation; vii) Trade Receivables to the tune of Rs. 946.65 crores were written off by the company in FY 2019-20; it was alleged that the sales transactions with the aforesaid Trade Receivables are therefore, fictitious & fraudulent in nature which had resulted in overstatement of revenue and Trade Receivables of Sanwaria to the tune of Rs. 941.43 crores. These acts lead to misstatement/ misrepresentation in the books of account of Sanwaria.*

6.7.8. *Hence, on the basis of the facts stated in the aforesaid paragraphs, it was alleged that financial statements of Sanwaria were reported misrepresented/ misstated/manipulated during the period April 01, 2017 to September 30, 2019, in violation of Regulations 4(1), 4(2)(e), 33 (1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34 (3) and 48 of LODR Regulations.*

***6.8.Role of Audit Committee Members**:*

6.8.1. *It was observed that the Audit Committee members namely Hans Kumar Verma (Noticee No. 1), Surendra Kumar Jain (Noticee No. 2) and Shyam Babu Agrawal (Noticee No. 3) have attended maximum number of Audit Committee meetings held during the investigation period.*

6.8.2. *It was alleged that the Audit Committee members failed to raise any suspicion on the company's financials despite there were number of red flags viz. significant rise of debtors, timely payments to creditors but significant delay in receipts from the debtors, poor maintenance of stock records, non-consolidation of accounts, change of the Statutory auditor, internal auditor and secretarial auditor almost every year, poor internal control system etc. These red flags/events were significant and major alerts pointing towards misstatements/irregularities in transactions/financial* *statements of the company, the Audit Committee members should have raised questions/queries on the company's financials, however, it was observed that they failed to raise any questions on the same. Hence, it was alleged that Noticees being members of the Audit Committee failed to perform their role to oversee efficacy and veracity of financial reporting function in violation of Regulation 18(3) of LODR Regulation which resulted in publication of misrepresented/misstated and misleading financial statements of Sanwaria.*

REPLIES OF THE NOTICEES

7. Noticees in their respective written replies have *inter alia* submitted as follows:

Noticee No. 1 (reply dated May 09, 2023, May 21, 2023 and June 03, 2023)

7.1. *I wish to state that I am not Proprietor/Director/Guarantor of the "Borrowal Company" M/s Sanwaria Agro Oils Limited (since changed to Sanwaria Consumer Limited). I do not know this company and the persons whose names are mentioned in your letter. Neither have I ever presided or been Chairperson at any of their meetings (namely their monthly Audit Committee meetings held during the 2017-2019 period).*

7.2. *Therefore, my name is to be removed from their list of "Borrowers/Directors". I am not concerned or aware of any financial activities, transactions, loans or repayment of any kind of the above referred company.*

7.3. *I further wish to add that I am a retired officer and eighty years of age. I have served the state in various responsible capacities as an IFS Officer for more than three decades and retired in the year 2000.*

7.4. *I enjoy an excellent reputation in my community and financial institutions, i.e., banks and the like. Your notice has been a cause of mental distress to me.*

7.5. *Having stated the above, I put forward my request for you to eliminate my name from the aforementioned list of Borrowers/Directors and notify me afterwards. Additionally, the documents being sent to me (including "Annexure 16") are inaccurate in their mistaken statement that I have ever presided or even attended their meetings.*

7.6. *I received similar letters from the Central Bank of India and the Bank of Baroda. Both obliged to this same request and withdrew my name from their list.*

<u>Noticee No. 2 (reply dated June 07, 2023 and June 12, 2023)</u>

7.7. *Former Director of Sanwaria, Shri Anil Agarwal came in contact of Undersigned and requested to become non-functional, non-executive independent Director. The undersigned accepted the request and signed Form No. 29.*

7.8. *The undersigned was never informed that he has been included / inducted in the Audit Committee of the Company nor was ever given any intimation of any meeting of the Audit Committee or the Board of Directors held. I did not attend any of the meeting of the Audit Committee of the Company, as depicted from the copy of minutes attached along with Show Cause Notice. It is evident from the perusal of concerned documents that the minutes does not contain my signature and the minutes have been forged showing my presence. Thus it is evident and clear that false minutes of Audit Committee have been prepared marking my false presence without knowledge or intimation to undersigned.*

7.9. *The undersigned got the information of these minutes only for the first time when we perused the documents enclosed along with the show cause notice. The undersigned had made request to the working representative of the Company to supply the photocopies of the minutes containing signature of attendance of undersigned but the same has not been supplied.*

7.10. *The undersigned has already lodged the FIR of forgery committed by the Company in the police station having jurisdiction over the office of the Company*

<u>Noticee No. 3 (reply dated June 07, 2023)</u>

7.11. *I was the Non-Executive Independent Director of Sanwaria till 30.09.2019 and not involved in the day to day affairs of the Company. I vehemently deny that I have violated the provisions of Regulation 18(3) of LODR Regulation which resulted in publication of misrepresented/misstated and misleading financial statements of Sanwaria.*

7.12.*In order to file my comprehensive reply to captioned SCN, I request your kind selves to provide me with an opportunity of Inspection of Documents and copies thereof that are referred to and relied upon by SEBI in present matter.*

7.13.*Grant me an adjournment of the Personal Hearing scheduled on 08.06.2023. Further, I request to provide me an opportunity for Personal Hearing to be granted 3 weeks after the documents are provided to me.*

HEARING

8. In compliance with the principle of natural justice, an opportunity of personal hearing was granted to the Noticees on **June 08, 2023** vide Hearing Notice dated **May 31, 2023.** Submissions made by Noticees on Personal Hearing were as follows:

Noticees	**Submissions**
Noticee No. 1	Shishir Verma, son of Noticee No. 1 vide e-mail dated June 03, 2023 responded that due to health reason, Noticee is not in a position to present himself to SEBI office. He further stated that Noticee has already filed his response vide e-mail dated May 21, 2023 and from his side there is nothing more to add. Also, Noticee did not attend the hearing scheduled on June 08, 2023. In the interest of natural justice, two more opportunities of personal hearing were granted to Noticee vide Hearing Notice dated July 03, 2023 and July 19, 2023 which was duly served through SPAD and the hearings were scheduled on July 19, 2023 and July 28, 2023 respectively. Hearing Notice specifically provided that in case the Noticee desire a personal hearing through video conferencing, he can intimate the same. However, Noticee did not attend the

	hearing scheduled on July 19, 2023 and July 28, 2023 as well.
Noticee No. 2	On the scheduled date of personal hearing, the Noticee appeared through his Authorized Representative (AR) who made submission primarily on the lines of his written replies filed with SEBI vide letter dated June 07, 2023. AR was further advised to file his additional submissions, if any latest by June 16, 2023 which had been provided vide letter dated June 12, 2023.
Noticee No. 3	Noticee vide e-mail ID – shyamagrawalbsd@gmail.com dated June 08, 2023 responded seeking adjournment of Personal Hearing scheduled on June 08, 2023. Noticee sought an opportunity of Inspection of Documents and thereafter to provide with an opportunity of Personal Hearing. Opportunity of Inspection of documents was granted to Noticee on June 14, 2023 and the same was communicated to Noticee by reply e-mail on June 08, 2023. However, Noticee failed to avail the opportunity of Inspection of documents on June 14, 2023. In the interest of natural justice, one more opportunity of personal hearing was granted to Noticee on July 19, 2023 vide Hearing Notice dated July 03, 2023 which was sent through SPAD which returned undelivered with remark **“Refused”** and e-mail on the e-mail ID - shyamagrawalbsd@gmail.com. The Noticee did not attend the hearing scheduled on July 19, 2023.

	In the interest of natural justice, one more opportunity of personal hearing was granted to Noticee on July 28, 2023 vide Hearing Notice dated July 19, 2023 which was duly served through SPAD. However, Noticee did not attend the hearing scheduled on July 28, 2023 as well.

CONSIDERATION OF ISSUES AND EVIDENCE

9. I have carefully perused the charges levelled against the Noticees 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 Noticees had violated Regulation 18(3) read with Para A of Part C of Schedule II of LODR Regulations?

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

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

Issue I. Whether Noticees had violated Regulation 18(3) read with Para A of Part C of Schedule II of LODR Regulations?

10. Before adverting to the factual conspectus of the case, I note that the Noticees had been alleged to had violated applicable provisions of LODR Regulations. Therefore, the text of the said provisions are reproduced hereunder:

<u>Relevant provisions of LODR Regulations:</u>

"Audit Committee.

18.

…....

(3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

SCHEDULE II: CORPORATE GOVERNANCE

…....

PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

A. The role of the audit committee shall include the following:

(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

(a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;

(b) changes, if any, in accounting policies and practices and reasons for the same;

(c) major accounting entries involving estimates based on the exercise of judgment by management;

(d) significant adjustments made in the financial statements arising out of audit findings;

(e) compliance with listing and other legal requirements relating to financial statements;

(f) disclosure of any related party transactions;

(g) modified opinion(s) in the draft audit report;

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;

(7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;

(11) evaluation of internal financial controls and risk management systems;

(12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;

(13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;

11. From the material available on record, I note that SCN alleges that Noticees are members of Audit Committee and have attended maximum Audit Committee meetings held during the Investigation period (April'2017 to September'2019). Noticee 1 and 3 had attended 9 Audit Committee meetings and Noticee 2 had attended 11 Audit Committee meetings during the Investigation Period. It was alleged that Noticees, being member of Audit Committee failed to raise any suspicion on the company's financials despite there were number of red flags viz. significant rise of debtors, timely payments to creditors but significant delay in receipts from the debtors, poor maintenance of stock records, non-consolidation of accounts, change of the Statutory auditor, internal auditor and secretarial auditor almost every year, poor internal control

system etc. These red flags/events were significant and major alerts pointing towards misstatements/irregularities in transactions/financial statements of the company. It was further alleged that Noticees, being member of Audit Committee failed in performing their role as an expert to oversee efficacy and veracity of financial reporting function which resulted in publication of misrepresented, misstated and misleading financial statements of Sanwaria.

12. In this regard, I note that Noticee No. 1 in his submissions mentioned in para 5 of this order contended that he does not know the Company and have neither presided nor been chairperson at any of the Audit Committee meetings. However, from the documents filed with Registrar of Companies (**ROC**), I note that Noticee No. 1 was a director of the Company from March'2008 to March'2019. It is also noted from the copy of Form 29 (*Form submitted to ROC for consent to act as Director of a Company*) obtained from ROC that Noticee No. 1 has provided his consent to act as director of the Company under his signature. Moreover, from the minutes of the Audit Committee meeting held during the period from April'2017 to March'2019 (falls under Investigation Period), I find that Noticee No. 1 was chairperson of the Audit Committee and had approved the quarterly and yearly financial results for the Financial Year 2017-18 and the quarterly financial results for first 3 quarters for the Financial Year 2018-19.

13. Hence, from the materials available on records, I find that Noticee No. 1 has not disputed the above facts with concrete and conclusive evidence except stating that he is not aware of the Company and was not a director.

14. I find that Noticee No. 1 was Independent director of the Company since March'2008 and resigned from the directorship of the Company only on March'2019. Also, during the Investigation Period i.e. April'2017 to September'2019, he was chairperson of the Audit Committee for the period from April'2017 to March'2019 and had approved the quarterly and yearly financial results for the Financial Year 2017-18 and the quarterly

financial results for first 3 quarters for the Financial Year 2018-19 in the Audit committee meetings.

15. In view of the above, contention of Noticee No. 1 that he was unaware of the facts is devoid of merit.

16. I note that Noticee No. 2 in his submission mentioned in para 5 of this order contended that he was a Non-Executive Independent Director of the Company. However, he was not the member of the Audit Committee of the Company and had not attended any of the meetings of the Audit Committee. The minutes of the Audit Committee meetings showing his presence were forged.

17. At the outset, I note that the fact that the Noticee No. 2 was Independent Director of the Company is not disputed.

18. From the perusal of material available on records i.e. documents filed with Registrar of Companies (ROC) and Annual Reports of the Company disseminated on Stock Exchanges, I find that Noticee No. 2 was Independent Director of the Company since March'2008. Further, from the Annual Reports of the Company disseminated on Stock Exchanges, I find that Noticee No. 2 was inducted as the member of the Audit Committee with effect from June 16, 2015. Since then, his presence in the Audit Committee Meetings of the Company was stated in the Annual Reports of the Company disseminated on Stock Exchanges. I find that Noticee No. 2 has attended following Audit Committee meetings since his induction as the member of the Audit Committee till the Investigation period:

Period	**No. of Meetings attended**
June 16, 2015 to March 31, 2016	3
April 01, 2016 to March 31, 2017	4
April 01, 2017 to March 31, 2018	**4**
April 01, 2018 to March 31, 2019	**5**
April 01, 2019 to September 30, 2019	**2**

19. In view of the above, I find that contention of the Noticee No. 2 that he was not aware about his induction as the member of the Audit Committee of the Company and the minutes of the Audit Committee showing his presence is forged appear to be an excuse considering the fact that Noticee No. 2 was associated with the Company as an Independent Director for a long period at the time of Investigation period i.e. for a period of more than 10 Years. The fact that he was inducted as the member of the Audit Committee of the Company and his presence in the Audit Committee meetings was stated in the Annual reports of the Company which was available on Public domain is seen from the records.

20. It is strange that Noticee No. 2 did not object to any of the previous annual reports in which his name is featured as member of the Audit Committee. Though, it is noted that a FIR has been lodged by the Noticee No. 2 disputing his attendance in the Audit Committee meetings, it is not possible at this juncture in this Adjudication proceedings to verify whether it is forged or not. However, there is overwhelming evidence as mentioned in previous years' Annual reports which indicate his presence in the Audit Committee meetings. If the Noticee No. 2 have any grievance, he should have raised the objection before as he has been associated with the Company as the Independent Director as many as 10 Years during the IP, raising such an objection at this juncture could be only seen as an afterthought.

21. I note that Noticee No. 3 in his submission made vide e-mail dated June 08, 2023 mentioned in para 5 of this order contended that he was a Non-Executive Independent Director of the Company till 30.09.2019 and not involved in the day to day affairs of the Company. I further note that Noticee No. 3 in his submission sought an opportunity of inspection of documents relied upon by SEBI in the present matter in order to file comprehensive reply. The opportunity was granted to Noticee No. 3 on June 14, 2023 and the same was communicated to Noticee No. 3 on June 08, 2023 itself by reply e-mail. However, for reasons best known to Noticee No. 3, he failed to avail the

opportunity of inspection of documents. I further note that documents which are relied upon by SEBI in the present matter were duly provided to the Noticee along with SCN dated May 08, 2023. I further note that, in the interest of natural justice, two more opportunities to attend the Personal hearing and to file additional submissions, if any were granted to Noticee No. 3 vide Notice dated July 03, 2023 and July 19, 2023. However, Noticee No. 3 neither attended the personal hearings nor made any additional submissions.

22. On the basis of the minutes of the Audit Committee meetings held during the period from April'2017 to March'2019 (falls under Investigation Period), I find that Noticee No. 3 attended the Audit Committee meetings and had approved the quarterly and yearly financial results of the Financial Year 2017-18 and the quarterly financial results for first 3 quarters of the Financial Year 2018-19 in Audit Committee meetings.

23. I find that Regulation 18(3) read with Para A of Part C of Schedule II of LODR Regulations casts specific responsibilities on the Audit Committee. It is clear from Regulations that Audit Committee is expected to play a vital role as far as ensuring compliance with existing accounting standards, true and fair presentation of the financial statement, approving related party transactions, monitoring the financial health of the company, apart from ensuring compliances with applicable laws and regulations, are concerned. Further, Audit Committee is also entrusted with oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient, and credible. Further, members of the Audit Committee are also mandated for approving as well as reviewing the disclosure of any related party transaction. They have to review the major accounting entries involving estimates based on the exercise of judgment by management. They are expected to be independent, vigilant, and cautious against any fraudulent acts committed by the company and raise their concerns. Therefore, contention of the Noticee No. 3 that he was not involved in day to day affairs of the

Company is not tenable as seen from his participation in the meetings of the Audit Committee.

24. In this context, I would like to refer to the order of Hon'ble SAT in the matter of N. Narayanan vs. SEBI, wherein SAT held that, *"The members of the audit committee are expected to exercise due oversight of the company's financial reporting process and to ensure that the financial statement is correct, sufficient and credible. It is also expected to conduct a meaningful review with special emphasis on major accounting entries and significant adjustments made in the accounts before putting up the statements for the approval of the Board. The board of directors of the company has entrusted the audit committee with an onerous duty to see that the financial statements are correct and complete in every respect. In this background, the members of the audit committee cannot take shelter under the verifications made by the internal auditor and other professionals. The details extracted in the show cause notice and the impugned order illustrate that there were several prominent irregularities which should have alerted the directors. The appellant's learned counsel submitted that abnormal profits, mismatch in receivables, insufficient security deposit in the bank did not act as an alert when the accounts have been certified by qualified professionals. We cannot accept the stand of the learned counsel for the appellants. The whole time director attending to the affairs of the company on a full time basis and the directors being members of the audit committee could not have ignored the "red flag" while considering the accounts of the company."*

25. In view of the above, I note that Noticees have failed in providing any reasonable explanation to the allegation levelled against them in the SCN. I hold that the allegations levelled against them are proved, and accordingly, I conclude that Noticees being members of the Audit Committee overlooked numerous red flags viz. significant rise of debtors, timely payments to creditors but significant delay in receipts from the debtors, poor maintenance of stock records, non-consolidation of accounts, change of the Statutory auditor, internal auditor and secretarial auditor almost every

year, poor internal control system etc. and failed to independently evaluate the accuracy of the financial statements and thereby, violated Regulation 18(3) read with Para A of Part C of Schedule II of LODR Regulations.

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

26. In the instant case, violation of Regulation 18(3) read with Para A of Part C of Schedule II of LODR Regulations has been established against the Noticees.

27. In this context, I would also like to also refer to the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*, Hon'ble Supreme Court of India 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 A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

28. As the violation of above mentioned provisions has been established, I hold that Noticees are liable for monetary penalty under section 15HB of SEBI Act.

29. The aforesaid provisions read as under:

    "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 Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

30. While determining the quantum of penalty under section 15HB, it is important to consider the factors stipulated in section 15J of 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."

31. It is difficult, in cases like the instant case, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors as no data pertaining to same is available on record. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticees. Even though the exact monetary loss to the investors cannot be computed, such misleading disclosures by a listed company tend to mislead gullible investors and place them in a precarious position. Such misleading disclosures erodes investor confidence in the market and totally defeats the process of disclosure regime which is one of the most important pillars of the Securities Market.

32. The Audit Committee oversees the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement disclosures are accurate and timely. Hence, the members of Audit Committee has a duty of care cast upon them, which calls for the exercise of independent judgment with reasonable

care, diligence, and skill. The institutions of independent directors and audit committee have been established to promote corporate governance and enhance the protection of interests of investors. Being the members of the Audit Committee, the Noticees failed to protect the interest of the Investors. Therefore, the case deserves imposition of monetary penalty proportionate to the default as found in this case. However, considering the fact that Noticees were only Independent Directors of the Company, I am inclined to take a lenient view as regard the monetary penalty warranted in the matter.

ORDER

33. In view of the above observations/findings, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of AO Rules, I hereby impose the following monetary penalty on the Noticees;

Noticee No.	Penalty under Section of SEBI Act	Penalty Amount (in ₹)
1	Section 15 HB of SEBI Act	1,00,000
2		1,00,000
3		1,00,000

I am of the view that the said penalty is commensurate with the violations committed by the Noticees in this case.

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

35. The Noticees shall forward the details/ confirmation of payment made in the format as given in table below to "The Division Chief, EFD – DRA - II, Securities and

Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

36. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : September 20, 2023
Place : Mumbai

Biju S
Adjudicating Officer