BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/SBM/AK/2021-22/15555)

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

In respect of:

Axis Bank Limited
(Merchant Banker)
PAN: AAACU2414K
SEBI Registration Number: INM000006104
1st Floor, AXIS House,
Investment Banking Department,
Wadia International Centre,
PB Road, Worli, Mumbai 400025

FACTS OF THE CASE

1. Axis Bank Limited (hereinafter referred to as **'Noticee'/'Bank'**) is a Category 1 SEBI registered Merchant Banker, holding registration number INM000006104. Based on a reference dated December 30, 2019 received from the Bank w.r.t the internal review of its Debt Capital Market business, Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an examination into the Debt Capital Market operations of the Noticee during the period August 2016 to August 2019 (hereinafter referred to as **'Examination Period'**). The Noticee is a scheduled commercial Bank registered under the Banking Regulation Act, 1949.

2. During the course of examination by SEBI, it was observed that Noticee had acted as the Merchant Banker in respect of 22 public issuances of debt of various companies during the aforementioned Examination Period out of which, the Noticee had also acquired the securities in respect of 9 public issues of debt made by the said companies. During the course of examination by SEBI, it was observed that Noticee had failed to submit the details /information of the transactions relating to its acquisition of the securities to SEBI in respect of the aforesaid 9 public issuances of debt. In terms of the requirements stipulated under the provisions of Regulation 27 of SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as **'MB Regulations'**), every Merchant Banker shall submit to SEBI complete particulars of the transactions relating to the acquisition of securities of the body corporate whose securities are managed by the Merchant Banker within 15 days from the date of entering into such

transactions. It is alleged that Noticee has failed to submit the said information to SEBI in respect of the 9 public issuances of debt made by the companies during the above mentioned Examination Period.

3. In view of the same, it is alleged that Noticee has violated the provisions of Regulation 27 of the MB Regulations. Therefore, adjudication proceedings have been initiated against the Noticee under the provisions of section 15 A (b) of the Securities and Exchange Board of India Act, 1992 (hereafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as **'AO'**), vide communique dated February 18, 2021 under Section 15-I of the SEBI Act, 1992 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 section 15A(b) of the SEBI Act the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice ref. SCN/SEBI/ EAD1/SBM/KL/2088/M/2021 dated March 02, 2021 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on it under the provisions of section 15A (b) of the SEBI Act.

6. The SCN issued to the Noticee, *inter alia*, mentioned/alleged the following-
   a. *The Noticee had acted as a lead manager in 22 public issuances of debt between the period from August 2016 to August 2019, and the Noticee had acquired the securities in 9 of these public issues. However, the Noticee failed to report the transactions to SEBI in respect of the aforesaid 9 public issues of debt where it had acquired securities, as obligated under the provisions of Regulation 27 of Merchant Bankers Regulations.*
   b. *Regulation 27 of Merchant Bankers Regulations, obligates every Merchant Banker to submit to SEBI complete particulars of any transaction w.r.t acquisition of securities of any body-corporate whose debt issues are being managed by that Merchant Banker within fifteen days from the date of entering into such transaction.*

c. *It is alleged that Noticee has violated the provisions of Regulation 27 of Merchant Bankers Regulations and therefore, adjudication proceedings have been initiated against the Noticee under the provisions of section 15 A (b) of the SEBI Act.*

7. Vide letter dated March 16, 2021, Noticee submitted its reply to the SCN and *inter alia*, mentioned the following:

    a. *The Bank's Internal Audit Department (IAD), while conducting the audit of Debit Capital Markets (DCM) Department observed non- adherence to the reporting requirements as per the Clause 27 of the SEBI (Merchant Bankers) Regulation. This was an inadvertent violation which we proactively reported to SEBI. An email regarding the same was sent to SEBI on December 30, 2019 making full disclosure of the omission.*

    b. *Considering that the Bank has ascertained the gap as a part of its own monitoring process, has taken prompt measures to plug the gap and proactively reported the matter to SEBI. We request forbearance in the matter and request for personal hearing to explain the above in detail.*

8. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on April 26, 2021, through the online webex platform. Authorized representatives (**ARs**) i.e., Mr. Rupesh Karanjawala, Mr. Jimmy Tavadia and Mr. Sagar Kulkarni (compliance officer of the Bank) attended the hearing on behalf of the Noticee viz. Axis Bank Limited – Merchant Banker, and reiterated the submissions made by it vide letter dated March 16, 2021.

9. Thereafter, vide email dated May 03, 2021, Noticee mentioned that it has decided to settle the instant adjudication proceedings by filing an application under the provisions of SEBI (Settlement Proceedings) Regulations, 2018. Thereafter, a settlement application ref.no. 6458/2021 was filed by the Noticee with the concerned department of SEBI i.e EFD-2 for settlement of the proceedings. In view of the same, the instant adjudication proceeding against the Noticee was kept in abeyance, till the settlement proceedings are concluded.

10. Vide email dated August 23, 2021, EFD 2 mentioned that the settlement application filed by the Noticee has been rejected by SEBI. In view of the same, Noticee was advised to make additional submissions in the matter, if any. Vide its letter dated October 05, 2021, *inter alia* the following additional submissions were made by the Noticee:

a. *The Internal Audit Department ("IAD") of the Noticee submitted their report on August 9, 2019, and the Noticee came to know that in 9 Public Debt Issues out of total 22; it had also invested in securities as well as acted as Merchant Banker between, August, 2016 and August, 2019, but had inadvertently omitted to report the same to SEBI within 15 days from date of investment. Vide email dated December 30, 2019, the Noticee informed SEBI about the said omission. Thus, the Noticee acted in a prompt and diligent manner to immediately inform SEBI regarding the omission. Furthermore, the Noticee has revised the processes and monitoring related to complying with provisions of Regulation 27 of SEBI (Merchant Bankers) Regulations, 1992 in order to ensure that such omissions do not take place in the future. Thereafter, no such omission has taken place.*
b. *It can be seen that the said 9 issues constitute only a small proportion of the total activity. Furthermore, these 9 issues are spread over a period of 3 years with 3 issues in a given year., the contribution of the Merchant Banking activity (Rs. 381 Crores) of the Noticee to its total income of FY 19-20 (Rs. 78,171.72 Crores) is around 0.49%.*
c. *The Noticee submits that the omission may have occurred because the DCM handled both Merchant Banking and Investment functions for the Bank and prays that the omission may be considered only as an inadvertent clerical error.*
d. *The Noticee further submits that no loss or prejudice was reported by any investor on account of the inadvertent omission on the part of the Noticee to inform SEBI regarding its participation in 9 out of 22 issues.*
e. *In the light of the above and considering the proactive manner in which it sought to rectify the omissions, the Noticee submits that it ought to be given the benefit of the doubt and discharged from the present proceedings.*

11. Thereafter, another opportunity of personal hearing was granted to the Noticee in the matter on January 17, 2022, through the online webex platform, which was rescheduled to February 15, 2022. The Authorized representatives (**ARs**) i.e. Mr. Neeraj Gambhir, Mr. Rupesh Karanjawala, Mr. Chetan Sagwekar attended the hearing on behalf of the Noticee and reiterated the submissions made by the Noticee vide its letters dated March 16, 2021 and October 05, 2021. During the course of hearing, the Noticee once again desired to explore the possibility of reviving the settlement proceedings in the matter and requested for additional time of one week to make further submissions, if any. Thereafter, vide its email dated February 25, 2022, the Noticee forwarded the clarification received from the concerned department of SEBI i.e EFD 2 wherein the Noticee was informed that an application already rejected under the SEBI (Settlement Proceedings) Regulations shall not be considered for revival of settlement. In view of the same, the Adjudication Proceeding were continued in respect of the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case, the material available on record and the replies of the Noticee. It is alleged that the Noticee failed to report / submit the transaction details to SEBI in respect of the nine public issue of debt of various companies, wherein it had acquired the securities, as required under Regulation 27 of the MB Regulations. In view of the above, it is alleged that Noticee has violated the provisions of Regulation 27 of the MB Regulations, and therefore, it is alleged that Noticee is liable for penalty under the provisions of section 15A(b) of the SEBI Act. The relevant text of the provisions of Regulation 27 of MB Regulations is mentioned as under:

SEBI (MERCHANT BANKERS) REGULATIONS, 1992

Information to the Board.

27. *Every merchant banker shall submit to the Board complete particulars of any transaction for acquisition of securities of any body corporate whose issue is being managed by that merchant banker within fifteen days from the date of entering into such transaction.*

**[Provided that complete particulars of any transaction for acquisition of securities made in pursuance of underwriting or market making obligations in accordance with Chapter XA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall be submitted to the Board on quarterly basis.]*

** Proviso to regulation 27 was inserted by the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2010 w.e.f, 13.04.2010.*

13. The list of the debt issuances made by the nine companies where the Noticee had acquired the securities while acting as Merchant Banker to the said issues is as under:

List of Public Debt Issues Managed as merchant Banker and Invested by Noticee

Sr. No.	Month & Year	Issuer Company Name	Issue Size (In Crores)	Amount Mobilized (In Crores)	Date of Listing	Amt. Applied by Noticee (Rs. In Crores)	Amt. Allotted to Noticee (Rs. In Crores)
1	Aug, 2016	Dewan Housing Finance Corp. Ltd.	10000	10000	14-Sep-2016	1500	857.73
2	Sep, 2016	Indiabulls Housing Finance Ltd	7000	7000	28-Sep-2016	1500	1449.77
3	Dec, 2016	Reliance Home Finance Limited	3500	3054	06-Jan-17	200	200
4	May, 2018	Dewan Housing Finance Corp. Ltd.	12000	10945	06-Jun-18	1000	1000
5	Jun, 2018	Shriram Transport Finance Ltd.	5000	3649	17-Jul-18	250	250
6	Dec, 2018	ECL Finance Ltd	1000	911	08-Jan-19	150	150
7	Mar, 2019	L&T Finance Ltd.	1500	1500	15-Mar-2019	150	150
8	Apr, 2019	L&T Finance Ltd.	1000	1000	18-Apr-2019	100	37.86
9	Aug, 2019	Tata Capital Finance Ltd.	4126	2158	28-Aug-2019	25	25

14. In terms of regulation 27 of the MB Regulations, the Merchant Banker shall submit to SEBI complete particulars of the transaction w.r.t the acquisition of the securities of the body corporate, whose issue is being managed by that Merchant Banker, within fifteen days from the date of entering into such transaction. It is an admitted fact that Noticee failed to submit the above details within the prescribed time period in respect of the above mentioned nine public issuances of debt made by the companies during the period August 2016 to August 2019. The

material/records made available show that Noticee submitted these details to SEBI w.r.t the nine public issues only on December 30, 2019. In view of the same, it is established that Noticee has failed to comply with the provisions of regulation 27 of the MB Regulations.

15. The Noticee has contended that the non-reporting of the acquisition of securities in the nine debt issuances came to light during its internal review of its Debt Capital Markets Dept and the same was reported to SEBI immediately. The Noticee mentioned that the prompt reporting of the omission to SEBI as and when its internal audit department had noticed the irregularity shows the bonafide intentions on its part. The Noticee also mentioned that it had put in place a monitoring mechanism and procedure in order to avoid recurrence of such omissions/lapses in future. The Noticee further stated that no loss or prejudice has been caused to any investor on account of its inadvertent omission. The above contentions of the Noticee that the lapse on its part was unintentional and that the Noticee had not gained from the inadvertent omission on its part is without any merit, because, firstly, penal liability is neither dependent upon intentions of the parties nor gains accrued from such delays. When the Regulations have prescribed certain things to be done in a time bound manner, the same has to be followed scrupulously. The Noticee being a registered market intermediary is expected to comply with the requirements of law and its role as Merchant Banker is central to the effective operation of the Merchant Bankers Regulations. The Merchant Banker is expected to demonstrate the application of due skill, care and diligence in the discharge of its functions and the professional obligation cast on it, by ensuring the compliance with the requirements specified under these regulations. From the above observations, it is clear that Noticee has failed to discharge its functions with due skill, care and diligence and therefore, the aforementioned contentions of the Noticee are devoid of any merit. In view of the same, I hold that Noticee has violated the provisions of Regulation 27 of the MB Regulations. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} –wherein the Hon'ble Supreme Court of India has 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..."*

16. In the instant matter, it is observed that the SCN issued to the Noticee had incorrectly mentioned the penal provisions/section applicable under the SEBI Act. It is noted that the SCN dated March 2, 2021 which was issued to the Noticee had mentioned that Noticee is liable for monetary penalty under the provisions of section 15A(b) of the SEBI Act instead of

mentioning the provisions of section 15 A (a) of the SEBI Act, which, in my assessment, is the correct provision of law in the facts and circumstances of the case. In the present matter, Regulation 27 of MB Regulations obligates the Noticee to submit the information/details to SEBI pertaining to the acquisition of the securities in the public issuance of debt managed by the Noticee in its capacity as a Merchant Banker within 15 days from the date of the acquisition of the securities. It is on record that Noticee has failed to comply with the said requirement. In my assessment, the penal section in the instant matter for imposition of penalty should be section 15 A (a) of SEBI Act instead of section 15 A (b) as the obligation was on the part of the Noticee to submit the information to the Board (i.e SEBI). However, the SCN has erroneously mentioned the penal provisions as section 15 A (b) of the SEBI Act. It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision of law, that by itself does not vitiate the exercise of powers to adjudicate so long as the power does exist and can be traced to a source available in law. The above views were also expressed by Hon'ble SC and Hon'ble SAT in their judgments from time to time that if the source of power exists, non-mentioning of the provision or wrong labelling of it would not invalidate the exercise of such powers. In this context, reference is drawn to a judgment of Hon'ble SC in the matter of N.Mani Vs Sangeetha Theatre and Ors (decided on March 16, 2004) wherein Hon'ble SC has held that " *it is well-settled that if an authority has a power under the law, merely because while exercising that power, the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law".*

17. Further, Hon'ble SAT in the matter of VLS Finance Ltd Vs. P.Sri Sai Ram, Adjudicating Officer vide order dated October 31, 2000, has held that:

"It is well settled that mere mention of a wrong provision of law, when the power exercised is available even though under a different provision is by itself not sufficient to invalidate the exercise of that power. There is a plethora of the Supreme Court decisions on this dictum."

18. Therefore, in view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of section 15A(a) of the SEBI Act, which reads as under:

SEBI Act

PENALTIES AND ADJUDICATION

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,—*

*(a) to furnish any document, return or report to the Board, fails to furnish the same **[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]]"*

** Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.
*** Substituted for "a penalty not exceeding one lakh and fifty thousand rupees for each such failure" by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002.
**** Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

19. In this regard, the provisions of Section 15J of the SEBI Act and rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

20. From the above observations, I find that Noticee has failed to comply with the requirements specified under regulation 27 of the MB Regulations for almost 3 years i.e from August 2016 to August 2019. I also note that Noticee has ascertained the above irregularity based on its internal audit of the Debt Capital Markets Department and as and when the irregularities were observed by the Noticee, the same was informed to SEBI by the Noticee. The instant adjudication proceedings have been initiated against the Noticee based on the above findings and further examination by SEBI. I find that the material made available has not shown any instances of investor complaints received against the Noticee on account of the above non-compliance by the Noticee. The Noticee as per its submission has also taken necessary corrective steps to avoid recurrence of such lapses. However, at the same time, I also cannot lose sight of the fact that Noticee as a registered market intermediary has failed to comply with the obligation cast on it under the MB Regulations for three consecutive years. Further, in the

context of the present matter, it is observed that the settlement terms offered by the Noticee to settle the instant proceedings have not been accepted by SEBI.

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 5,00,000/--(Rupees Five Lakh only) on the Noticee viz. Axis Bank Limited – Merchant Banker, under the provisions of section 15A(a) of the SEBI Act for its violation of provisions of regulation 27 of the MB Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

22. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action -II[EFD1-DRA-II] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following details:

1	Case Name	
2	Name of the 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)	

23. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceeding may be initiated under section 28A of the SEBI Act, 1992 for

realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

25. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee viz. Axis Bank Limited – Merchant Banker and also to Securities and Exchange Board of India.

Date: March 24, 2022	**SURESH B MENON**
Place: Mumbai	**ADJUDICATING OFFICER**