BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2023-24/28479-28478

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

In respect of:

Noticee No.	Name of Noticee	PAN
Noticee 1	**SMC Capitals Limited** SEBI Reg. No. INM000011427	AABCS3706R
Noticee 2	**Karvy Investor Services Limited** SEBI Reg. No. INM000008365	AABCK2424J

In the matter of **SMC Capitals Limited**

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (*hereinafter also referred to as **"SEBI"***) conducted an inspection of books of accounts, records and documents of **SMC Capitals Limited** (**"Noticee 1" / "SMC"/ "Merchant Banker" / "MB" / "MB1"**) relating to activities of issuance and listing of debt securities during the period April 2019 to March 2021. The focus of inspection was to ascertain the level of due diligence exercised by the Merchant Banker and post issue activities and procedures followed by it in respect of various issues handled by it during the period from April 2019 to March 2021 (hereinafter also referred to as "**Inspection Period**").

2. The findings and observations of the inspection were communicated to SMC by SEBI vide its letter dated December 01, 2021 and their comments were sought on the same. SMC vide its letter dated December 20, 2021 provided its comments on the findings and observations of SEBI. During the analysis of comments from SMC, SEBI *inter alia* also found observations w.r.t. Karvy

Investor Services Limited (**"Noticee 2" / "Karvy"/ "KISL" / "MB2"**). Accordingly, comments from Karvy were sought by SEBI *inter alia* w.r.t. inspection observations vide SEBI Email dated April 27, 2022, however, no reply was received from Karvy despite follow up. (Noticee 1 and Noticee 2 hereinafter collectively also referred to as **"Noticees" / "Merchant Bankers"**).

3. Pursuant to the said inspection, based on the analysis of replies received and examination in the matter by SEBI, briefly stated, it was observed by SEBI that Noticee 1 and Noticee 2 had allegedly violated various provisions of SEBI (Merchant Bankers) Regulations, 1992 viz., violation of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992. Accordingly, SEBI initiated adjudication proceedings against the Noticees under Section 15HB of SEBI Act, 1992 (hereinafter also referred as "**SEBI Act"**) for the alleged violations of the relevant provisions as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Upon being satisfied that there are sufficient grounds to inquire and adjudicate upon the alleged violations of provisions of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 by the Noticees, SEBI, in exercise of powers under Section 19 of the SEBI Act, read with Sub-section (1) of Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure For Holding Inquiry And Imposing Penalties) Rules, 1995 (***"Adjudication Rules"***), appointed Dr. Anitha Anoop, Chief General Manager, SEBI as the Adjudicating Officer ("**AO**") vide communique dated June 27, 2022, to inquire into and adjudicate upon the alleged violations by the Noticees. Pursuant to transfer of Dr. Anitha Anoop, SEBI appointed the undersigned as AO in the instant matter *vide* Communique dated September 05, 2022.

C. SHOW CAUSE NOTICE (SCN) / SUPPLEMENTARY SCN (SSCN), REPLIES OF THE NOTICEES AND HEARING

5. A Common Show Cause Notice No. SEBI/EAD-5/AN/SM/58843/1-2/2022 dated November 23, 2022 (hereinafter referred to as **"SCN"**) was issued to Noticee 1 and Noticee 2 and Supplementary SCN No. SEBI/HO/EAD-5/AN/SM/7275/1/2023 ("***SSCN"***) was issued to Noticee 2, in terms of provisions of Rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, under section 15HB of SEBI Act, 1992 be not imposed on the Noticees for the alleged violations.

6. The allegations brought out in the aforesaid SCN / SSCN is as under:

"….

*4. **Findings and Observations of SEBI pursuant to inspection in the matter:***

*4.1. Inspection of books of accounts, records and documents of SMC relating to activities of issuance and listing of debt securities from April 2019 to March 2021 was carried out by SEBI during September 27-29, 2021. The findings and observations of the inspection were communicated to SMC vide letter dated December 01, 2021 (copy enclosed as **Annexure-2**) and their comments were sought on the same. Copy of relevant portion of the Inspection Report is attached as **Annexure 3.***

*4.2. SMC vide its letter dated December 20, 2021 provided comments on the findings and observations of SEBI. (Copy enclosed as **Annexure-4**)*

*4.3. During the analysis of comments from SMC, SEBI inter alia also found observations w.r.t. Karvy Investor Services Limited (Karvy, Merchant Banker). Comments from Karvy were sought inter alia w.r.t. inspection observations vide SEBI Email dated April 27, 2022. Copy of email dated April 27, 2022 is enclosed as **Annexure-5.***

4.4. Based on the reply/ comments received and the information available on record, matter was analysed and examined by SEBI, accordingly the following has inter alia been observed and/or alleged by SEBI:

4.4.1. ***Public issue of NCDs by SREI Infrastructure Finance Limited:***

Details of the issue:

Table 1

Name of the issuer	*SREI Infrastructure Finance Limited*
Type of instrument	*Secured redeemable NCDs of face value of Rs.1000/- each*
Nature of industry	*NBFC*
Base issue	*Rs. 100 Crores*
Option to retain Oversubscription Amount	*Up to Rs. 400 Crores*
Final value of NCDs allotted	*Rs. 105.75 Crores*
Issue opening date	*April 09, 2019*

Issue closing date	*May 09, 2019*
Coupon rate	*9.81%/9.84%/10.52%/10.53%/10.51%/10.74%/ 10.76%/10.75%*
Maturity date	*400 days/ 3 years/5 years*
Credit Rating	*AA+*
Listing date	*May 17, 2019*
Stock Exchange	*BSE*
Lead Manager to the issue	*SMC Capitals Ltd, Karvy Investor Services Ltd, SREI Capital Markets Limited*
Debenture Trustee	*Catalyst Trusteeship Limited*

4.4.1.1. ***Noticee 1 and Noticee 2 went ahead with the public issue of NCDs of SREI Infrastructure Finance Limited (SIFL) without having obtained NOC by SIFL from existing lender (bank of India):***

4.4.1.1.1. Upon perusal of the disclosures made in the shelf prospectus of the aforesaid issue, the issuer was required to obtain NOCs from some of its lenders as per the loan agreements entered between them for raising of funds. It was found that the issuer did not obtain NOC from one of its lenders named "Bank of India".

4.4.1.1.2. Since the responsibility of this activity was cast upon both the lead managers (SMC and Karvy) as per the "Inter-se allocation of responsibilities" (copy enclosed as ***Annexure-6****). Therefore, it was the duty of each lead manager to ensure that proper due diligence was carried.*

4.4.1.1.3. In this regard, clarification was sought from the merchant banker (SMC) vide email dated October 4, 2021 (copy enclosed as ***Annexure-7****) w.r.t the aforementioned observation. Merchant banker vide email dated October 6, 2021 (copy enclosed as* ***Annexure-8****) submitted that the loan agreement with Bank of India has restrictive covenants in respect of further fund raising by the issuer. It had applied for NOC to Bank of India on February 22, 2019 and was unable to obtain NOC from the Bank of India in timely manner. The issuer intended to launch the issue before March 31, 2019 and in the absence of NOC from the Bank of India the date of filing of prospectus was getting delayed. Since, the issuer intended to offer exclusive charge on specific assets where NOC from the Bank of India is not required, they have filed the shelf prospectus and Tranche prospectus on March 29, 2021. (Copy enclosed as* ***Annexure-9****)*

4.4.1.1.4. Further, comments were sought from Noticee 2 (Karvy) by SEBI vide its email dated April 27, 2022 (copy enclosed as ***Annexure-5****) w.r.t to the aforesaid observation. However, no reply was received from the Noticee 2. In this regard, SEBI observed that "it is gathered that there is no employee in the Karvy at present and CEO of the Karvy is in prison."*

4.4.1.1.5. Clause 4 of Schedule III (Code of conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 provides that a merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgement.

4.4.1.1.6. In the instant case, the Bank of India through the restrictive covenants in the loan agreement with the issuer, had disallowed the issuer from raising new debt without obtaining its consent. Therefore, it was the responsibility of the merchant banker (SMC Capitals Ltd and Karvy Investor Services Ltd), on behalf of the issuer, to obtain the said NOC prior to the issuance. However, merchant bankers had filed the offer documents without obtaining the required NOC from one of the lenders of the issuer and thus did not exercise proper due diligence while handling the aforesaid public issue.

In view of the above, it is alleged that Noticee 1 and Noticee 2 have violated Clause 1 and 4 of Schedule III (Code of Conduct) read with Regulation 13 of.. SEBI (Merchant Bankers) Regulations, 1992.

4.4.2. ***Public issue of NCDs by Kosamattam Finance Limited (KFL) - Issue date-November 11, 2019:***

Details of the issue:

Table 2

Name of the issuer	*Kosamattam Finance Limited*
Type of instrument	*Secured redeemable NCDs of face value of Rs.1000/- each*
Nature of industry	*NBFC*
Base issue	*Rs. 175 Crores*
Option to retain Oversubscription Amount	*Up to Rs. 175 Crores*
Final value of NCDs allotted	*Rs. 290 Crores*
Issue opening date	*November 11, 2019*
Issue closing date	*December 04, 2019*
Coupon rate	*9.26%/9.75%/10.00%/10.52%/10.67%/10.71%/10 .25%/10.41%*
Maturity date	*18 months/24 months/36 months/48 months/66 months/84 months*
Credit Rating	*IND BBB*
Listing date	*December 12, 2019*
Stock Exchange	*BSE Limited*
Lead Manager to the issue	*SMC Capitals Limited and Karvy Investors Services Limited*
Debenture Trustee	*Vistra ITCL(India) Limited*

4.4.2.1. ***Noticee 1 and Noticee 2 failed to issue corrigendum for rectifying all the errors in offer document of public issue of NCDs of Kosamattam Finance Limited:***

4.4.2.1.1. The verification of the offer documents revealed that incorrect email id and contact number of Registrar to the issue (i.e. Karvy Fintech Private Limited) for Investor grievance was mentioned at several places in the offer document. Subsequently, Lead manager (SMC) and issuer came out with corrigendum along with the newspaper advertisement highlighting the correct email id and the contact number. However, the subsequent newspaper advertisement (Copy enclosed as ***Annexure-10****) and the corrigendum to the offer document did not highlighted all the errors mentioned in the offer document. The details of the same has been tabulated below:*

Table 3

Particulars	***Mentioned in the offer document***		***orrect details***	***Remarks***
	Page number	***Details***		
Email id of RTA for investor grievance	*205*	*Kosamattam.ncdipo16@karvy.com*	*Kosamattam.ncdipo18@karvy.com*	*not included in corrigendum*

In this regard, it has inter alia been alleged that Noticee 1 and Noticee 2 failed to issue corrigendum for rectifying all the errors in offer document of public issue of NCDs of Kosamattam Finance Limited and has allegedly violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992.

4.4.2.2. ***Noticee 1 and Noticee 2 delayed in submission of corrigendum to the offer document to the stock exchange in the public issue of NCDs of Kosamattam Finance Limited:***

4.4.2.2.1. Lead manager (SMC) issued corrigendum to the offer document through newspaper advertisement on November 09, 2021 before opening the issue i.e. November 11, 2019 but the same was dispatched to BSE vide letter dated

*November 15, 2019 (Copy enclosed as **Annexure-11**) with a delay of six days. Lead manager must ensure that such corrigendum shall be immediately sent to stock exchanges and SEBI for uploading on the website for information to the public at large.*

*4.4.2.2.2. Since the responsibility of this activity was cast upon both the lead managers (SMC and Karvy) as per the "Inter-se allocation of responsibilities" (Copy enclosed as **Annexure-12)**. Therefore, it was the duty of each lead manager to ensure that proper due diligence was carried.*

*4.4.2.2.3. In this regard, clarification was sought from Noticee 2 (Karvy) w,r,t the aforesaid observation vide email dated March 07, 2022 (Copy enclosed as **Annexure-13**). However, no reply was received from Noticee 2 even after several follow ups. In this regard, SEBI observed that "it is gathered that there is no employee in the Karvy at present and CEO of the Karvy is in prison."*

In view of the above, it is alleged that Noticee 1 and Noticee 2 have violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992.

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7. Briefly stated, the following was inter alia alleged in the SCN /SSCN in respect of the Noticee 1 and Noticee 2:

    7.1. Going ahead with the public issue of NCDs of SREI Infrastructure Finance Limited (SIFL) without having obtained NOC by SIFL from existing lender (Bank of India), allegedly in violation of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.

    7.2. Not issuing corrigendum for rectifying all the errors in offer document of public issue of NCDs of Kosamattam Finance Limited, allegedly in violation of Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.

    7.3. Delay in submission of corrigendum to the offer document to the stock exchange in the public issue of NCDs of Kosamattam Finance Limited, allegedly in violation of Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992.

In view thereof, it was alleged that Noticees had violated provisions of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992, as stated.

8. The receipt of SCN was acknowledged by Noticee 1 vide its email dated November 30, 2022. Vide letter /email dated December 07, 2023. Noticee 1 submitted its reply to the SCN and inter alia requested for grant of opportunity of personal hearing.

9. Vide Hearing Notice dated February 16, 2023, Noticee 1 as granted an opportunity of hearing on February 21, 2023. On the scheduled hearing date, Noticee 1 appeared in person along with its Authorised Representatives (ARs) viz; Mr. Anurag Bansal (Director of Noticee 1), Mr. Satish Maruti Mangutkar (Sr. Vice President of Noticee 1), Shri Prakash Shah (Advocate) and Mr. Meit Shah (Authorized Representative i/b Prakash Shah & Associates) and reiterated the submissions made by it *vide* its letter dated December 07, 2022. During the hearing, Noticee 1 inter alia requested time to make additional submissions and accordingly time till February 25, 2023 was allowed. Noticee 1 made its additional submissions vide letter dated February 22, 2023 received vide email dated February 23, 2023.

10. The key submissions made by the Noticee 1 *vide* letters dated December 07, 2022 and February 22, 2023, are as below:

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Our response to the allegations made against SMC Capitals under Para 4.5.1 (Internal page nos. 7 & 8) of SCN

1. ***Matter No.1 -***

(Ref. Para 4.5.1.1. (Internal Page nos. 7 and 8) of SCN

Allegation:

Going ahead with the public issue of NCDs of SREI Infrastructure Finance Limited without having obtained NOC by SIFL from existing lender (Bank of India), allegedly in violation of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992

Our Submissions:

Conclusion drawn by placing reliance on incomplete documentation

At the outset, we wish to bring your kind attention to the fact that the following correspondences done with the SEBI inspection team in this matter have not been brought on record in the SCN:

- *Our submissions made during meeting held with the inspection team of SEBI on February 15, 2022*
- *Email received from SEBI on February 15, 2022 subsequent to the meeting (attached as **Appendix 1**)*
- *Our email reply dated February 15, 2022, along with required annexures (attached as **Appendix 1**)*
- *Email received from SEBI on March 29, 2022 subsequent to the meeting (attached as **Appendix 2**)*
- *Our email reply dated March 29, 2022 (attached as **Appendix 2**)*
- *Email received from SEBI on April 26, 2022 subsequent to the meeting (attached as **Appendix 3**)*
- *Our email reply dated April 26, 2022 along with required annexures (attached as **Appendix 3**)*

Background of the matter:

*With reference to the public issue of NCDs by SREI Infrastructure Finance Limited ("Issuer"), which opened for subscription on April 9, 2019 and closed on May 9, 2019 ("Issue") in compliance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 as amended from time to time ("**SEBI Debt Regulations**"), Karvy Investor Services Limited, SMC Capitals Limited and SREI Capital Markets Limited ("Lead Managers") have acted as Lead Managers to the issue. In this regard, we furnish our clarification/ explanation as under:*

1. *The Issuer has offered the <u>exclusive security</u> of receivables from "**<u>Orissa Steel Expressway Private Limited</u>**" amounting to Rs.129 crores which is more than 1.0 time of the NCDs issued to the public, through the Issue. A copy of Debenture Trust Deed is attached as "**Appendix 4"** confirming the exclusivity of charge.*

2. *It is pertinent to note that in terms of erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008; (SEBI Debt Regulations) consent from the lender is required in case of creating pari passu charge on the assets offered as security in the Issue.*

3. *The sanction letter of Bank of India dated April 23, 2018 (BOI Sanction Letter) ("**Appendix 5**") has listed down the list of securities offered to them by Issuer while obtaining the debt facility. It is important to note that exclusive security offered i.e. receivables from "Orissa Steel Expressway Private Limited" by the Issuer in the Issue is not the part of the security offered to Bank of India.*

4. *The Issuer has entered into loan agreements with various banks including Bank of India which contains various restrictive covenants including restriction to raise public debt without their prior approval. On perusal of the BOI Sanction Letter following restrictive clause has been identified:*

   "Clause 19 – Without prior consent of the Bank, the Borrower shall not during the continuance of the credit facility granted:

   (xiv) Approach capital market for mobilizing additional resources either in the form of debt or equity"

   *As per requirement of aforesaid clause, the Issuer had sought the consent of Bank of India vide its email dated February 22, 2019 (attached as "**Appendix 6**"). The Lead Managers do not have any contractual obligations to deal with the lenders on behalf of the Issuer.*

5. *Further, Karvy Investor Services Ltd. ("Karvy"), was the "Coordinator" towards activity of "Due diligence of Company's operations/management/business plans/legal etc." as per the "Inter-se allocation of responsibilities amongst the Lead Managers", as enumerated in Annexure I of the Issue agreement dated 14th March 2019 entered between SREI Infrastructure Finance Limited **(the "Company")** and the Lead Managers to the Issue i.e. Karvy SMC Capitals and SREI Capital Markets Limited in respect of the issue (enclosed as **"Appendix 7").** Accordingly, Karvy has followed up with the Issuer for pending NOC from Bank of India. During the all-party due diligence call, we had been informed by the Karvy officials that, they have met the management at their office in Kolkata to discuss the requirement of obtaining the NOC in timely manner. Based on their discussion with the management they proposed to include it as risk factors vide their email dated 16th March 2019.*

6. *Since the Issuer had not succeeded in obtaining NOC in time bound manner they decided to proceed with the Issue without their consent. On decision of the Issuer to proceed without NOC from Bank of India, the Lead Managers along with Legal Advisor have accessed the risk associated with it particularly enumerated in following clause of BOI Sanction Letter:*

   "Clause 20 – If the Bank turns down the borrower's request for terms i) to xv) mentioned above but later still goes ahead, the Bank shall have the right to call up the facilities sanctioned"

   *The Lead Managers have duty to disclose such facts and risk associated with the Company in the offer documents issued to prospective investors to enable them to make a balanced and informed decision. Accordingly, Lead Managers along with Legal Advisor had decided to disclose following risk factor which is at page 19 of the Shelf Prospectus dated March 29, 2019 (Relevant pages attached as "**Appendix 8")** to apprise investors to take informed decision:*

*"**6. We have not received NOC for The Issue from one of our lenders 'Bank of India'***

We are required to obtain NOCs from some of our existing lenders in terms of the financial covenants mentioned in the loan agreements with them in order to raise debt by way of public issue. We have applied for NoCs only from those existing lenders who have stipulated the said requirement either in their sanction letter or loan agreement. We have received NoCs from all such existing lenders except one existing lender, the Bank of India ("BOI"). We have applied to BOI for the said NoC. However, as on date of this Draft Shelf Prospectus we have not received the said NoC from BOI. In the event BOI rejects our application, it may affect our liquidity/ resources position to the extent of current outstanding of BOI."

7. *In any event, it is pertinent to note that Bank of India did not raise any complaint to the Lead Managers during the Issue period for restricting Issue process.*

Considering all the above facts, Lead Managers after seeking advice from Legal Advisor, have taken collective call to allow Issuer to proceed with the Issue.

Taking totality view of our aforesaid submissions, we state that SMC Capitals had made all efforts to protect the interests of investors and had also exercised due diligence, reasonable and proper care and professional judgment as required under the relevant SEBI Regulations. Consequently, it is denied that SMC Capitals did not exercise proper due diligence as alleged or otherwise. It is also denied that SMC Capitals is in violation of Clauses 1 and 4 of Schedule III of Merchant Bankers Regulations.

2. ***Matter No. 2 -***

(Ref. Para 4.5.1.2 on Page no. 8 of SCN)

Not issuing corrigendum for rectifying all the errors in offer document of public issue of NCDs of Kosamattam Finance Limited, allegedly in violation of Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.

Our Submission:

*With reference to the public issue of NCDs by Kosamattam Finance Limited ("Issuer"), which opened for subscription on November 11, 2019 and closed on December 4, 2019 ("Issue") in compliance with Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 as amended from time to time (the "**SEBI Debt Regulations**"). Karvy and SMC Capitals have acted as Lead Managers to the issue.*

The Issuer had issued corrigendum on November 9, 2019, amongst other matters, regarding change of email address of Registrar to the Issue i.e. Karvy from Kosamattamncdipo17@karvy.com to Kosamattamncdipo18@karvy.com. However, at one place i.e. on page no.205 the email id namely Kosamattamncdipo17@karvy.com was not corrected through corrigendum.

In so far as concerns the incorrect email id i.e. Kosamattamncdipo17@karvy.com which was not rectified inadvertently via corrigendum, we submit that the said email id was functional and operational during the entire issue process in parallel to the new email id mentioned in the corrigendum.

*Moreover, it is pertinent to note that the Registrar and Transfer Agent (**RTA**), who had approved the details given in the Offer Document/Corrigendum has not objected or raised any concern during Issue period to change email id on page 205. Therefore, there was no inconvenience caused to the Investors due to the disclosure/non-disclosure.*

Further, we are surprised to note that, the aforesaid allegation is levelled against only one merchant banker i.e. SMC Capitals Limited. Whereas, Karvy, who was one of the Lead Manager to the Issue and was assigned with responsibility of "Co-ordination" for various activities in terms of "Inter-se Allocation of responsibilities" agreed as per Issue Agreement dated September 26, 2019, has not been made party to the aforesaid allegation. The relevant responsibility of "Coordinating" activity assigned to Karvy is as follows:

"Due diligence of Company's operations/ management/ business plans/ legal etc. Drafting and design of the Offering Document (i.e. Draft Prospectus, Prospectus), Abridged Prospectus, Application Forms and of statutory advertisement including memorandum containing salient features of the Offering Document. The Merchant Bankers shall ensure compliance with stipulated requirements and completion of prescribed formalities with the Stock Exchange(s), RoC and SEBI including finalisation of Offering Document and RoC filing). Deposit of 1% Security deposit with designated stock exchange "Drafting and approval of all publicity material"

Taking totality view of our aforesaid submissions, we state that SMC Capitals had made all efforts to protect the interests of investors and had also exercised due diligence, reasonable and proper care and professional judgment as required under the relevant SEBI Regulations. Consequently, it is denied that SMC Capitals did not exercise proper due diligence as alleged or otherwise. It is also denied that SMC Capitals is in violation of Clauses 1 and 4 of Schedule III of Merchant Bankers Regulations.

3. ***Matter No. 3 -***
(Ref. Para 4.5.1.3 on Page No. 8 of the SCN)

Delay in submission of corrigendum to the offer document to the stock exchange in the public issue of NCDs of Kosamattam Finance Limited allegedly violation of Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992

<u>Our Submission:</u>

*Karvy and SMC Capitals jointly acted as Lead Managers to the public issue of NCDs by Kosamattam Finance Limited (**Issuer**), which opened for subscription on November 11, 2019 and closed on December 4, 2019 (**Issue**) in compliance with SEBI Debt Regulations.*

*The statutory cum corrigendum advertisement **("Advertisement")** was published on **Saturday, November 9, 2019**. The **next working day** for **filing of the Advertisement** was on **November 11, 2019**. It is alleged that the advertisement has been submitted to BSE on November 15, 2019, a **delay of 4 days** from the due date of filing.*

We would like to bring to your attention that we, as one of the Lead Managers, have uploaded the said corrigendum on our website, the very same day i.e. November 9, 2019, for information to the public at large.

*As set out above, SMC Capitals was jointly acting with Karvy as Lead Managers for the Issue. As per the "inter-se allocation of responsibilities" agreed vide Issue agreement dated September 26, 2019 between Karvy and SMC Capitals (**"Appendix 9"**), Karvy was assigned the responsibility for co-ordination with the regulatory authorities for the purposes of the Issue. The relevant responsibility of "Coordinating" activity assigned to Karvy in terms of aforesaid Issue agreement is as follows:*

"Due diligence of Company's operations/ management/ business plans/ legal etc. Drafting and design of the Offering Document (i.e. Draft Prospectus, Prospectus), Abridged Prospectus, Application Forms and of statutory advertisement including memorandum containing salient features of the Offering Document. The Merchant Bankers shall ensure compliance with stipulated requirements and completion of prescribed formalities with the Stock Exchange(s), RoC and SEBI including finalisation of Offering Document and RoC filing). Deposit of 1% Security deposit with designated stock exchange "Drafting and approval of all publicity material"

Since Karvy had responsibility to submit the corrigendum to BSE, we had provided our signatures on the covering letter and submitted to the Karvy's office on November 11, 2019 for onward submission to BSE. However, the same was not been submitted in time by Karvy. The operational delay was caused due to inadvertence on the part of Karvy.

Through SCN we have come across the fact that there were no employees in Karvy and are non-operational. We believe it is injustice to penalize SMC Capitals for non-competence of Karvy, just because they are non-functional.

Taking totality view of our aforesaid submissions, we state that SMC Capitals had made all efforts to protect the interests of investors and had also exercised due diligence, reasonable and proper care and professional judgment as required under the relevant SEBI Regulations. Consequently, it is denied that SMC Capitals did not exercise proper due diligence as alleged or otherwise. It is also denied that SMC Capitals is in violation of Clauses 1 and 4 of Schedule III of Merchant Bankers Regulations.

4. Denials of alleged provision of law:
Ref. para 5 on page no. 9 of SCN

Clause 4 of Schedule III of the Code of Conduct mandates that a merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgement. Such due skill, care and diligence can only mean that merchant banker shall act in such a way that a person of ordinary prudence would act in the normal circumstances in carrying out activities and functions relating to its business and will remain careful and diligent. Accordingly, we have exercised all due skill, care and diligence as a man of ordinary prudence is expected to do in carrying out its activities.

In this regard we further state that, the word "due diligence" has not been defined in the Code of Conduct. Notably, according to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. Besides, as per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. Importantly according to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.
In support to our aforesaid submissions, we place reliance on Judgement passed by Hon'ble Supreme Court of India, in the matter of Chander Kanta Bansal V. Rajinder Singh Anand MANU/SC/7310/2008: (2008) 5 SCC 117 has held as under:

"The words "due diligence" have not been defined in the Code of Civil Procedure, 1908. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As

per Black's law Dictionary (18th Edn), "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Pharses by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

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11. The additional submissions made by the Noticee 1 vide email dated February 23, 2023 are as below:

"….

At the outset, we thank your kind selves for providing us an opportunity of personal hearing on 21.02.2023 whereby our authorized representatives had furnished explanations on the denials of alleged violations as alleged in the SCN in line with and on the basis of our Written Submissions dated 07.12.2022 filed by us. Further, during the course of hearing, your honour has kindly permitted us to file additional submissions in the captioned subject matter. In accordance thereto, we file our additional submissions for your kind and sympathetic consideration as under:
Initially, we respectfully state that these Additional Submissions may please be considered to be in addition to our earlier Written Submissions dated 07.12.2022. We humbly state that contents therein are not reproduced herein to avoid repetition and for the sake of brevity.

We make our additional submissions as under:

1. *On the allegations levelled against us in Para 4.5.1.1 (Internal Page No. 7 and 8 of the SCN), we submit as under:*
   - *(i) The SEBI inspection team has not brought on record and have not taken into consideration various correspondences made by us such as our submissions dated 15.02.2022, our email reply dated 15.02.2022, 29.03.2022 and 26.04.2022 on the matter of alleged violation. Hence, great prejudice is caused to us.*
   - *(ii) It is pertinent to note that No Objection Certificate (**NOC**) from existing lender is required in case of Pari-Passu charge is offered to the investors in public issue of NCD's in terms of SEBI (Issue and Debt Securities) Regulation 2008.*
   - *(iii) The issuer i.e. SREI Infrastructure Finance Ltd (**SIFL**) has offered exclusive charge of security of receivables from "Orissa Steel Expressway Pvt Ltd" to the investors. Hence there is no violation of any clause of SEBI (Issue and Debt Securities) Regulation 2008 (then applicable regulation) in the present case.*
   - *(iv) NOC from Bank of India (**BOI**) is required to be obtained by SIFL in terms of restrictive covenants of loan agreement with Bank and SIFL had applied for it.*
   - *(v) As per the restrictive covenant of loan agreement between SFIL & BOI, SFIL can proceed with the issue without NOC, however BOI can exercise right to call up the credit facility sanctioned (refer point (20) of Bank sanction letter). A copy of BOI sanction letter dated 23.04.2018 is hereto annexed and marked as **Annexure – "1"**. The said risk factor was disclosed explicitly in Shelf Prospectus dated 29.03.2019 on Page No. 19 at Para No. 6 under the heading "We have not received NOC for The Issue from one of our lenders 'Bank of India". A copy of relevant Pages of Shelf Prospectus dated 29.03.2019 is hereto annexed and marked as **Annexure – "2"***
   - *(vi) Additionally, we would like to submit that BOI has not made any communication to us regarding stoppage of NCD's issued and have also not recalled the credit facility during the issue period.*
   - *(vii) It is pertinent to note that SMC Capitals' responsibility as Lead Manager was to ensure that it disclosed such facts and risks associated with the Issuer so as to ensure prospective investors made an informed decision. Thus we have complied with the Code of Conduct read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.*
   - *(viii) Hence, we state that no adverse inference be drawn against us for not obtaining NOC from BOI.*

2. *On the allegations levelled against us in Para 4.5.1.2 (Internal Page No. 8 of the SCN), we submit as under:*
   *The allegation is w.r.t. not issuing Corrigendum for rectifying all the errors in offer in offer document of public issue of NCD's of Kosamattam Finance Ltd (**KFL**).*
   - *(i) The issuer i.e. KFL had issued corrigendum on 09.11.2019, amongst others, regarding change of email address of Registrar to the issue to Kosamattam.ncdipo18@karvy.com. However, the said revised email id was inadvertently not corrected on only one of the pages of Prospectus through corrigendum dated 09.11.2019.*

(ii) *It is pertinent to note that the unchanged email id was functional and operational during the entire issue process in parallel to the new email id mentioned in the corrigendum. It is not the case that the email sent to unchanged email id would be unattended or the same would bounce back.*

(iii) *Further, the unchanged email id was mentioned at Page No. 205 under the heading "OTHER REGULATORY AND STATUTORY DISCLOSURES". Whereas, in all other places including the cover page of the Prospectus, the details of the Registrar and Transfer Agent (**RTA**) who in the present issue is Karvy Fintech Pvt. Ltd. is modified through corrigendum. Therefore, no inconvenience is caused to any investor.*

(iv) *It is on record that there is no grievance of any investor on the subject matter of the present issue.*

(v) *Further, it is pertinent to note that the aforesaid allegation is only levelled against us i.e. SMC Capitals Ltd and not on Karvy Investor Services Ltd who was one of the lead manager to the issue and was assigned with coordinating responsibility of compliances with SEBI.*

3. *On the allegations levelled against us in Para 4.5.1.3. (Internal Page No. 8 of the SCN), we submit as under:*

The allegation is w.r.t delay in submission of corrigendum to the offer document to the Stock Exchange in the public issue of NCDs of KFL.

(i) *Corrigendum advertisement was published on 09.11.2019 i.e. on Saturday. Therefore, the filing was due on the next working day i.e. 11.11.2019.*

(ii) *It is pertinent to note that publishing corrigendum through newspapers itself is timely dissemination of information to the public. In addition, we as joint lead manager, had uploaded the corrigendum on our website on 09.11.2019, on the same day when it was required to be published for prompt dissemination of information to the public.*

(iii) *Further, Karvy Investor Services Ltd (**Karvy**) was the main Lead Manager, whose name appears first on the left side column of the prospectus which is also commonly known as "Left Lead Manager" as per normal market practice. It is pertinent to note that Karvy was assigned with coordinating responsibility with Regulatory authorities for the present case.*

(iv) *Since Karvy had responsibility to submit the corrigendum to BSE, we had provided our signatures on the covering letter and submitted to Karvy's office on 11.11.2019, being the immediate working day post release of corrigendum, for onward submission to BSE. However, it is understood that the same was not submitted by Karvy on time. Hence, the operational delay was caused on part of Karvy and not on our part.*

(v) *In addition to what is stated aforesaid, we would like to state that SMC Capitals Ltd was jointly acting with Karvy as Lead Managers for the Issue. As per the "inter-se allocation of responsibilities" agreed vide Issue Agreement dated 26.09.2019 between Karvy and SMC Capitals, Karvy was assigned the responsibility for co-ordination with the regulatory authorities for the purposes of the Issue. The relevant responsibility of "Coordinating" activity assigned to Karvy in terms of aforesaid Issue agreement is as follows:*

(Ref Annexure – 1 at Sr. No. 2 & 4 on Page No. 53 of Issue Agreement dated 26.09.2019)

No	*Activities*	*Responsibility*	*Co-ordination*
2	*Due diligence of Company's operations/ management/ business plans/ legal etc. Drafting and design of the Offering Document (i.e. Draft Prospectus, Prospectus), Abridged Prospectus, Application Forms and of statutory advertisement including memorandum containing salient features of the Offering Document. The Merchant Bankers shall ensure compliance with stipulated requirements and completion of prescribed formalities with the Stock Exchange(s), RoC and SEBI including finalisation of Offering Document and RoC filing). Deposit of 1% Security deposit with designated stock exchange.*	*KISL and SMC Capital*	*KISL*
3	*…*	*…*	*…*
4	*Drafting and approval of all publicity material statutory advertisement as mentioned in (2) above including corporate advertisement, brochure etc.*	*KISL and SMC Capital*	*KISL*

From the aforesaid, it can be seen that that the coordinating responsibility the regulators and statutory authorities was always with Karvy and not us. Hence, no adverse inference be drawn against us.

*A copy of relevant pages of Issue Agreement dated 26.09.2019 between Kosamattam Finance Ltd and Karvy Investor Services Ltd and SMC Capitals Ltd is hereto annexed and marked as **Annexure – "3".***

4. *Without prejudice to what is stated aforesaid, we would like to submit as under:*

(i) *Clause 4 of Schedule III of the Code of Conduct mandates that a merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgement. Such due skill, care and diligence can only mean that merchant banker shall act in such a way that a person of ordinary prudence would act in the normal circumstances in carrying out activities and*

functions relating to its business and will remain careful and diligent. Accordingly, we have exercised all due skill, care and diligence as a man of ordinary prudence is expected to do in carrying out its activities.

(ii) *In this regard we further state that, the word "due diligence" has not been defined in the Code of Conduct. Notably, according to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. Besides, as per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. Importantly according to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.*

(iii) *In support to our aforesaid submissions, we place reliance on Judgement passed by Hon'ble Supreme Court of India, in the matter of Chander Kanta Bansal V. Rajinder Singh Anand MANU/SC/7310/2008: (2008) 5 SCC 117 has held as under:*

> *"The words "due diligence" have not been defined in the Code of Civil Procedure, 1908. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's law Dictionary (18th Edn), "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Pharses by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."*

A copy of Judgment dated 11.03.2008 passed by Hon'ble Supreme Court of India in the matter of Chander Kanta Bansal V. Rajinder Singh Anand (Civil Appeal No. 1893 of 2008) is hereto annexed and marked as ***Annexure – "4"***

(iv) *Further, w.r.t. due diligence to be followed by Merchant Bankers, we rely on the following Orders wherein the proceedings initiated against them have been disposed off without any direction or imposition of penalty.*

(a) *Copy of Order dated 29.06.2021 bearing reference no. WTM/MB/IVD/ID7/12358/2021-22 passed by Ld. Whole Time Member, SEBI w.r.t. Saffron Capital Advisors Pvt Ltd in the matter of Acropetal Technologies Ltd is hereto annexed and marked as* ***Annexure – "5"***

(b) *Copy of Order dated 30.09.2022 bearing reference no. ORDER /VV/AS/2022-23/19863 passed by Adjudicating Officer, SEBI w.r.t. D&A Financial Services (P) Ltd in the matter of IPO of Shilpi Cable Technologies Ltd is hereto annexed and marked as* ***Annexure – "6"***

5. *On the subject matter of the proceedings, i.e., Inspection of Books of Accounts, records and documents, we would like to refer to and rely upon the Orders passed by Hon'ble Securities Appellate Tribunal* ***("Tribunal")****. The gist is as under:*

(i) *Order dated 16.06.2011 passed by Hon'ble Tribunal in the matter of Religare Securities Limited (Appeal No. 23 of 2011) wherein Hon'ble Tribunal held as under:*

Quote:

"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent.

For the reasons recorded above, the appeal is allowed and the impugned order set aside with no order as to costs."

Unquote:

A copy of above referred Order dated 16.06.2011 passed by Hon'ble Tribunal in the matter of Religare Securities Limited (Appeal No. 23 of 2011) is hereto enclosed and marked as ***Annexure – "7"***

(ii) *Order dated 25.07.2011 passed by Hon'ble Tribunal in the matter of UPSE Securities Limited (Appeal No. 109 of 2011) wherein Hon'ble Tribunal held as under:*

Quote:

"5. Before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued

from time to time which are meant to regulate the securities market. Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity. However, if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law. Having said this, we leave the matter at that.

In the result, the appeal is allowed and the impugned order set aside with no order as to costs."

Unquote:

*A copy of above refereed Order dated 25.07.2011 passed by Hon'ble Tribunal in the matter of UPSE Securities Limited (Appeal No. 109 of 2011) is hereto enclosed and marked as **Annexure – "8"***

(iii) Order dated 11.09.2012 passed by Hon'ble Tribunal in the matter of DSE Financial Services Limited (Appeal No. 153 of 2012) wherein Hon'ble Tribunal held as under:

Quote:
"3. ….. Under similar circumstances in one of the cases decided by us earlier (Religare Securities Limited vs. SEBI Appeal no. 23 of 2011 decided on 16.6.2011), we have observed that it must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We have also observed that every minor discrepancy / irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities / deficiencies to the intermediary at the time of inspection and making it compliant. As per the observations made by the adjudicating officer himself, the violations committed by the appellant are mostly technical in nature; some of them are solitary instances and for others the appellant has mostly taken/initiated corrective measures. In view of this, we are of the view that the adjudicating officer was not justified in taking punitive action.

We, therefore, set aside the impugned order and allow the appeal with no order as to costs."

Unquote
*A copy of above referred Order dated 11.09.2012 passed by Hon'ble Tribunal in the matter of DSE Financial Services Limited (Appeal No. 153 of 2012) is hereto enclosed and marked as **Annexure – "9"***

6. *In view of our aforesaid submissions, we submit that we strongly and vehemently deny that we have violated provisions of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.*

7. ***Conclusion***
We would like to submit that we are a law abiding Company and we have always complied with rules/regulations governing securities market. In case regulatory action by way of imposition of penalty is taken by a reputed and credible organization like SEBI, it shall cause loss of goodwill, credibility, market standing and reputation which we have painstakingly built over the years. The same shall have a cascading effect on our entire business and all connected stakeholders without any fault of ours. Thus, we humbly request that we may be discharged from present proceedings at the earliest.
8. ***Prayer***
Taking totality view of the facts and circumstance of the case and on consideration of our submissions and denials as aforesaid, we submit that we have been wrongly roped into the present proceedings, hence humbly request that;
(i) The proceedings initiated vide Show Cause Notice dated 23.11.2022 against us be dropped.
(ii) We may be discharged from the present proceedings at the earliest without imposition of any penalty.

We crave leave to make further submissions and submit documents, if required, during the course of present proceedings.

….."
.

12. The Show Cause Notice No. SEBI/EAD-5/AN/SM/58843/2/2022 dated November 23, 2022 (hereinafter referred to as **"SCN"**) was sent by SPAD and email to Noticee 2 on the following two addresses:

Address No.	Address
Address 1	Karvy House, 46, Avenue 4, Street No.1 Banjara Hills Hyderabad - 500034
Address 2	Karvy Millennium, Plot No.31/P, Nanakramguda Financial District, Gachibowli, Sherilingampally Hyderabad Rangareddi, Telangana, 500032

13. The SCN sent to Noticee 2 was delivered at its Address No. 2 as per India Post Tracking Details and the one issued at its Address No. 1 was received as returned undelivered. As the SCN was delivered at Address No. 2 of Noticee 2, the Supplementary SCN No. SEBI/HO/EAD-5/AN/SM/7275/1/2022 dated February 20, 2023 was issued by SPAD at its Address No. 2 and also by E-mail to Noticee 2. Copy of said Supplementary SCN along with copy of SCN dated November 23, 2022 was also hand delivered to Noticee 2 at its Address No. 2 mentioned in the aforesaid table. The Supplementary SCN along with said SCN was acknowledged on behalf of Noticee 2. However, no reply to the SCN and SSCN was received from Noticee 2 by the dates, as indicated in the SCN/SSCN.

14. Thereafter, vide Hearing Notice dated March 03, 2023, an opportunity of hearing was provided to Noticee 2 and the hearing was scheduled on March 09, 2023. No confirmation or reply was received. Noticee 2 did not appear on the said scheduled date of hearing.

15. However, vide its email dated March 11, 2023, response of Noticee 2 was received inter alia requesting extension of period of 4 weeks' to file the reply to the SCN and SSCN and also requesting not to pass any order without hearing in the captioned subject. Accordingly, vide email dated March 11, 2023, Noticee 2 was given one more opportunity of Hearing on March 17, 2023 and was inter alia advised to submit its reply to the SCN / SSCN before March 17, 2023.

16. Reply of Noticee 2 to the Show Cause Notice and Supplementary Show Cause Notice was received through its Authorised Representatives vide letter dated March 16, 2023 received vide its email dated March 16, 2023 .

17. On the scheduled hearing date, Noticee 2 appeared through its Authorised Representatives (AR-2) viz; Mr. Vinay Chauhan and Ms. Almira Lasrado for the

hearing held through online mode viz., video conferencing. During the hearing the ARs for Noticee 2 relied upon and reiterated the submissions made by the Noticee 2 vide letter dated March 16, 2023. The ARs sought time for making additional written submissions and accordingly, time till March 20, 2023 was allowed. Noticee 2 made its additional submissions vide letter dated March 17, 2023 which was received through email dated March 18, 2023.

18. The key submissions made by the Noticee 2 as its reply to the SCN and SSCN vide letter dated March 16, 2023 are as below:

"…..

1. *We are concerned for Karvy Investor Services Limited having their registered address as Office Nos. Karvy Millenium, Financial District, Nanakramguda, Gachibowli, Hyderabad – 500032 (hereinafter referred to as our **"our Client")** who have placed in our hands, your Show Cause Notice No. SEBI/HO/EAD-5/AN/SM/58843/2/2022 dated 23.11.2022 and Supplementary Show Cause Notice NO: SEBI/HO/EAD-5/AN/SW7275/1/2023 dated 20.2.2023 and under their instructions and on behalf of our Client, we address you as hereinunder:*

2. *Please refer to the captioned SCN & SSCN issued to Karvy Investor Services Limited **("KISL").***

3. *The said common SCN/SSCN has been issued, in context of inspection conducted by SEBI with regard to operations of SMC Capitals Limited ("**SMC**") pertaining to their merchant banking operations. The focus of inspection conducted by SEBI was to ascertain the level of due diligence exercised by SMC and post issue activities and procedures followed by it in respect of various issues handled by it during the period from April 2019 to March 2021 ("**Inspection Period").***

4. *Based on the inspection, it has inter alia been alleged in the SCN/SSCN that, our Client has violated provisions of violation of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 ("**MB Regulations**").*

5. *Further, vide the said SCN/SSCN you have called upon our Client to show cause as to why an inquiry should not be held against us in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing penalties by Adjudicating Officer) Rules, 1995 (**"Rules")** and penalty be not imposed under Section 15 HB of the SEBI Act 1992 **("SEBI Act")** for the violation of the aforesaid alleged provisions.*

6. *In response to the said SCN/SSCN, our Client had vide our email/letter dated 11.3.23, inter alia sought extension of time for filing the reply in the matter.*

7. *At the outset our Client submits that, save and except the contents of the said SCN/SSCN which are specifically admitted herein, all other averments, observations, allegations made by SEBI in the said SCN/SSCN are specifically and individually denied. Nothing contained in the said SCN/SSCN shall be deemed to be admitted on the basis of non-traversement of specific allegations or findings, unless the same is specifically admitted by us in this reply.*

8. *As will be evident from the following paras, the observation in the SCN/SSCN pertain only to certain technical and procedural issues, which are not, even remotely, serious in nature. Admittedly, the observations do not pertain to any kind of fraud or manipulation or unfair trade practices indulged in by us or pertaining to causing any harm to Issuer Company/Investors interest in any manner etc. or misappropriation of funds/securities of the Issuer Company/Investors. The alleged lapses are inadvertent/accidental and purely unintentional. Patently, the observations are in the nature of hair-splitting exercise. While appreciating our below mentioned submissions, it be kept in mind that our Client has not compromised or adversely affected the interests of the Issuer Company/Investors in any manner and there are no complaints.*

9. *Before dealing with the allegations in the SCN/SSCN, our Client would like to state that our Client are part of Karvy Group of companies. Consequent to, inter alia, various orders (including Order dated 22.11.19 & 24.11.20) passed by SEBI against our group company Karvy Stock Broking Limited ("**KSBL**")- in its capacity as - the Stock Broker and Depositary Participant various group companies, including our Client, came under*

lot of operational stress. As a spillover of adverse publicity etc, our operations also came to a grinding halt, resulting in mass employee exodus. Further, as on date there are no employees in the company.

<u>Para-wise comments</u>

10. *With regard to the observations in Paras 1 to 3 of the SCN, our Client submits that conducting of inspection by SEBI and the appointment of the Adjudicating Officer, are a matter of record. Therefore, our Client has no comments to offer.*
11. *With regard to observations in Paras 4.1 to 4.3 of the SCN, it is submitted that no response from our Client's end to the email dated 27.4.2022 happened in the context of peculiar facts and circumstances of the case, as stated hereinbefore. The employees to whom the mails were marked had already left the services of the company. Even SCN/SSCN observes that "it is gathered that there is no employee in the Karvy at present"*

<u>Public issue of NCD's by SREI Infrastructure Finance Limited ("SIFL")</u>

12. *With regard to observations in Paras 4.4.1 of the SCN, pertaining to non-obtaining of NOC before going ahead with the public issue of NCDs of SFIL , it is denied that our Client has violated Clause 1 and 4 of Schedule III (Code of Conduct) read with Regulation 13 of MB Regulations as alleged. In this context , following be noted :*

(i) The allegation that "it was the responsibility of the merchant banker (SMC Capitals Ltd and Karvy Investor Services Ltd) on behalf of the issuer, to obtain the said NOC prior to the issuance" is totally misplaced. It is submitted that in terms of the agreements entered into between the Issuer and Bank of India, the responsibility to obtain NOC lay with the Issuer company. As a merchant banker, our Client could not have obtained NOC from Bank of India.

(ii) It may be appreciated that the Issuer had in fact applied for NOC to Bank of India on February 22, 2019 .

(iii) As a merchant banker, our Client was under obligation to ensure that all the requisite disclosures are made and all the risk factors are highlighted, so as to enable the potential investors to take a informed decision. Same was done by us as lead managers, by making requisite disclosures in the prospectus. In this context, your attention is invited to Page 19 of the Prospectus wherein it was inter alia disclosed as follows:

*6. **Our Client have not received NOC for the issue of shares from one of our lenders "Bank of India"***

Our Client are required to obtain NOCs from some of our existing lenders in terms of the financial covenants mentioned in the loan agreements with them in order to raise debt by way of public issue .Our Client have applied for NoCs only from those existing lenders who have stipulated the said requirement either in their sanction letter or loan agreement . Our Client have received NoCs from all such existing lenders except one existing lender, the bank of India {BOI") . Our Client have applied to BOI for the said NoC. However, as on date of this Draft Shelf Prospectus, our Client have not received the said NOC from BOI. In the event BOI rejects our application, it may affect our liquidity /resources position to the extent of current outstanding of BOI."

(iv) From the aforesaid disclosure it is clear that the factum of non-availability of NOC from BOI (at the relevant time and that it was applied for) was transparently and adequately disclosed .Further, consequences of non-receipt of NOC was also disclosed to the investors as a Risk factor.

(v) Under the circumstances, our Client cannot be alleged to have not made all efforts to protect the interests of investors or not having exercised due diligence or not having ensured proper care or not having exercised independent professional judgment.

<u>Public issue of NCD's by Kosamattam Finance Limited ("KFL")</u>

13. *With regard to observations in Paras 4.4.2.1 of the SCN/SSCN, pertaining to failure to issue corrigendum for rectifying all the errors in offer document of public issue of NCDs of KFL, it is denied that our Client has failed to issue corrigendum for rectifying all the errors in offer document of public issue of NCDs of KFL as alleged and that our Client have violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of MB Regulations as alleged. It is submitted that mentioning of incorrect email id and contact number of Registrar to the issue (i e. Karvy Fintech Private Limited) for Investor grievance, was a bonafide human error. Admittedly corrigendum was issued for the same. Unfortunately, in the corrigendum, by mistake the error at one place in the document persisted. The said mistake was purely human and not intentional or contumacious. It is also submitted that the corrigendum was undertaken by SMC who was responsible for interacting with the printers. Consequent to said human error, no one's interest has been impacted or affected or compromised. It is not the case that investors could not raise their grievances or there were grievances of the investors which were not addressed by Karvy Fintech Private Limited. Under the circumstances, our Client submit that the said inadvertent and venial lapse be viewed leniently.*
14. *With regard to observations in Paras 4.4.2.2 of the SCN/SSCN, pertaining to delay in submission of corrigendum to the offer document to the stock exchange in the public issue of NCDs of KFL, it is denied that our Client have violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to MB Regulations as alleged . It is submitted that delay in dispatching the corrigendum of BSE was inadvertent. The said delay was inadvertent and not intentional or contumacious. Consequent to said delay, no one's interest have been impacted or affected or compromised. It is not the case that investors could not view the Corrigendum at all, admittedly paper publication was already there. Under the circumstances, our Client submits that the said inadvertent and venial lapse be viewed leniently.*
15. *With regard to observations in Paras 4.5.1 of the SCN, it is submitted that the same does not pertain to us, therefore our Client has no comments to offer.*

16. *With regard to observations in Paras 4.5.2. of the SCN/SSCN, our Client reiterate the submissions made in the earlier paras and submit that our Client have not violated the provisions of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of MB Regulations.*

17. *It is submitted that the alleged lapses pointed out in the SCN/SSCN are merely technical, venial and procedural in nature. As a result of the alleged lapses, our Client have not made any gains or derived any unfair advantage. Our Client are committed to complying with the law and request that the procedural lapses be seen in the context of our overall scale of operations then handled by us.*

18. *Our Client may also point out that any action for the alleged lapses, given our present state of affairs (wherein- no business activity including merchant banking is taking place, there are no operations , no employees etc) would result in enormous misery to us. Our Client submits that our Client had acted as an honest Merchant Banker and the lapses observed, in the Inspection report, are isolated instances of human error and not forming any pattern which leads to doubt/suspicion or for personal benefit or with the intent to defraud the Issuer companies or the investors. Our Client reiterates that as a responsible and compliance conscious registered market intermediary, it has been our continuous effort to ensure that all the relevant rules, regulations and the Circulars issued by SEBI are properly complied with.*

19. *In this context our Client also invite your attention to the following observations of Hon'ble Securities Appellate Tribunal:*

    (i) Order dated 25.7. 2011 in the matter of UPSE Securities Ltd vs SEBI, wherein it has inter alia been observed that:
    "the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity. However if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law "

    (ii) Order dated 16.6.2011 in the matter of Religare Securities Ltd vs SEBI, wherein it has inter alia been observed that:
    "It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. Our Client also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could our well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will ofcourse , depend on the nature of irregularity noticed and our Client hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent"

20. *In the matter under reference also the SCN is based on the alleged lapses found during the course of inspection. Further, the alleged lapses are procedural in nature. The said technical lapses are not serious in nature and the same have not impacted the interest of investors or the interests of securities market of clients in any manner. Admittedly, there are no allegations of indulging in unfair, fraudulent, and manipulative practices, qua us while rendering Merchant Banking services to Issuer companies. Even there are no complaints from any of the Issuer companies or the investors in this regard.*

21. *Our Client respectfully submits that, given the aforesaid background of alleged lapses and their nature- i.e. technical and procedural, the proceedings may be dropped and no penalty be imposed. In this context your attention is invited to observations of the Hon'ble Supreme Court in the matter of Hindustan Steel vs State of Orissa [(1969) 2 SCC 627] wherein it has been held that -*

    "whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

22. ***Without prejudice*** *to our submission that our Client have not violated any provisions of SEBI Act or MB Regulations as alleged, our Client are setting out following mitigating/ extenuating factors for your kind consideration:*
    (a) The alleged technical lapses were not deliberate and intentional and in contumacious disregard of provisions of law.

    (b) Our Client has not indulged in any manipulative, fraudulent or unfair trade practices.

    (c) Our Client has not made any gains or derived any unfair advantage as a result of alleged technical and minor lapses. The same has not been even alleged.

(d) Our Client have not caused losses to Issuer companies or the investors in any manner as a result of alleged technical and minor lapses. The same has not been even alleged.

(e) The alleged violations have happened inadvertently and were not committed for our personal benefit or with the intent to defraud the clients.

(f) Inspection Report (at internal page 13) , itself , in context of Public issue of NCDs by KISL (pertaining to Secured redeemable NCDs and unsecured redeemable NCDs of face value of Rs 1000/- each), has specifically recorded that " No adverse observation was found during the inspection with respect to the handling of the aforesaid issue by Merchant banker"

(g) Our Client are going through a rough patch wherein Company is running in losses, with no sources of income. Our operations have come to a halt as a consequence of employee exodus. Any imposition of monetary penalty, in the present facts and circumstances of the case and given our present situation, would be harsh, oppressive and burdensome .

(h) The alleged lapse pertains to a very old period i.e. year 2019, virtually 4 years old. There has been undue delay in initiation of proceedings. It is a well settled now that "undue delay is a mitigating factor which has to be considered while imposing a penalty under section 15J of the SEBI Act". (Refer: Anita Jajodia vs SEBI – SAT Order dated 20.1.21).

(i) There are no complaints from Investors/Issuer Companies in the matter pertaining to the alleged lapses.

23. *It is respectfully submitted that in the true and correct facts and circumstances as stated hereinbefore, the allegations in the Notice are technical, procedural and venial in nature. Therefore, imposition of any monetary penalty under sec 15 HB of SEBI Act, would be unjustified and unwarranted. Given the factual backdrop of the case, it would be in the fitness of things and in consonance with the well settled principles of proportionality and fairness, that no monetary penalty be imposed on us.*

….."
.

19. The additional submissions made by the Noticee 2 *vide* letter dated March 17, 2023 received through email dated March 18, 2023 are as below:

"…..

1. At the outset, we thank you for the patient hearing given to our representative on March 17,2023 in the captioned matter.

2. During the course of the hearing, you had permitted us to file additional submissions and place on record the judgements relied on, in the matter. These submissions are in addition to and in continuation of our earlier submissions dated 16.3.23 in response to SCN/SSCN.

3. We reiterate that the observations in the SCN/SSCN pertain only to certain technical and procedural issues. Admittedly, the observations do not pertain to any kind of fraud or manipulation or unfair trade practices indulged in by us or pertaining to causing any harm to investors interest in any manner or misappropriation of the funds/securities of the Issuer Company/Investors in any manner etc. In fact, the alleged violations did not have any consequential impact on the interests of our Issuer Company/Investors. We reiterate that we have not compromised or adversely affected the interests of the Issuer Company/Investors in any manner.

4. Significantly, it may be noted that there is no allegation in the SCN/SSCN:

(i) That inquiries from the investors have not been adequately dealt with or grievances of investors have not been redressed in a timely and appropriate manner or that the investor has not been advised of any further steps which may be available to the investor under the regulatory system.
(ii) That adequate disclosures have not been made to the investors in a timely manner in accordance with the applicable regulations and guidelines to enable them to make a balanced and informed decision.
(iii) That the investors have not been provided with true and adequate information or that there has been misleading or exaggerated claims or misrepresentation
(iv) That the investors have not been made aware of the attendant risks before taking any investment decision.

(The aforesaid flow from Clauses 5, 6 & 7 of the Code of Conduct applicable to the Merchant Bankers- which are not alleged to have been violated by us.)

5. *With regard to allegation pertaining to non-obtaining of NOC from BOI (pertaining to Public issue of NCD's by SREI Infrastructure Finance Limited), we submit that we had bonafide disclosed the factum of non-receipt of NOC coupled with attendant risks under the head "Risk Factors" in the offer document. While making the said disclosure we had ensured : (a) that the requisite disclosure is made in this regard; (b) that the disclosures are adequate;(c)that the disclosures are not-misleading in nature and there is no misrepresentation or suppression of relevant information; (d) that all the attendant risks , pertaining to non-receipt of NOC, are highlighted to the investors, so as to enable the investors to take an informed decision .Admittedly, there is no allegation that the disclosure made with regard to non-obtaining of NOC from BOI which was disclosed as a Risk factor – was inadequate or misleading in nature or did not highlight attendant risks or impeded the ability of investors to take an informed decision . In the aforesaid circumstances, we cannot be alleged to have not made efforts to protect the interest of investors or not having exercised due diligence or not having taken proper care or not having exercised professional judgement. Therefore, we submit that there was no violation of Clauses 1 and 4 of Schedule III (Code of Conduct) read with Regulation 13 of MB Regulations as alleged .*
6. *With regard to allegation pertaining to Non-rectification of all errors in the Corrigendum and the| delay in forwarding the Corrigendum to the Exchange (pertaining to Public issue of NCD's by Kosamattam Finance Limited) following be noted :*

(i) Non-rectification of all errors in the Corrigendum was a human error, which has not impacted investors interest in any manner.

(ii) In so far as delay of 6 days in forwarding the Corrigendum to Exchange is concerned, it may be noted that, admittedly, the Issue had opened on 11/11/19 and closed on 4/12/19. Further, the Corrigendum was sent on 15/12/19 to BSE. Since, question of investor grievance, ordinarily, would arise only post-closing date i.e. 4/12/19, the alleged delay of 6 days was inconsequential and did not impact investors interest, in terms of investors not being able to raise their grievances etc. Further, it may be appreciated that admittedly advertisement in newspaper was already made on 9/11/19.

7. *Admittedly, there is nothing on record to demonstrate that there are any complaints from the investors on this score or that the inquiries from the investors have not been adequately dealt with or grievances of investors have not been redressed in a timely and appropriate manner.*

8. *Pragmatically viewed, there was no sequitur, in terms of adverse impact on the interest of investors in any manner, to the alleged technical and procedural lapses.Under the circumstances, we respectfully submit that, no penalty is warranted in the facts of the present case.*

9. *Without prejudice to our submission that no penalty is warranted, we submit that , the Hon'ble Tribunal vide its Order dated 29.6.22 in the matter of ACML Capital Markets Limited vs SEBI (SAT Appeal No -100 of 2022) , arising from inspection of a stock broker conducted by SEBI, while observing that the object of inspection is not punitive etc, had , inter alia considering that there was some lapse on the part of the broker for non-compliances of various Circulars of SEBI within the stipulated period , reduced the penalty from Rs 20 lacs as imposed by the Adjudicating officer to Rs 5 lacs. It may be noted that the facts of our case stand on a much better footing then the said broker's case. The relevant observations are extracted hereinbelow:*

"7. In the light of the aforesaid, we find that the object of inspection of books of accounts and records of any Intermediary is to monitor and identify any non-compliance with respect to process procedures and systems prescribed through various provisions of the SEBI Act, Rules, Regulations and Circulars issued from time to time. The broker is required to take corrective steps in the event any irregularity as pointed out during the course of inspection. In this regard this Tribunal in the matter of Religare Securities Limited v Securities and Exchange Board of India (Appeal No. 23 of 2011 decided on June 16, 2011) held that the purpose of carrying out inspection was not punitive and that the object was to make the intermediary comply with the procedural requirements with regard to the maintenance of records etc. The Tribunal held that every minor discrepancy or irregularity found during the course of inspection cannot be converted into a violation for imposition of monetary penalty unless there is a serious lapse which is found in the course of inspection.

8. In view of the aforesaid and as discussed in the previous paragraphs we find that there is no serious lapse on the part of the appellant for not complying with the various Circulars of SEBI. Admittedly, there has not been compliances within the stipulated period as specified in the Circular and there has been a delay but the compliances were made by the appellant when the inspection had taken place. It is not a case where non-compliance was found at the time of the inspection and compliance was made thereafter .

9. ………

10. Consequently, for the reasons stated aforesaid, while we note that there was some lapse on the part of the appellant for non-compliances of various Circulars of SEBI within the stipulated period, the lapse was not such which required the AO to impose a penalty of Rs. 20 lakhs, which in our opinion, is excessive.

11. Considering what we have stated aforesaid while affirming the lapse committed by the appellant in some of the matters we reduce the penalty from Rs. 20 lakhs to Rs. 5 lakhs which the appellant is directed to pay within 4 weeks from today".

….."

.

D. CONSIDERATION OF ISSUES AND FINDINGS

20. The issues that arise for consideration in the present matter are as following:

Issue No. I - Whether the Noticees have violated the provisions of SEBI (Merchant Bankers) Regulations, 1992, as alleged?

Issue No. II - Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

Issue No. III - If so, what should be the monetary penalty that should be imposed on the Noticees?

21. Before proceeding on merits, it would be pertinent to deal with the preliminary/technical contentions issues raised by Noticee 1 viz; had inter alia contented that the conclusion is drawn by placing reliance on incomplete documentation in so far as stated correspondences done with the SEBI inspection team in this matter had not been brought on record in the SCN. In this regard, from the material available on record, it is noted that as per SEBI though no specific reference had been made to said emails however the responses received through cited emails had been considered during the analysis by it. This apart, as regards alleged violation that Noticee 1 had inter alia also contended that, "we are surprised to note that, the aforesaid allegation is levelled against only one merchant banker i.e. SMC Capitals Limited. Whereas, Karvy, who was one of the Lead Manager to the Issue and was assigned with responsibility of "Co-ordination" for various activities in terms of "Inter-se Allocation of responsibilities" agreed as per Issue Agreement dated September 26, 2019, has not been made party to the aforesaid allegation…". In this regard, it is a matter record, as also brought out in the foregoing, Supplementary SCN had been issued in the matter to Noticee 2. Accordingly, the contentions raised by Noticee 1 stand addressed.

22. I now proceed to deal with the matter on merits with respect to the allegations made against the Noticees vide SCN dated November 23, 2022 and SSCN dated February 20, 2023.

Issue No. I - Whether the Noticees have violated the provisions of SEBI (Merchant Bankers) Regulations, 1992, as alleged?

22.1. **It was inter alia alleged in SCN that Noticee 1 and Noticee 2 went ahead with the public issue of NCDs of SREI Infrastructure Finance Limited (SIFL) without having obtained NOC by SIFL from existing lender (Bank of India) and therefore, violated Clause 1 and 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.**

22.1.1. Here it would be pertinent to draw reference to the relevant provisions alleged to have been violated, which are reproduced as under:

[SCHEDULE III
Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992
[Regulation 13]

CODE OF CONDUCT FOR MERCHANT BANKERS

“

…..

1. A merchant banker shall make all efforts to protect the interests of investors.

…..

***4.** A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.*

…..

”.

(Note: For detailed/ complete text/provisions etc., Regulations may please be referred to).

22.1.2. In this regard, Noticees vide their respective replies to the SCN/SSCN inter alia made following submissions:

Noticee 1

22.1.3. Noticee 1 vide its reply dated December 07, 2022 and February 23, 2023 inter alia made following submission:

> *"…The Issuer has offered the exclusive security of receivables from "Orissa Steel Expressway Private Limited" amounting to Rs.129 crores which is more than 1.0 time of the NCDs issued to the public, through the Issue…" It is pertinent to note that in terms of erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008; (SEBI Debt Regulations) consent from the lender is required in case of creating pari passu charge on the assets offered as security in the Issue…"*
>
> *….*
>
> *"….The sanction letter of Bank of India dated April 23, 2018 (BOI Sanction Letter) ("Appendix 5") has listed down the list of securities offered to them by Issuer while obtaining the debt facility. It is important to note that exclusive security offered i.e. receivables from "Orissa Steel Expressway Private Limited" by the Issuer in the Issue is not the part of the security offered to Bank of India…."*
>
> *…..*
>
> *"As per the restrictive covenant of loan agreement between SFIL & BOI, SFIL can proceed with the issue without NOC, however BOI can exercise right to call up the credit facility sanctioned (refer point (20) of Bank sanction letter)."*
>
> *….*
>
> *"…Karvy Investor Services Ltd. ("Karvy"), was the "Coordinator" towards activity of "Due diligence of Company's operations/management/business plans/legal etc." as per the "Inter-se allocation of responsibilities amongst the Lead Managers…"*
>
> *….*
>
> *"…Since the Issuer had not succeeded in obtaining NOC in time bound manner they decided to proceed with the Issue without their consent….. The Lead Managers have duty to disclose such facts and risk associated with the Company in the offer documents issued to prospective investors to enable them to make a balanced and informed decision. Accordingly, Lead Managers along with Legal Advisor had decided to disclose following risk factor which is at page 19 of the Shelf Prospectus dated March 29, 2019…"*
>
> *…..*
>
> *"…In any event, it is pertinent to note that Bank of India did not raise any complaint to the Lead Managers during the Issue period for restricting Issue process…"*

…..

"…we state that SMC Capitals had made all efforts to protect the interests of investors and had also exercised due diligence, reasonable and proper care and professional judgment as required under the relevant SEBI Regulations. Consequently, it is denied that SMC Capitals did not exercise proper due diligence as alleged or otherwise. It is also denied that SMC Capitals is in violation of Clauses 1 and 4 of Schedule III of Merchant Bankers Regulations…."

…..

"…BOI has not made any communication to us regarding stoppage of NCD's issued and have also not recalled the credit facility during the issue period…."

…..

"…As per the restrictive covenant of loan agreement between SFIL & BOI, SFIL can proceed with the issue without NOC, however BOI can exercise right to call up the credit facility sanctioned (refer point (20) of Bank sanction letter)…"

…..

"….SMC Capitals' responsibility as Lead Manager was to ensure that it disclosed such facts and risks associated with the Issuer so as to ensure prospective investors made an informed decision…"

…..

"according to Oxford Dictionary (Edition 2006), the word "diligence" means careful and <u>persistent application or effort</u>. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. Besides, as per Black's Law Dictionary (Eighth Edition), "diligence" means a <u>continual effort to accomplish something</u>, care; caution; the attention and care required from a person in a given situation."

Noticee 2

22.1.4. **Noticee 2 vide its reply dated March 16, 2023 and March 17, 2023 inter alia made following submissions:**

"…the observation in the SCN/SSCN pertain only to certain technical and procedural issues, which are not, even remotely, serious in nature. Admittedly, the observations do not pertain to any kind of fraud or manipulation or unfair trade practices indulged in by us or

pertaining to causing any harm to Issuer Company/Investors interest in any manner etc…"

…..

"…The allegation that "it was the responsibility of the merchant banker (SMC Capitals Ltd and Karvy Investor Services Ltd) on behalf of the issuer, to obtain the said NOC prior to the issuance" is totally misplaced. It is submitted that in terms of the agreements entered into between the Issuer and Bank of India, the responsibility to obtain NOC lay with the Issuer company. As a merchant banker, our Client could not have obtained NOC from Bank of India." Further, the Noticee also submitted that *"It may be appreciated that the Issuer had in fact applied for NOC to Bank of India on February 22, 2019 …."*

…..

"….As a merchant banker, our Client was under obligation to ensure that all the requisite disclosures are made and all the risk factors are highlighted, so as to enable the potential investors to take a informed decision. Same was done by us as lead managers, by making requisite disclosures in the prospectus…"

22.1.5. It is noted from the submissions of the Noticees that both the Noticees have made similar submissions save for being differently worded or argued. The submissions of the Noticees being related to common allegation in this regard are being accordingly dealt with as hereunder:

22.1.6. It is noted from Noticees submissions that with regard to the public issue of NCDs by SREI Infrastructure Finance Limited ('Issuer' /'SREI Infrastructure Finance Limited' / 'SREI') (hereinafter the public issue of NCDs by SREI Infrastructure Finance Limited may also be referred as 'Issue'), the issuer had entered into loan agreements with various banks including Bank of India (for brevity *'BOI' /'Bank'*) which contained various restrictive covenants including restriction to raise public debt without their prior approval. The following is noted with regard to the said restrictive covenants, in this regard, from the copy of Bank's Sanction Letter dated April 23, 2018, provided by the Noticee 1 as part of its submissions:

“Clause 19 – Without prior consent of the Bank, the Borrower shall not during the continuance of the credit facility granted:

(xiv) Approach capital market for mobilizing additional resources either in the form of debt or equity”

22.1.7. In this regard, merely going by the wordings of the cited covenant viz., the phrase ‘w*ithout prior consent of the Bank’,* evidently connotes that obtaining Non Objection Certificate (NOC) from the Bank was a condition precedent to raising further debt /funds by the issuer.

22.1.8. In this regard, it is noted from the material available on record that the issuer had applied for NOC from the Bank vide email dated February 22, 2019, however, the same could not be received and in view thereof, the Noticees went ahead with the public issue of NCDs of SREI Infrastructure Finance Limited by disclosing following risk factor in the offer document viz., shelf prospectus:

“6. We have not received NOC for The Issue from one of our lenders ‘Bank of India’

We are required to obtain NoCs from some of our existing lenders in terms of the financial covenants mentioned in the loan agreements with them in order to raise debt by way of public issue. We have applied for NoCs only from those existing lenders who have stipulated the said requirement either in their sanction letter or loan agreement. We have received NoCs from all such existing lenders except one existing lender, the Bank of India (“BOI”). We have applied to BOI for the said NoC. However, as on date of this Draft Shelf Prospectus we have not received the said NoC from BOI. In the event BOI rejects our application, it may affect our liquidity/ resources position to the extent of current outstanding of BOI.”

22.1.9. In this regard, it is noted that as per inter se allocation of responsibilities among the Lead Managers, both the Noticees as Lead Managers were responsible for the activities related to issue.

22.1.10. In this regard, Noticee 1 had inter alia submitted that *“As per the restrictive covenant of loan agreement between SFIL & BOI, SFIL can proceed with the issue without NOC, however BOI can exercise right to* *call up the credit facility sanctioned (refer point (20) of Bank sanction letter).".* In this regard, as already discussed above the phrase, "w*ithout prior consent of the Bank",* evidently connotes that the requirement of NOC from the bank was a must before the Issue. Further in this regard, it is noted that as per the sanction letter the Bank had the right to call up the facilities sanctioned, if the issuer went ahead without obtaining NOC from the Bank.

22.1.11. In this regard, evidently, Bank's right to call up facilities did not mean that Issuer was allowed to violate the aforesaid restrictive covenant of loan agreement and logically speaking bank's right to call up facilities was in the nature of consequential action as a consequence of breach of restrictive covenant of the loan agreement. Accordingly, in my opinion, the contention of the Noticee 1 in this regard, is misplaced and out of context and cannot be accepted.

22.1.12. Noticee 1 had also inter alia contended that Noticee 2 was the coordinator towards activity of due diligence of company's operations / management / business plans/ legal etc. In this regard, it is noted from the copy of document titled, 'Annexure I – Inter-se allocation of responsibilities among the Lead Managers', as per material available on record that both the Noticees as Lead Managers were responsible for the work related to issue including inter alia with regard structuring of various issuance options and due diligence etc. Accordingly, the contention of the Noticee 1, in this regard is evasive in nature and cannot be accepted.

22.1.13. Noticee 1 has inter alia contended tha*t, 'BOI has not made any communication to us regarding stoppage of NCD's issued and have also not recalled the credit facility during the issue period…'.* In this regard, in my opinion the submissions of the Noticee 1 are out of context in so far as the same relate to actions /consequential actions by the bank and /or prerogative of the bank and are accordingly out of context and hence cannot be accepted.

22.1.14. As regards the submission of Notice 1 that "…*the Issuer has offered the exclusive security of receivables from "Orissa Steel Expressway Private Limited…",* and that "…*terms of erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008; (SEBI Debt Regulations) consent from the lender is required in case of creating pari passu charge on the assets offered as security in the Issue",* given that the alleged violation is with regard to inter alia going ahead with the Issue without having obtained NOC by issuer from existing lender, the submissions of the Noticee 1 are out of context and hence not tenable.

22.1.15. It is noted that w.r.t. due diligence to be followed by Merchant Bankers Noticee 1 has inter alia relied upon following two orders viz. Chander Kanta Bansal V. Rajinder Singh Anand MANU/SC/7310/2008: (2008) 5 SCC 117, Whole Time Member, SEBI w.r.t. Saffron Capital Advisors Pvt Ltd in the matter of Acropetal Technologies Ltd., and Adjudicating Officer, SEBI w.r.t. D&A Financial Services (P) Ltd in the matter of IPO of Shilpi Cable Technologies Ltd.

22.1.16. In this regard, it may not be out of place to state that each matter may be peculiar and /or unique in its facts and circumstances based on which the violations are ascertained. Though certain portion of the orders have been cited however Noticee 1 has neither demonstrated as to how these orders were applicable in the instant matter nor has it demonstrated as to what are the relied upon findings in the respective orders which had a bearing on the alleged violations against Noticees. Accordingly, the submission of Noticee 1 are observed to be generic in nature and hence not tenable.

22.1.17. Besides, in this regard, reliance is also placed on Hon'ble SAT order in the matter of *SEBI vs Almondz Global Securities Ltd.* dated 13.05.2016 wherein, Hon'ble SAT had inter alia held that *"..It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances..."*

22.1.18. As regards term /phrase due diligence, the Noticee 1 as part of its submissions has inter alia drawn reference to Oxford Dictionary (Edition 2006), and Black's Law Dictionary (Eighth Edition). In this regard, it is noted that the as part of the definition of the said term as per the citation submitted by the Noticee 1 itself, the same inter alia uses terms like *"careful and persistent application or effort", "a continual effort to accomplish something"*, which in my opinion only goes on to support alleged lapse on part of the Noticees in so far as Noticees have not submitted anything so as to demonstrate as to the persistent and /or continual efforts pitched in by them with regard to non receipt of the NOC from the bank. Further in this regard, reliance is placed on Hon'ble SAT Order dated 19.02.2014 M/s. Keynote Corporate Services Ltd. vs SEBI wherein Hon'ble SAT had inter alia held as under:

> *"*
>
> *.....*
>
> *Due diligence on part of Merchant Banker does not mean passively reporting whatever is reported to it but to find out everything that is worth finding out. It is about making an active effort to find out material developments that would affect interest of investors. It is on faith that intermediary has conducted due diligence with utmost sincerity that*

investing public goes forward and decides to invest in a particular company.

…..

".

22.1.19. In this regard, it would be relevant to draw reference to the expression "Due Diligence" as interpreted by Hon'ble Supreme Court of India, in the matter of Chander Kanta Bansal V. Rajinder Singh Anand (2008) 5 SCC 117, relevant extract of which is as under:

"……According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's law Dictionary (18th Edn), "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Pharses by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs…..".

22.1.20. Bearing in mind these principles governing 'due diligence', in my opinion, Noticees as Lead Managers were expected to not passively or mechanically disclose but ought to have exercised reasonable diligence being Lead Managers inter alia follow up for say by way of NOC and/or at least tried to ascertain the reason with respect to non-receipt of the NOC, considering the broad of objective of protection of interest of investors. In the instant case, Noticees have not demonstrated anything about specific efforts pitched in by it or the Noticees as Lead Managers regarding non receipt of the NOC by the issuer nor has it demonstrated about any efforts taken by it for following up for the NOC. This only leads to the inference that the Noticees did not exercise due care and diligence

22.1.21. Accordingly, I find that the allegation in the SCN that Noticee 1 and Noticee 2 had violated Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992 stands established.

22.2. It was inter alia alleged in SCN / SSCN that Noticees failed to issue corrigendum for rectifying all the errors in offer document and therefore allegedly violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992.

22.2.1. In this regard, Noticees vide their respective replies inter alia made following submissions:

Noticee 1

22.2.2. Noticee 1 vide its reply dated December 07, 2022 and February 23, 2023 inter alia made following submission:

> *"….*
> *In so far as concerns the incorrect email id i.e. Kosamattamncdipo17@karvy.com which was not rectified inadvertently via corrigendum, we submit that the said email id was functional and operational during the entire issue process in parallel to the new email id mentioned in the corrigendum.*
>
> *Moreover, it is pertinent to note that the Registrar and Transfer Agent (**RTA**), who had approved the details given in the Offer Document/Corrigendum has not objected or raised any concern during Issue period to change email id on page 205. Therefore, there*

was no inconvenience caused to the Investors due to the disclosure/non-disclosure.
…."

Noticee 2

22.2.3. Noticee 2 vide its reply dated March 16, 2023 and March 17, 2023 inter alia made following submissions:

"….
Unfortunately, in the corrigendum, by mistake the error at one place in the document persisted. The said mistake was purely human and not intentional or contumacious…. Consequent to said human error, no one's interest has been impacted or affected or compromised. It is not the case that investors could not raise their grievances or there were grievances of the investors which were not addressed by Karvy Fintech Private Limited
…."

22.2.4. The submissions of the Noticees being related to common allegation in this regard are being accordingly dealt with as hereunder:

22.2.5. In this regard, it is noted that as per inter se allocation of responsibilities among the Lead Managers, both the Noticees as Lead Managers were responsible for the activities related to Issue inter alia with regard structuring of various issuance options and due diligence etc.

22.2.6. In this regard, I note that the submissions of the Noticees are in the nature of admissions in so far as Noticee 1 has inter alia submitted, "the incorrect email id i.e. Kosamattamncdipo17@karvy.com which was not rectified inadvertently via corrigendum", and Noticee 2 has inter alia submitted, "Unfortunately, in the corrigendum, by mistake the error at one place in the document persisted".

22.2.7. Accordingly, I find that the allegation in the SCN that Noticees failed to issue corrigendum for rectifying all the errors in offer document of public issue of NCDs of Kosamattam Finance Limited and allegedly violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992, stands established.

22.3. It was inter alia alleged in the SCN that Noticee 1 and Noticee 2 delayed in submission of corrigendum to the offer document to the stock exchange in the public issue of NCDs of Kosamattam Finance Limited and therefore allegedly violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992.

22.3.1. In this regard, Noticees vide their respective replies inter alia made following submissions:

Noticee 1

22.3.2. Noticee 1 vide its reply dated December 07, 2022 and February 23, 2023 inter alia made following submission:

"….
The statutory cum corrigendum advertisement ("Advertisement") was published on Saturday, November 9, 2019. The next working day for filing of the Advertisement was on November 11, 2019. It is alleged that the advertisement has been submitted to BSE on November 15, 2019, a delay of 4 days from the due date of filing.

"….
We would like to bring to your attention that we, as one of the Lead Managers, have uploaded the said corrigendum on our website, the very same day i.e. November 9, 2019, for information to the public at large.

…"

Noticee 2

22.3.3. Noticee 2 vide its reply dated March 16, 2023 and March 17, 2023 inter alia made following submissions:

> *"….*
> *In so far as delay of 6 days in forwarding the Corrigendum to Exchange is concerned, it may be noted that, admittedly, the Issue had opened on 11/11/19 and closed on 4/12/19. Further, the Corrigendum was sent on 15/12/19 to BSE. Since, question of investor grievance, ordinarily, would arise only post-closing date i.e. 4/12/19, the alleged delay of 6 days was inconsequential and did not impact investors interest, in terms of investors not being able to raise their grievances etc…"*

22.3.4. The submissions of the Noticees being related to common allegation in this regard are being accordingly dealt with as hereunder:

22.3.5. In this regard, Noticee 1, has inter alia submitted that it had uploaded the said corrigendum on its website, the very same day i.e. November 9, 2019, for information to the public at large. In this regard, website of a Stock Exchange would, in my opinion fall in the bucket of wider dissemination relative to website of the Noticee 1. In any case, I note that the submissions of Noticee 1 are out of context in so far as the allegation is about delayed submission of corrigendum to the offer document to the Stock Exchange and not about uploading of the same on the website of Noticee. As regards submissions of Noticee 2, in this regard, I note that the submissions of the Noticee 2 are in the nature of admissions in so far as Noticee 2 has inter alia submitted that the alleged delay of 6 days was inconsequential.

22.3.6. Accordingly, I find that the allegation in the SCN that Noticee 1 and Noticee 2 had violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of to SEBI (Merchant Bankers) Regulations, 1992, stands established.

ISSUE II: Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

ISSUE III: If so, what should be the monetary penalty that should be imposed on the Noticees?

23. It has been established in the preceding paragraphs that Noticees have violated provisions of Clause 1 and Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.

24. In this regard, 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 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…………....".*

25. In view of the foregoing, I conclude that the Noticees are liable for monetary penalty under the provisions of Section 15HB of the SEBI Act, 1992, which reads as under:

SEBI Act

"

……

Penalty for contravention where no separate penalty has been provided.

> ***Section 15HB.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under 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.*

……

".

Note: for detailed /complete text/provisions etc., relevant Act may please be referred.

26. While determining the quantum of penalty under section 15HB of SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under-

"….

Factors to be taken into account while adjudging quantum of penalty

> ***15J.*** *While adjudging quantum of penalty under section 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.*

…."

27. In the instant case, I find that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticees as a result of the violations committed by the Noticees. There is nothing on record to show that the violations committed by the Noticees are repetitive in nature. However, I cannot ignore the fact that in a regulated securities market, intermediaries play a crucial role and Merchant Bankers as Lead Managers, Noticee as in instant case, being engaged in the

business of issue management play an important role and accordingly such failure on their part needs to be dealt with imposition of suitable penalty.

E. ORDER

28. After taking into consideration the facts and circumstances of the case, material available on record, nature and gravity of violations, submissions made by the Noticees and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticees, payable jointly or severally, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticees in this case:

Name of Noticee	**Penalty Under Section**	**Penalty Amount (Rs.)**
SMC Capitals Limited (Noticee 1)	Section 15HB of SEBI Act, 1992	Rs,5,00,000/- (Rupees Five Lakhs Only) (Joint and Several)
Karvy Investor Services Limited (Noticee 2)		

29. 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

30. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization

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

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

PLACE: MUMBAI | **AMAR NAVLANI**
DATE: July 31, 2023 | **ADJUDICATING OFFICER**