

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/GG/VV/2023-24/28720-28727**

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

In respect of:

S.No	Noticee No. (as per the SCN)*	Noticee's Name and PAN No.
1.	Noticee No. 1	Trinity Alternative Investment Managers Limited. (Formerly SREI Alternative Investment Trust) Pan No: AAGCS5232F
2.	Noticee No. 2	Satish Chandra Jha Pan No: AAJPJ2177Q
3.	Noticee No.4	Shashi Bhushan Tiwari Pan No: ABSPT6019M
4.	Noticee No.5	Moses Harding John Pan No: AABPH3324D
5.	Noticee No.6	Parag Keshar Bhattacharjee Pan No: ACWPB82794
6.	Noticee No.7	Chandra Sekhar Samal Pan No: ARMPS1477J
7.	Noticee No.8	Sanjeev Sancheti Pan No: AQIPS8082Q
8.	Noticee No.9	Susil Kumar Pal Pan No: AEHPP8238E

*(In respect of **Noticee No. 3 – S Rajagopal**, an Order dated 30 August, 2022 has been passed. The sequence of Noticee Numbers in the SCN is retained as such in this order.)

In the matter of Trinity Alternative Investment Managers Limited.

A. BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has initiated adjudication proceedings in the matter of Trinity Alternative Investment Managers Limited (hereinafter referred to as "**TAIML**" or "**the Company**" or "**Target Company**") (formerly known as SREI Alternative Investment Trust "**SREI AIT**") against the company and its 8 directors, under Section 15HB of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**"), for the alleged violations of Regulations 2(1)(b), 21, 22, 24(e) and 11 of SEBI (Alternate Investment Funds) Regulations, 2012 (hereinafter referred to as "**AIF Regulations, 2012**").
2. SEBI conducted inspection of TAIML, to look into the operations carried out by it as a manager of its Alternative Investment Fund (AIF). The inspection was carried out on March 25 and 26, 2019 and the period of inspection was from April 1, 2016 till the date of inspection. Consequently, certain instances of irregularities were pointed out in the inspection report. The Inspection report was forwarded to TAIML SREI on January 05, 2020 seeking comments, of the entity on the aforesaid inspection observations. The reply of TAIML (formerly SREI) was received vide letter dated February 21, 2020.
3. Based on the reply/comments of TAIML (formerly SREI AIT) with regard to certain observations, the submissions by TAIML were not accepted by SEBI. Therefore, SEBI alleged that certain provisions of the AIF Regulations, 2012, have been violated by TAIML as the manager of its AIF, as elaborated subsequently in this order.
4. In this regard, SEBI initiated Adjudication proceedings in the matter against TAIML and its eight directors. The order pertaining to one of the independent directors of TAMIL viz. Noticee No. 3 - Mr. Rajagopal, has already been passed on August 30, 2022. Therefore, this order is in respect of TAIML and its seven directors as shown in the cause title.

B. APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI, in exercise of powers under section 15-I of SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by AO) Rules, 1995 (hereinafter referred to as "SEBI Rules, 1995") read with Section 19 of the SEBI Act, 1992 appointed me as the Adjudicating Officer **(AO)** vide order dated December 10, 2021 to inquire into and adjudge under Section 15HB of the SEBI Act, 1992, the alleged violations of SEBI (AIF) Regulations, 2012 with respect to the Noticees, herein.

C. SEBI'S INSPECTION AND OBSERVATIONS:

6. TAIML (formerly SREI Alternative Investment Managers Limited) was established as a Category I-Infrastructure Fund, Alternate investment Fund bearing SEBI Registration Number IN/AIF1/12-13/0041 on March 15, 2013. SREI Alternative Investment Managers Limited (hereinafter referred to as '**SREI AIML**') is the Sponsor and Manager of the fund. Mr. Raghunath Ghose is the trustee of the fund. The Board of directors of the sponsor and manager is as following:

Table No. 1: Board of director of sponsor / manager:

Name of Director	Designation
Mr. Susil Kumar Pal	Director of Sponsor and Manager
Mr. C.S. Samal	Director of Sponsor and Manager
Mr. Sanjeev Sancheti	Director of Sponsor and Manager
Mr. S.B Tiwari	Director of Sponsor and Manager

7. SREI has appointed Stock Holding Corporation of India Limited as a custodian of the AIF. SREI AIF has launched four schemes and the details of each scheme of SREI as on February 2, 2019 are as under:

Table No. 2 : The 4 schemes of SREI AIF

Name of scheme	No. of Investors	Spons or investment Rs. in crores	Corpus as per PPM (Rs. in crores)	Total Commitment (Rs. in crores)	Total Drawdown (Rs. in crores)	Amount of investments made (Rs. in crores)	Final closing date	Tenure (from final closing including extensions , if any)
Infrastructure Resurrection Fund (Scheme I)	5	1.1	300	157.9	43.8	39.85	31/12/2019	6+1+1
Bharat Nirman Fund (Scheme II)	7	1	300	76.7	37.4	32.52	31/12/2020	6+1+1
Infra Advantage Fund (Scheme III)	2	1	700	21.0	3.18	2.18	31/12/2025	6+1+1
Bharat Construction Fund (Scheme IV)	0	0	2000	0.0	0	0	31/03/2023	7+1+1

9. The investors of the Infrastructure Resurrection Fund (IRF), are GMR Corporate Affairs Private Limited, SREI Alternative Investment Managers Limited, SREI Infrastructure Finance Limited, Nikshepa infrastructure and Logistics Limited, Elevate Portfolio Management Private Limited and SREI Capital Markets Limited.
10. SEBI conducted inspection of TAIML (formerly SREI Alternative Investment Trust) to look into the operations carried out by the Alternative Investment Fund (AIF). The inspection was carried out on March 25 and 26, 2019 and the period of inspection was from April 1, 2016 till the date of inspection.
11. Consequently, observations on irregularities were pointed out in the Inspection Report. The relevant part of the inspection report is reproduced below:

INSEPCION REPORT EXTRACT:

“11.1 Takeover of investment in AMRL Hitech City Limited by IRF and disclosures in Placement Memorandum”

- 11.1.1 Infrastructure Resurrection Fund a scheme of SREI, has investable fund amounting to Rs 155.8 crores. Out of the drawdown amount of Rs 43.8 crores, IRF invested Rs 35.35 crores in AMRL Hitech City Limited. The details of the investment raises concern about the independence of the AIF and the role of trustee.*
- 11.1.2 SREI Equipment Finance Private Limited a company in the SREI group had lent money to AMR Hospitality Services. SREI EFPL had provided loans of Rs 9.25 crores and Rs 15.53 crores to AMR Hospitality wherein Mr. A Mahesh Reddy and associates had provided personal guarantee.*
- 11.1.3 As part of the arbitration proceedings between SREI EFPL and AMR Hospitality Services, AIF which is supposed to be an independent entity, appears in the settlement order wherein it is noted that IRF scheme of the AIF will buy the shares held by Mr. A Mahesh Reddy and associates of AMRL Hitech City as part of the settlement. AIF has submitted that as part of the settlement it had paid Rs 24 crores to SREI EFPL directly. Further it has paid 11 crores directly to Mr. A Mahesh Reddy to acquire additional 1.1 crore shares. As per AIF regulations “associate” means a company or a limited liability partnership or a body corporate in which a director or trustee or partner or Sponsor or Manager of the Alternative Investment Fund or a director or partner of the Manager or Sponsor holds, either individually or collectively, more than fifteen percent of its paid-up equity share capital or partnership interest, as the case may be;*

11.2 Disclosures in Placement Memorandum:

- 11.2.1 *Regulation 11 of the AIF Regulation mandates that the AIF shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called and it shall contain all material information as specified in the Regulation thereof. The investment decision making process, in the placement memorandum inter alia states that the trustee shall constitute an Investment Committee. The Investment manager, based on the due-diligence shall refer investment proposals to the Investment Committee. The decision of the IC shall be final.*
- 11.2.2 *As part of the arbitration settlement between SREI Equipment Finance Private Limited (a company in the SREI group) and AMR Hospitality Services (loan borrower), it is noted that IRF scheme of the AIF bought the shares held by Mr. A Mahesh Reddy and associates in AMRL Hitech City as part of the settlement. AIF has submitted that it had paid Rs 24 crores to SREI EFPL directly.*
- 11.2.3 *The minutes of investment committee dated May 14, 2014, records that the investment may be made in AMRL HiTech City due to its growth prospects including SEZ approval for developing infrastructural facilities. However, the details regarding arbitration proceedings, promoters of AMRL group being overleveraged, etc. were not disclosed while taking the decision for investment in AMRL Hitech City. Neither was it disclosed that such investment amount aggregating to Rs. 24 crores will be paid to SREI EFPL.*

11.2.4 *It may be interpreted that the amount collected from investors was used to indirectly repay the loans given by a SREI group entity ie. SREI-EFPL. This has not been recorded in the investment committee minutes.*

11.2.5 *In terms of the AIF Regulations, AIF is defined as a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors. Lending or repayment of loans has not been envisaged as such in the Regulations. Hence, by such indirect repayment of loans to company associated with the sponsor, the manager of SREI has violated the provisions of Regulation 2(1)(b) of the AIF regulations.*

11.2.6 *Further, by not disclosing the objective (repayment of loan to SREI Equipment Finance Limited) to the investment committee, the manager failed to produce and record complete due-diligence before the IC and violated provisions of Regulation 21, Regulation 22 and Regulation 24 (e) of the AIF regulations. By not doing proper due diligence, the manager of SREI has failed to comply with the statements in the placement memorandum and has violated provisions of Regulation 11 of the AIF Regulations.*

12. The Inspection Report was forwarded to SREI on January 05, 2020 seeking comments of the entity on the aforesaid inspection observations. The reply of TAIML (formerly SREI) was received vide letter dated February 21, 2020, which pointed towards violation of certain provisions of the AIF Regulations, 2012. From the above observations, the following violations of AIF Regulations, were alleged against the Noticees:

- a. By indirect repayment of loans to the company associated with the sponsor, the manager of SREI has violated the provisions of Regulation 2(1) (b) of AIF Regulations;
- b. By not disclosing the objective (i.e. the repayment of loans to SREI Equipment Finance Private Limited) to the investment committee, the manager failed to produce and record complete due diligence before the IC and violated provision of Regulation 21, 22 and 24 (e) of AIF Regulations, 2012.
- c. By not doing proper due diligence, the manager of SREI has failed to comply with the statements in the placement memorandum and has violated the provisions of Regulation 11 of AIF Regulations, 2012.

D. SHOW CAUSE NOTICE, REPLY AND HEARING

13. A common Show Cause Notice dated May 04, 2022 (hereinafter referred to as “**SCN**”) was issued to the Noticees viz. Noticee No.1, No.2, No.4, No.5, No.6, No.7, No.8 and No.9 in the matter, vide Speed post with acknowledgement due (hereinafter referred to as ‘**SPAD**’), under Rule 4(1) of the SEBI Adjudication Rules, to show cause as to why an inquiry should not be initiated against the Noticees and penalty not be imposed under Section 15HB of the SEBI Act, 1992 for the alleged violations of the provisions of SEBI (Alternate Investment Funds) Regulations, 2012. I note from the proof of delivery available on record, that the SCN was delivered to all the Noticees, by SPAD. The SCN was also subsequently delivered by email with digital signature to Noticee No.1, Noticee No.4, Noticee No.6, Noticee No.7 and Noticee No.9, whose email ids were available on record, at the time of issuing the SCN. With regard to Noticee No.2, upon subsequent

verification it came to my knowledge that Mr. Satish Chandra Jha had passed away on the 25th of January, 2015, as intimated by TAIML to BSE vide its letter dated February 03, 2015. Accordingly, I am inclined to treat the cause to have abated as against Noticee No.2 and the SCN is being dropped accordingly.

14. Noticee No. 1, requested for inspection of documents/material, which was granted on June 06, 2022. Noticee No.1 conducted inspection of documents through their Authorised Representatives (ARs), Ms. Saachi Purohit, Advocate and Ms Nikita Agarwal, from TAIML.
15. Thereafter, the Noticees were granted an opportunity of personal hearing on June 13, 2022, vide Hearing Notice (**HN**) dated June 03, 2022. The HN was sent by SPAD to all Noticees and by email to Noticees whose email ids were available as given above.
16. Noticee No. 1 responded vide its letter dated June 10,2022, to the HN issued, requesting for six weeks' time to file a reply to the SCN and had intimated that they are considering settlement in the said matter. Further, on June 13, 2022 the Noticee Nos.1,4, 6 to 9 collectively appeared through their common ARs - Ms. Aparna Wagle, Advocate and Ms Nikita Agarwal, from TAIML and submitted the authorization letters from the Noticees. The ARs of the Noticees during the hearing requested for four weeks' time to submit their reply. It was also submitted by the ARs that the Noticees are considering settlement in the matter and that the settlement application may be filed in a week.
17. As informed by the ARs during the hearing, Noticee Nos.1, 4, and 6 to 9 had filed a settlement application with SEBI, which was registered on September 14, 2022. Accordingly, the instant adjudication proceedings were kept on hold. However, vide email dated January 24, 2023, the Settlement Division of SEBI, communicated that the Noticees withdrew the settlement application they had filed with SEBI.

Accordingly, the adjudication proceedings were recommenced for Noticee Nos.1 and 4 to 9.

18. As regards Noticee No.5, the HN dated June 03, 2022, sent by SPAD , was not delivered. Hence, the Noticee was granted another opportunity of personal hearing on July 28, 2022, vide Hearing Notice dated July 21, 2022, and the same was attempted to be served by hand delivery. However, as the Noticee was not available in the address (i.e. Flat No. 1A, 27 Baker Road, Kolkata – 700027), the Hearing Notice could not be delivered. Subsequently, a Notice granting Noticee No.5 a last opportunity of hearing on October 31, 2022, was served by publication on October 10, 2022, through three daily Newspapers namely Times of India(English); Sanmarg (Hindi) and Bertaman (Bengali), which were circulated in Kolkata. I note that despite the publication, the Noticee had not availed the last hearing opportunity granted. As Noticee No.5 neither submitted his reply to the SCN nor availed the opportunities of hearing granted to him, I am constrained to proceed ex-parte against him.
19. It was observed that Noticee Nos. 1,4 and 6 to 9 had not submitted their replies on merit, to the SCN issued. However, in the interest of natural justice, the Noticees were granted an opportunity of personal hearing on February 08, 2023, vide a common Hearing Notice dated January 31, 2023, sent through email with digital signature. I note that Noticee Nos.4 and 7 had requested for rescheduling the hearing to a later date citing their constraints. As requested, vide email dated February 06, 2023, the Noticees, were granted another opportunity of hearing on March 02, 2023. The Noticees vide the said hearing Notice were granted time to submit their replies to the SCN, before the date of the hearing.
20. The Noticees had submitted their replies to the SCN vide emails, as given in the table below:

Noticee No. (as per the SCN)	Noticee's Name and PAN No.	Date of reply to the SCN submitted by the Noticees vide emails

Noticee No. 1	Trinity Alternative Investment Managers Limited. (Formerly SREI Alternative Investment Trust) Pan No: AAGCS5232F	February 28, 2023
Noticee No.4	Shashi Bhushan Tiwari Pan No: ABSPT6019M	February 27, 2023
Noticee No.6	Parag Keshar Bhattacharjee Pan No: ACWPB82794	February 27, 2023
Noticee No.7	Chandra Sekhar Samal Pan No: ARMPS1477J	February 27, 2023
Noticee No.8	Sanjeev Sancheti Pan No: AQIPS8082Q	February 24, 2023
Noticee No.9	Susil Kumar Pal Pan No: AEHPP8238E	February 25, 2023

21. Further, the Noticees vide email dated March 01, 2023 had informed that the hearing would be attended by the following persons viz. Mr. Somshekhar Sunderasan, Counsel, Mr. Yugandhara Khanvilkar, Counsel, Mr. Ankur Loona, Advocate, Ms. Aparna Wagle, Advocate, Ms. Siddhi Somani, Advocate and Ms. Sonakshi Sahay, Advocate. The ARs attended the hearing on March 02, 2023, and made submissions, referring to the replies submitted by the Noticees. The Noticees were advised to submit details of events and figures that form part of the core submissions made during the hearing, at the earliest. The Noticees made their additional submissions vide email dated March 16, 2023. The details contained in such replies and additional submissions are summarised, after a narration of the sequence of the events.

E. Chronological Sequence of Events:

22. I find it relevant to give a chronology of the events as available in the records as the same is relevant for the purpose of the instant adjudication, as listed below:

(i) Launch of IRF – March 2013:

Noticee No.1, the manager of TAIML AIF had launched several schemes and one such scheme was called the Infrastructure Resurrection Fund scheme (**IRF**). IRF Scheme was established to make privately negotiated equity related investments in projects and companies related to development of infrastructure in India. The IRF was launched on **March 15,2013** with 6 investors, out of which three investors

were from TAIML and group companies (viz. SREI Alternative Investment Managers Limited, SREI Infrastructure Finance Limited and SREI Capital Markets Limited) and three investors were other private investors (viz. GMR Corporate Affairs Private Limited, Nikshepa infrastructure and Logistics Limited, Elevate Portfolio Management Private Limited). The percentage of investor's contribution in the IRF scheme is as follows:

List of Contributors as on 1.02.2020

Name of the investors/ Contributors	Total Units	Total Amt (Rs.)	Total % of Contribution
<u>SREI Companies:</u>	5,10,000	5,10,00,000	11.64
<u>Other Investors:</u>	38,70,000	38,70,00,000	88.36
Total	43,80,000	43,80,00,000	100%

(ii) Loan Transaction between SREI EFPL and Investee Company – September 2013:

Noticee No.1 TAIML (formerly called as SREI Alternate Investment Fund or SAIT) had a group company known as SREI EFPL. Two Loan agreements bearing Nos. 49917 and 49918 both dated **September 08, 2013** were executed between SREI EFPL and AMR Hospitality Services Limited ("AMR Hospitality"/ "AMR HSL") pursuant to which loan aggregating to approximately Rs. 27 crores (Rs. 12.05 crores under the first loan agreement and Rs. 15.53 crores under the second loan agreement) had been extended to AMR Hospitality. In 2014, the borrower, i.e. AMR Hospitality Services Limited, defaulted in servicing the loan leading to a set of arbitration proceedings. The promoters/directors of AMRL HCL viz. Mr. A Mahesh Reddy and his family members, had provided personal guarantees for the loan taken by AMR Hospitality.

(iii) Non Repayment and Settlement – February 2014:

As AMR HSL, could not settle the loan amount with SREI EFPL, Arbitration Proceedings were initiated by SREI EFPL, against AMR HSL. On February 21,

2014, the Memo of “Terms of Settlement” between SREI EFPL and AMR Hospitality including its directors were arrived at and on February 28, 2014 two arbitration awards were passed by the Arbitrator in the matter. I note that in the Memo of ‘Terms of Settlement’ enclosed to the Arbitration Awards dated February 28, 2014, it was mentioned that Mr.A Mahesh Reddy who had provided personal guarantees to the loan taken by AMR HSL, is transferring his shareholding in AMR HCL and has found a buyer for the shares and that SREI – IRF (i.e currently called TAIML- IRF) is desirous of acquiring the shareholding in AMR HCL. It is further stated that Mr. A Mahesh Reddy proposed to apply the sale proceeds received from the sale of AMR HCL shares towards part payment of the amount to be settled between him and the sponsor group company – SREI-EFPL. It was mentioned that Mr.A Mahesh Reddy associates were unsecured creditors of AMR Energys Ltd., which holds 93,30,206 shares of AMR HCL and is intending to sell the shares to SREI – IRF, which has been identified as buyer of such shares and make repayment of loans out of such sale proceeds. Further, it was stated in the terms of settlement that the guarantors upon receipt of money from AMR Energys Ltd. have offered to make payment towards settlement amount which was agreed to be as Rs.19,31,14,093.00. Further, it was stated that SREI-IRF would receive 1,06,01,203 shares of AMR HCL from Mr. A Mahesh Reddy and that SREI-IRF, would pay a consideration of 10,60,12,030.00 to the Claimant viz. SREI-EFPL.

The sole Arbitrator settled the claims arising out of the two loan agreements both dated 8th of September 2013, executed between AMR HCL and SREI EFPL by passing two separate awards on February 28, 2014, in line with the Memos of Terms of Settlement. It is an admitted fact that “SREI Alternative Investment Trust A/c - Infrastructure Resurrection Fund” was identified as a buyer of the shares of the promoters of AMR HCL and mentioned so in the Settlement Awards.

(iv) Investment Committee Meeting- May, 2014:

The Investment committee meeting of TAIML AIF, took place on **May 14, 2014**, which identified AMR HCL as the investment option. The relevant part of the Investment Committee minutes of the meeting held on May 14, 2014 reads as below:

“AMRL Hitech City Limited is developing multi-product High Tech Industrial Park under the SEZ scheme promoted by the Government of Tamil Nadu in Tirunelveli District. The Company proposes to develop the project as a Multi-Product SEZ providing world class infrastructure facilities along with all utilities on an area 1019 Hectares. The land for the proposed SEZ is contiguous in nature, has already been allotted AMRL by Government of Tamil Nadu and

A DETAILED PROJECT AND INVESTMENT NOTE WAS PROVIDED FOR PERUSAL OF THE INVESTMENT COMMITTEE

Based on prospect of the project undertaken by the Company the Investment Committee approved purchase of 35,348,298 equity shares at Rs.10/share of AMRL Hitech City Limited consideration of Rs. 35.35 crores The Investment Committee further discussed the matter in detail and thereafter passed the following resolution unanimously:

***“RESOLVED THAT** the Fund hereby acquire 35,348,298 equity shares at Rs. 10/share of AMRL Hitech City Limited for consideration of Rs. 35.35 crores,*

***“RESOLVED FURTHER THAT** Ms. Shilpa Lohia Modi, Mr. Bajarang Kumar Choudhary and Mr. Indranil Das Gupta be and are hereby severally authorized to execute the Agreements other necessary document and do such other matter and things as may be required on behalf of the Fund in this regard.”*

(v) Note circulated to investors after SEBI Inspection – February 10, 2020:

On **February 10, 2020**, post SEBI's inspection, TAIML issued a letter to its investors informing them about the SEBI Inspection of Srei Alternative Investment Trust and its Scheme. The letter reads as below:

“Inspection of books of accounts of SREI Alternative Investment Trust (“SAIT”) and its schemes including Infrastructure Resurrection Fund (“IRF”) was conducted by SEBI Officials on March 25-26, 2019 and inspection report dated February 05, 2020 (enclosed herewith).

With reference to IRF and its investments SEBI has advised us to comply with regulations 15 (1) (c) which prohibits investment of more than 25% of the investible funds in one investee company. In this regard we will confirm to SEBI that before the drawdown period ends this compliance will be ensured by us.

SEBI has also raised concerns on the investment of IRF in AMRL Hitech City Ltd. ("ARML"), on issues such as conflict of interest, improper due diligence and transparency; kindly refer to the inspection report of SEBI. In this regard we are sharing a brief note with details of investment/ transaction made by IRF in AMRL which was also shared with SEBI officials.

We wish to assure you as investor in IRF that no undue benefit has been given to any of the associates of the investment manager and at all point in time the priority has been given to interest of investors.

On the transaction of AMRL if you have any objection or you seek any clarification please write to us else request you to give us no-objection letter for this transaction of AMRL."

Along with the said letter a brief note on AMRL (referred to by Noticee No.1 as "he Note)" and the SEBI Inspection report dated February 5, 2020 were attached. The content of the Note is as extracted below:

"Brief note on AMRL Hitech City Limited transaction from Infrastructure Resurrection Fund"

The Investment Manager, namely Srei Alternative Investment Managers Limited- was engaged in discussion with Mr. Mahesh Reddy one of the promoter of AMRL Hitech City Limited for an investment opportunity for Infrastructure Resurrection Fund by way of acquisition of equity shares of AMRL Hitech City Limited. As an infrastructure focused fund Srei Alternative Investment Trust - Infrastructure Resurrection Fund ("IRF" or "fund") explores multiple investment opportunities in Infrastructure space.

During the ongoing discussion the investment manager also came to know that the existing promoter/promoter group of AMRL Hitech City Limited has provided a Personal Guarantee to the lenders of AMR Hospitality Services Limited (one of their group entities). The promoters of AMRL group were over leveraged and to reduce their liability they were keen to divest their stake in AMRL Hitech City Limited.

For repayment of dues as per arbitration award dated February 28, 2014 they agreed to sell their holding in AMRL Hitech City Limited to IRF and clear the dues of Srei Equipment Finance Limited, lenders of AMRL Hospitality Services Limited.

While the opportunity was being discussed with the Investment Committee (IC) of IRF informally, the final approval of the IC of IRF was taken in May 2014 after which IRF entered into agreements to acquire. 3.5 crore equity shares of AMRL Hitech City Limited from the existing promoter/promoter group for consideration of Rs. 35 Crores for acquisition of 86% stake. Consideration against acquisition of shares was paid as under:

- i. An amount aggregating to Rs. 24 crores was paid by Srei Alternative investment Trust A/c. Infrastructure Resurrection Fund (IRF) to SREI Equipment Finance Limited (SEFL) as per the two arbitration awards dated 28.2.2014, for acquisition*

- of 2.40 crore equity shares (Rs. 10.0 per share), or 58% stake in AMRL Hitech City Limited.
- ii. Balance payment aggregating to Rs 11 crores was made by Srei Alternative Investment Trust A/c. Infrastructure Resurrection Fund (IRF) to AM Reddy for acquisition of approx. 1.1 crore equity shares (Rs. 10.0 per share) or 28% stake in AMRL Hitech City Limited.
 - iii. The amount paid for acquisition of 28% stake is shown as advances in the books of accounts of IRF. The balance 1.1 crore equity Shares will be transferred to IRF upon receipt of approval from Tamil Nadu Industrial Development Corporation. To secure its interest, IRF has taken control of the demat of AM Reddy in which the said 1.1 crore shares are lying by way of Power of Attorney given by AM Reddy to IRF.”

Copies of certain documents including two arbitration awards dated February 28, 2018 and two Share Purchase Agreements dated August 22, 2014 and August 29, 2014 between IRF and AM Reddy were attached to the Note.

(vi) Disclosure of SEBI Inspection Report to Investment Committee on February 14, 2020.

The SEBI Inspection report was tabled at the meeting of the Investment Committee of SREI Alternative Investment Trust- IRF held on February 14, 2020 and discussed among the committee members. The relevant part of the Minutes reads as below:

“With respect to SEBI’s observation on non-disclosure by the Manager to the Investment Committee of the objective of the investment made by IRF in AMRL Hitech City Limited, the committee members resolved as under:

RESOLVED THAT *the decision of investment in the shares of AMRL Hitech City Limited by IRF was taken by the Committee based on the overall project including the manner of payment of consideration to the extent of Rs.24 Crores to the lender of AMR Hospitality Services Limited i.e. Srei Equipment Finance Limited as per the arbitration/ settlement award dated February 28, 2014*

RESOLVED FURTHER THAT *any of the Members of Investment Committee of the fund be and are hereby severally authorized to issue copy of the foregoing resolution certified to be a true copy to such parties concerned with respect to the investment made in AMRL Hitech City Limited.”*

F. ISSUES FRAMED FOR CONSIDERATION:

23. The crux of the allegations is that Noticee No.1 (the AIF manager), after mobilizing funds from investors of IRF Fund through the AIF route, invested the funds in AMR HCL, which at the time of investment had an outstanding loan that was repayable to SREI EFPL, one of the sponsor's group companies. The SCN stands abated against Noticee No.2 as he passed away and Noticee No.3 is not part of this order, in view of the earlier order passed dropping the allegations against him. Noticee Nos.4 to 9 have been made parties to the SCN in their capacity as directors of TAIML, the Noticee No.1. I wish to segregate the consideration of allegations, replies and submissions of Noticee No.1 from the rest of the Noticees/Directors. Thus, the broad issues that arise for consideration, are as follows:

- (i) Whether Noticee No.1, TAIML has violated the provisions of Regulations 2(1)(b), 11, 21, 22 and 24 (e) of the AIF Regulations, as alleged in the SCN;
- (ii) If yes, whether Noticee Nos. 4 to 9 being the directors of the Manager and Sponsor of AIF, can be held liable for such violations; and
- (iii) If yes, what should be the quantum of penalty w.r.t. Noticee No.1 and the remaining set of Noticees;

Issue (i). Violation of Provisions of AIF Regulations by Noticee No.1 TAIML:

24. The Noticee No.1 Trinity Alternative Investment Managers Limited., replied to the SCN vide email dated February 28, 2023 and additional submissions furnished vide letter dated March 16, 2023. The reply of Noticee No.1 to the SCN is summarised in para Nos.25 to 30 below.
25. Noticee No.1 has in fact not disputed any of the financial transactions/events that have been brought out in the "Chronological Sequence of Events" listed above. However, Noticee no.1 contends that the allegation in the SCN that the investment

of IRF in AMRL HCL is an indirect repayment of loans to SREI EFPL is not borne out of facts or law. According to Noticee No.1, SREI EFPL were lenders to AMR Hospitality, to which AMRL HCL and its promoters including Mahesh Reddy and his family Members had given personal guarantee. As per the arbitration awards dated February 28, 2014, the promoters of AMRL Group agreed to sell their holding in AMRL HCL to IRF and clear the dues of SREI EFPL, the lenders of AMRL Hospitality. Two Share Purchase Agreements were executed by SAIT –IRF on August 22, 2014 and August 29, 2014, one between A Mahesh Reddy and SAIT - IRF and the other between the existing promoter's/ promoter groups of AMR HCL and IRF. Thus an aggregate of 25.76% and 60.32% of the shares of AMR HCL was acquired by IRF. Noticee No.1, has distanced SREI AIF –IRF's "investment" in AMRL HCL from the issue of AMR Hospitality from its promoters being in dire need of money as they were over leveraged. According to Noticee No.1, the investment was solely based on the prospects of the acquisition of a government approved multi-product SEZ asset in Tirunelveli. The investment was bonafide and preceded by a detailed consideration by the IC on 14 May, 2014. Further, there is no allegation in the SCN that the investment in AMR HCL was a sham or over-valued, with the sole purpose of ensuring repayment of a loan to a group company. The SCN alleges a lack of due diligence based solely on the fact that the Reddys contracted to apply the proceeds to settle dues owed to SREI EFPL under the arbitration proceedings, ignoring the fact that a valuable asset was acquired by SAIT-IRF. The SCN has not, and indeed cannot, assail the fact that a viable asset within the investment objectives of scheme was acquired by SAIT-IRF. Further, through the Note circulated on February 10, 2022, the IC Members were made aware that the existing promoters are in immediate requirement of funds for repayment of their dues in another company promoted by them and therefore they are willing to sell to IRF 86% of the shareholding at an attractive price. It is further stated that neither the investee company AMR HCL nor SAIT IRF were parties to the arbitration. Any such insinuation would be inaccurate. Since the arbitration was being discharged by settlement, AMR HCL and SAIT-IRF became confirming parties to the Settlement Memorandum, and thereby the agreement to transfer shares held by the Reddys in

AMR HCL to SAIT-IRF could be documented, securing the investment avenue for SAIT-IRF. The Noticee TAIML has effectively tried to distance itself from the issue of financial stress that the Reddy's were facing. It is the case of the Noticee TAIML that it went ahead with the investment solely on the basis of the prospects of the investment. Notice No. 1 also laboured to make out a case that the SREI Alternative Investment Trust A/c Infrastructure Resurrection Fund ("SAIT") was an investment made pursuant to a Madurai Bench of the Madras High Court's Order.

26. Noticee No.1 further contended that AMRL HCL cannot be construed as 'associate' of Noticee No. 1 as it does not fall within the ambit of definition of 'associate' under Regulation 2(1)(c) of the AIF Regulations. It is submitted that even SREI EFPL is not an associate of Noticee No. 1 in terms of Regulation 2(1)(c) of the AIF Regulations though it is a group company of SREI Group. In support of the contention that SREI EFPL is not an associate of Noticee No.1, the shareholding structure of SREI EFPL at the relevant time was furnished. It is strongly denied that the investment in the equity shares of AMRL HCL was an indirect repayment of loans to SREI EFPL, a company associated with the sponsor and the manager of the Fund and thereby the Noticee No. 1 has violated the provisions of Regulation 2(1)(b) of AIF Regulations. The transaction in question was not in the form of lending or repayment of loans as alleged in the SCN. The Noticee No. 1 has invested in the equity shares of AMRL HCL in accordance with the AIF Regulations and the Investment Policy as stated in the Private Placement Memorandum ("PPM") approved by SEBI. The investment in question is in the form of equity investment in a company engaged in the infrastructure sector and such investment is in accordance with the investment policy of the Fund as stated in the PPM and Regulation 2(1)(b) of the AIF Regulations. It is a normal commercial practice that dues payable by the seller to its lenders can be directly paid to the seller's lenders or any other person as per the seller's instructions out of the consideration amount. Mere payment of a part of share purchase consideration by the buyer to the sellers' lenders does not change the nature of transaction which primarily was in the form of investment in the equity of AMRL HCL. The SCN has failed to appreciate the true

and correct nature of the transaction. It has also been contended that the SCN has wrongly alleged or concluded that the settlement orders stated that “the IRF Scheme shall buy the shares held by Mr. Reddy and associates as part of settlement”. In this connection, attention was drawn to Para 6 of the Memo of Settlement dated February 21, 2014 which reads as under:

“As held by the Madurai Bench, since the project is implemented in terms of the Joint Venture Agreement, Respondent No. 3 / A, Mahesh Reddy can transfer its shareholdings in Hitech. Respondent No. 3/ A, Mahesh Reddy has found a buyer for the shares and that Srei Alternative Investment Trust A/c Infrastructure Resurrection Fund (“SAIT”) is desirous of acquiring the shareholding in Hitech and agreeable to pay the aforesaid consideration to the Claimant. Respondent No. 3 / A. Mahesh Reddy proposed settlement of part of the Outstanding Dues and claims filed against the Respondents 1 to 6 being the Borrower and Guarantors by applying the sale proceeds to be received from the sale of Hitech Shares towards part payment of the amount agreed to be settled herein”

27. As per Regulation 15(1)(e) of AIF Regulations, AIF shall not invest (except with the approval of 75% of investors by value of the investment in the AIF) in “associates”. The expression “associate” is defined in Regulation 2(1)(c) of the AIF Regulations as under:

“associate” means a company or a limited liability partnership or a body corporate in which a director or trustee or partner or Sponsor or Manager of the Alternative Investment Fund or a director or partner of the Manager or Sponsor holds, either individually or collectively, more than fifteen percent of its paid-up equity share capital or partnership interest, as the case may be.”

28. Regulation 2(1)(b) is a definition provision and not a charging provision. There cannot be a breach of a provision on defining what an AIF is. Besides, there is nothing in either Regulation 2(1)(b) or in any other provision in the AIF Regulations that expressly prohibits an AIF from investing in a company to enable it to repay loans either to a third- party lender or to a group company - since these are matters

left to the commercial wisdom of the AIF and its investors. It is clear from the foregoing that Noticee No.1 as the Manager of IRF has provided all the necessary information and documents to the IC and hence there is no basis for the allegation that the Manager failed to produce and record complete due diligence before the IC and thereby violated the provisions of Regulations 21, 22 and 24(e) of the AIF Regulations.

29. It is denied that Noticee No. 1 has not done proper due diligence and thereby failed to comply with the statements in the Private Placement Memorandum (PPM) and has violated Regulation 11 of the AIF Regulations. Wherever required, Noticee No. 1 has disclosed the conflict of interest, if any, and has put in place a policy to address the conflict of interest situation. It was reiterated that necessary due diligence covering inter alia viability of the project, Investment Note, Financial projections, and necessary documentation (including agreements for investments) was undertaken and all such documents were placed before the IC which approved the proposal for investment in AMRL HCL having a project strategically located in an Industrial Development Corridor in South India at Nangineri, close to Indian Ocean. Noticee No.1 stated that the charge of breach of Regulation 22, which requires an AIF to be transparent, is untenable as the information specified in Regulation 22 about the investee company i.e. AMR HCL - was indeed disclosed, in the note that was tabled before the IC. As regards violation of Regulation 21, it was stated that this was a transaction between two unrelated parties at arms-length, which incidentally leads to a group company of one of the parties, receiving a part of the proceeds. This in itself cannot become the basis to allege a conflict of interest, unless it is shown that the transaction between the unrelated parties would never have been contracted, but for the incidental benefit to group company of one of the parties. Further, as a measure of caution, the contents of SEBI inspection report was also tabled before the IC subsequently which reiterated the decision that was taken earlier. As an added measure of transparency, the contents of the SEBI inspection report were also shared with all six investors in the Salt-IRF scheme, and each of these investors have stated in writing that they have no objection to the transaction and it was done

at arms-length. Therefore, if even the stakeholders who are directly affected by any investment decision have conveyed that they have no objection, continuation of these proceedings would be unbeatable.

30. As regards the allegation of contravention of Regulation 11(1) dealing with a private placement memorandum, Noticee No.1 contended that it is untenable as the SCN does not identify what specifically was required to be disclosed but was not disclosed in the private placement memorandum. The private placement memorandum explicitly set out a chapter on potential conflicts and the means of managing conflicts. Therefore, the charge of breach of Regulation 11 (1) is untenable and vague. Hence, it was prayed that the charges as alleged in the SCN against Noticee No.1 may be dropped in the interest of justice and considering the factors brought out above.

Analysis and Findings:

31. I have perused the elaborate reply filed by Noticee No.1. At the outset, I note that there was no allegation in the SCN that the SREI AIF- IRF had invested in AMR-HCL, which is its “associate”, in terms of Regulation 2(1)(c) of the AIF. Nor is there an allegation in the SCN that SREI EFPL and TAIML (Noticee No.1) are “associates” in terms of Regulation 2(1)(c) of the AIF. Noticee No.1 has contended that Regulation 15(1)(e) restricts investment by an AIF in its “associates” as it mandates for approval of 75% of investors by value of the investment to do so. The SCN, on the basis of observations made in the Inspection Report, alleged that Noticee No.1 made an “indirect repayment of loans to the company associated with the Sponsor”. Noticee No.1 has not denied that TAIML (now name changed, formerly SREI Alternative Investment Trust) and SREI EFPL form part of the same Group of Companies. In fact, the contention of Noticee No.1 is that the subject “transaction was between two unrelated parties at arms-length which incidentally leads to a group company of one of the parties, receiving a part of the proceeds”. According to Noticee No.1, this in itself cannot become the basis to allege a conflict of interest,

unless it is proved that the same was entered only to benefit a group company of one of the parties.

32. The facts of the matter have been chronologically brought out at Para 22 above. It follows from the sequence of events that the loan transaction entered into between SREI EFPL and AMR HCL was six months after the launch of the IRF Scheme by Noticee No.1 in March 2013. Thereafter, in a span of around 5 months, the promoters of AMR HCL- cum- guarantors of the loan could not repay the loan. The name of SREI Alternative Investment Trust A/c Infrastructure Resurrection Fund found a mention in the settlement awards, as a buyer, as early as in February, 2014. The Investment Committee (**IC**) meeting took place in May, 2014. The Share Purchase Agreements (**SPAs**) were executed in August, 2014. Post SEBI's inspection, another IC was conducted on February 14, 2020. There was a letter dated 10 February, 2020 sent to the investors attaching therewith a "Note" about AMRL Hitech City Limited transaction with Infrastructure Resurrection Fund.

33. I note from the minutes of the IC meeting held on May 14, 2014, that there were three members who formed part of the IC, that decided to invest in 3,53,58,298 equity shares of AMRL HCL at Rs. 10/- per share for consideration of Rs.35.35 crores from the funds of the IRF Scheme. In the said meeting, a resolution was passed authorizing three persons named therein to execute the agreements and other necessary documents and to do such other matters and things as may be required on behalf of the Fund in this regard. The final resolution for the acquisition of AMRL HCL shares was mentioned in the Minutes of the said IC meeting itself. The most crucial aspect of this case is that the IC meeting was held on May 14, 2014, whereas the actual investment decision was taken by the AIF Manager even prior to February, 2014, when the loans of SREI EFPL had become irrecoverable.

34. Further, I note from the extract of the IC meeting records that investment was being made in AMRL HCL due to its growth prospects including its SEZ approval for developing infrastructure facilities. However, the details regarding the arbitration

proceedings, between EFPL and Mahesh Reddy and associates, the promoters of AMRL group being over leveraged and that the investment amount aggregating to Rs.24 crores being paid to SREI EFPL directly, were not documented in the minutes of IC meeting. This indicates that the said details were not considered while taking the decision for investment in AMRL HCL. Not disclosing the pre-existing liability to the Investment Committee and to the investors, in fact closed the doors to a proper appraisal of the entire scope of investment by the IC members. I also note that there are no documents produced to show whether any other Infrastructure Project was considered or compared for finally choosing the AMR- HCL Port project.

35. In this context, it is relevant to examine the scope of certain provisions contained in AIF Regulations. Regulation 21 thereof deals with 'Conflict of Interest. For purpose of examining the import of the provision, Regulation 21 is being reproduced hereunder:

"Conflict of Interest.

- 21.** *(1) The sponsor and manager of the Alternative Investment Fund shall act in a fiduciary capacity towards its investors and shall disclose to the investors, all conflicts of interests as and when they arise or seem likely to arise.*
(2) Manager shall establish and implement written policies and procedures to identify, monitor and appropriately mitigate conflict of interest throughout the scope of business.
(3) Manager and sponsor shall abide by high level principles on avoidance of conflicts of interest with associated persons, as may be specified by the Board from time to time."

36. Regulation 21(1) of the AIF Regulations provides that both the Sponsor and Manager of the AIF shall act in a fiduciary capacity towards its investors and shall disclose to the investors, all conflicts of interests as and when they arise or seem likely to arise. The Manager shall establish and implement written policies to identify, monitor and appropriately mitigate conflicts of interest throughout the scope of business, in terms of sub-regulation (2) of Regulation 21. Further, sub-regulation (3) thereof provides that the Manager and Sponsor shall abide by high level principles on avoidance of conflicts with associated persons, as may be specified, by the Board from time to time.

37. In this context, the relevant part of the PPM dealing with Conflict Resolution has to be referred and the same is extracted below:

“Conflict Resolution”

Any conflicts of interests that arise between the Investment Manager and the Scheme or the Fund, Board of Directors of the Investment Manager, Trustee, Board of Directors of the Trustee Company, will be discussed and resolved on a case-by-case basis by the relevant parties. Any such discussions will take into consideration the interests of the relevant parties and the circumstances giving rise to the conflict. Investors should be aware that such conflicts will not necessarily be resolved in favour of the Company's and the Scheme's interests. While situations involving conflict between the Scheme and other Interested Parties could arise, the Scheme is run as an independent and separate business

The Investment Manager shall also put in place strict policies to ensure that it is in compliance with local rules and regulations on the control of information flows.

The Investment Manager shall disclose to the investors all conflicts of interest as and when they arise or seem likely to arise.

The Investment Manager shall act in a fiduciary capacity towards its investors and shall disclose to the investors, all conflicts of interests as and when they arise or seem likely to arise.

The Investment Manager shall establish and implement written policies and procedures to identify, monitor and appropriately mitigate conflicts of interest throughout the scope of business.

The Investment Manager shall abide by high level principles on avoidance of conflicts of interest with associated persons, as may be specified by the SEBI from time to time.”

The above part extracted from the PPM of IRF Scheme, substantially mirrors the provisions of Regulation 21 of the AIF Regulations, besides laying down the procedure of resolving of conflict of interests, that may inter alia arise between the Investment Manager and the Scheme or the Fund through case-by-case discussions by the relevant parties. Any such discussion would have had to take into consideration, the interests of the relevant parties and circumstances that gave rise to the conflict. There is a disclaimer that such resolutions will not necessarily be in favour of Company's and Scheme's interests. It further provides that while situations involving conflict between the Scheme and other Interested Parties could arise, the IRF Scheme will be run as an independent and separate business.

38. The question, therefore, is whether there was any conflict of interest arising out of the subject investment which required resolution in terms of Clause of the PPM extracted above and a transparent disclosure to the IC and investors. Firstly, the

decision to invest in AMR HCL by the investment manager of AIF, was taken without a formal approval from the IC committee members as admitted by the very act of circulation of a 'Note' to the investors, post the SEBI – inspection in February, 2020. Further, the observations of SEBI's inspection was placed before the IC meeting held on February 14, 2020. It is therefore, evident that much prior to the approval by the IC committee to make the investment in AMR HCL, the manager of AIF, consented to the investment, without which the name of SREI IRF would not have found a mention in the Arbitration award dated February 28, 2014 as a buyer. In my view, the issue of conflict of interest arises from the very fact that the investment of the AIF investors is going to indirectly benefit the recovery of an unrecoverable loan of one of the Group companies of the AIF, namely, SREI EFPL. In other words, the independence of the financial decision taken by the IC or the AIF Manager to invest in a borrower entity of its group company begs the question of conflict.

39. As per the PPM of the IRF Scheme, the investment decision making process is through the Investment Committee Mechanism. This is dealt with in the PPM under the head **"Investment Decision Making Process"**. It reads as

"Investment Manager, based on the due-diligence undertaken by it shall refer the investment proposals to the Investment Committee. The decision of the Investment Committee shall be final and binding."

The records show that the Investment Committee that met in May, 2014 was made aware only of the proposal and the benefits arising out of the investment in AMR HCL through the 50 page "Proposal for Consideration of the Investment Committee of Infrastructure Resurrection Fund". The remaining aspects such as the stranglehold that one of its group companies had over the investee company, in the form of an unrealizable loan was not informed to the IC or the investors.

40. Regulation 21(1), explicitly provides that the sponsor and Manager of the AIF shall act in a fiduciary capacity towards its investors and disclose to the investors, all

conflicts of interests as and when they arise. The first limb of Regulation 21, mandates that the Manager of AIF ought to act in a fiduciary capacity to its investors. The second limb deals with the obligation of the AIF Manager to disclose conflicts of interest to its investors. The violation of the statutory mandate of disclosure is very apparent, as the conflict of interest has been brought out earlier. Further by taking a conflicting investment decision, the Manager has even failed to act in a fiduciary capacity towards its investors. However, I take note of the fact that the Inspection Report/ SCN restricts the allegation to the Manager's failure to disclose the objective (i.e., repayment of loans to SREI Equipment Finance Pvt Ltd) to the Investment Committee as a failure of the Manager to produce and record complete due diligence. I therefore, hold that the non-disclosure of a vital information of conflict of interest amounts to a breach of Regulation 21(1) by Noticee No. 1 to the extent that the conflict of interest was not informed to the investors. Likewise, despite having written policies and procedures to identify, monitor and mitigate conflict of interest in its PPM, Noticee No.1 failed to do so. The Noticee cannot rely on a subsequent disclosure made after SEBI's inspection and after 6 years from the date of investment, to stay clear of the allegation of conflict of interest and non-disclosure of information to the IC and the investors. The IC meeting and the attendant formalities appears to be an eye wash exercise that were merely perfunctory, to bring on record the identification of the subject port project to channelize the funds of the AIF Scheme.

41. In this connection, it is necessary for me to also deal with the observation/allegation in the Inspection Report/SCN that by indirect repayment of loans to the company associated with the sponsor the manager of SREI has violated the provisions of Regulation 2(1)(b) of the AIF Regulations. In this connection, the Noticee has sought to state that the investee company viz. AMR-HCL is not an "associate" in terms of the definition contained in the Regulations and SREI EFPL is also not an "associate" in that sense. Hence the provisions on conflict of interest does not arise under Regulation 21. In my view, this argument that the issue of conflict of interest would arise only if the investment is in an "associate" is misplaced and unacceptable.

42. I note that the three sub-regulations of Regulation 21 cast three distinct obligations and each of the obligation is to be read disjunctively and not otherwise. Each of the sub-regulation uses the expression “conflict of interests”. Sub-regulation (1) provides that the sponsor and manager ought to act in a fiduciary capacity towards its investors and disclose all conflicts of interests. Sub-regulation (2) mandates that the Manager shall establish and implement written policies and procedures to identify, monitor and appropriately mitigate conflict of interest throughout the scope of business. While both sub-regulations (1) and (2) are broad in scope, sub-regulation (3) is limited to conflict of interest with associated persons and provides that the manager and sponsor shall abide by high level principles on avoidance of conflicts of interest when it is with “associated persons”. The provision, in no way, can be interpreted to mean that the conflict of interest arises only in the case of the manager’s transactions with their associated persons, as defined in Regulation 2(1)(c) thereof. Any type of conflict falling within the scope of business of the AIF requires disclosures to investors. Accordingly, I find that the Manager failed to do proper due diligence while conducting the IC meeting and failed to disclose the conflict of interest to the investors. Noticee No.1 has violated the provisions contained in Regulation 21(1), as alleged.

43. Regulation 22 of the AIF Regulation deals with “Transparency”. It is extracted below:

Transparency.

- “22.** *All Alternative Investment Funds shall ensure transparency and disclosure of information to investors on the following:*
- (a) financial, risk management, operational, portfolio, and transactional information regarding fund investments shall be disclosed periodically to the investors;*
 - (b) any fees ascribed to the Manager or Sponsor; and any fees charged to the Alternative Investment Fund or any investee company by an associate of the Manager or Sponsor shall be disclosed periodically to the investors;*
 - (c) any inquiries/legal actions by legal or regulatory bodies in any jurisdiction, as and when occurred;*
 - (d) any material liability arising during the Alternative Investment Fund’s tenure shall be disclosed, as and when occurred;*
 - (e) any breach of a provision of the placement memorandum or agreement made with the investor or any other fund documents, if any, as and when occurred;*
 - (f) change in control of the Sponsor or Manager or Investee Company.*

- (g) *Alternative Investment Fund shall provide at least on an annual basis, within 180 days from the year end, reports to investors including the following information, as may be applicable to the Alternative Investment Fund:-*
 - A. *financial information of investee companies.*
 - B. *material risks and how they are managed which may include:*
 - (i) *concentration risk at fund level;*
 - (ii) *foreign exchange risk at fund level;*
 - (iii) *leverage risk at fund and investee company levels;*
 - (iv) *realization risk (i.e. change in exit environment) at fund and investee company levels;*
 - (v) *strategy risk (i.e. change in or divergence from business strategy) at investee company level;*
 - (vi) *reputation risk at investee company level;*
 - (vii) *extra-financial risks, including environmental, social and corporate governance risks, at fund and investee company level.*
- (h) *Category III Alternative Investment Fund shall provide quarterly reports to investors in respect of clause (g) within 60 days of end of the quarter;*
- (i) *any significant change in the key investment team shall be intimated to all investors;*
- (j) *alternative Investment Funds shall provide, when required by the Board, information for systemic risk purposes (including the identification, analysis and mitigation of systemic risks)."*

44. Regulation 22 provides that all AIFs shall ensure transparency and disclosure of information to the investors *inter alia*, the financial risk management, operational, portfolio and transactional information regarding fund investments. The investors, in the instant case, were also kept in the dark about the "financial, risk management, operational, Portfolio and transactional information regarding fund investment", which are mandated to be disclosed under Regulation 22(a) of the AIF Regulations. Further, Regulation 22(e) mandates that AIFs shall ensure transparency and disclosure of information to investors on any breach of a provision of the placement memorandum as and when occurred. I am of the opinion that the issue of conflict of interest and transparency are inextricably interconnected that the breach of one inevitably results in the breach of the other. Hence, I find that Noticee No.1 is in violation of the provisions of sub-regulations (a) and (e) of Regulation 22 of the AIF Regulations.

45. Regulation 24 of the AIF Regulations reads as shown below:

Obligation of Manager.

"24. The Manager shall be obliged to:

- (a) address all investor complaints;*
- (b) provide to the Board any information sought by Board;*
- (c) maintain all records as may be specified by the Board;*
- (d) take all steps to address conflict of interest as specified in these regulations;*
- (e) ensure transparency and disclosure as specified in the regulations.”*

Regulation 24 details five specific obligations of the Fund Manager such as addressing investor complaints; providing information to SEBI; maintaining records specified by SEBI; taking all steps to address conflict of interest as specified in the AIF Regulations and ensuring transparency and disclosure. More specifically, Regulation 24(e) provides that, the Manager of the AIF shall be obliged to “ensure transparency and disclosure” as specified in the regulations. It is the admitted case of all the Noticees that there was no disclosure of the underlying conflict in the investment, as the actual disclosures were made to the investors, by way of circulation of a Note, subsequent to the SEBI inspection. The purpose of sub-regulation (e) of Regulation 24 is to bind the obligation to ensure transparency and disclosure on to the Fund Manager explicitly. In short, the aforesaid provisions, namely regulation 21, 22 and 24(e) of the AIF Regulations deal with the need to transparently disclose any conflict of interest that may arise in the course of the business of the AIF. As brought out above, I am of the view that Noticee No.1 has violated the provisions contained in Regulations 21, 22 and 24(e) of the AIF Regulations.

46. It is also relevant to state that a “Note” was circulated to the investors in February, 2020, after SEBI’s inspection of the Fund Manager and the discovery of the violation. In the said Note, TAIML stated that in the capacity of the investment manager of the AIF, it had discussions with Mr. A Mahesh Reddy, one of the promoters of AMR HCL on investment opportunity for its IRF fund by acquiring shares of AMR HCL. During such discussion, TAIML stated that it came to know of the liability of AMR Hospitality owed towards EFPL and AMR HCL agreed to sell the shares to IRF and the same was later provided in the arbitration award dated February 28, 2014. Further, TAIML stated that an informal discussion on acquiring the shares was held with the IC Committee. Disclosure after a period of six years from the date of commencement

of the conflict, would literally defeat the purpose and object of the provision of disclosure, as the words used in Regulation 21(1) with respect to disclosure are “as and when they arise or seem likely to arise”.

Other Miscellaneous/incidental Issues – (Noticee No.1)

47. Incidentally, I note that Noticee No.1 has inter alia contended in its submissions that the SCN traverses beyond the approval granted for Adjudication by the WTM, as the Competent Authority. I note that this contention is incorrect, as the ED of SEBI who was the competent authority for approving the said adjudication proceedings had approved all the allegations made with respect to the Noticee as provided in the SCN. The required approval was not that of a WTM, as contended. However, the contention was not pressed at the time of hearing and has therefore been given up.

48. The Inspection Report/SCN alleges that by indirect repayment of loans to the company associated with the sponsor, the manager of SREI violated the provisions of Regulation 2(1)(b), i.e. the definition of an AIF. In my view, this allegation cannot be maintained against Noticee No.1. While it is true that neither the investee company, viz. AMR HCL nor SREI EFPL, the company to which AMR HCL & its associates, owed a loan liability, are “associates” as defined in Regulation 2(1)(c), it is an admitted fact that the lender of the investee company of the AIF was a group company of the AIF.

49. The operative part of the definition of “Alternative Investment Fund” reads as:

“Alternative Investment Fund means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

- (i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and*
- (ii) is not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations 1996, Securities and Exchange*

*Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities;
Provided that*

50. Upon an evaluation of facts of the instant case, it is difficult to state that there is a violation of the definition provision contained in the AIF Regulations, as contended by the Noticee. The violation is substantially in the manner of conduct of the business and not of the form and structure of AIF as stipulated in the definition. Hence I am inclined to drop this allegation as against Noticee No.1.

51. The SCN further alleged that Noticee No.1 had violated Regulation 11 of the AIF Regulations, as the manager of SREI failed to comply with the statements in the placement memorandum.

Placement Memorandum.

“11.(1) Alternative Investment Fund shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called.

(2) Such information or placement memorandum as specified in sub-regulation (1) shall contain all material information about the Alternative Investment Fund and the Manager, background of key investment team of the Manager, targeted investors, fees and all other expenses proposed to be charged, tenure of the Alternative Investment Fund or scheme, conditions or limits on redemption, investment strategy, risk management tools and parameters employed, key service providers,²⁹[terms of reference of the committee constituted for approving the decisions of the Alternative Investment Fund,]conflict of interest and procedures to identify and address them, disciplinary history, the terms and conditions on which the Manager offers investment services, its affiliations with other intermediaries, manner of winding up of the Alternative Investment Fund or the scheme and such other information as may be necessary for the investor to take an informed decision on whether to invest in the Alternative Investment Fund.”

52. Regulation 11 of the AIF Regulations provides for the issue of a Placement Memorandum or Information Memorandum to raise funds and all the material information about the AIF and the Manager that should be contained in it. I note that the Placement Memorandum **(PM)**, in its form, was again in consonance with the stipulation contained in Regulation 11. However, the covenants contained in the Placement Memorandum relating to “conflict of interest” were not resorted to in order to resolve the actual conflict, either by the AIF or its Manager. The PPM provides

that the investment manager may take the decision as per the Conflict Resolution Clause, extracted at Para No. 37 above to invest in any company, by disclosing all details of risks involved and conflicts of interest that may arise due to the investment decision that may be taken. Therefore, though I have held that Noticee No.1 has substantially violated certain provisions of PPM by not adhering to disclosures and resolving conflicts, as stipulated therein, I cannot find it to be a violation of the provisions contained in Regulation 11.

53. In short, I find that TAIML, had essentially failed to disclose the conflict of interest, as mandated under Regulation 21(1); failed to comply with the mandates contained in the PPM with respect to Conflict Resolution; and failed to disclose information to its investors and ensure transparency under Regulations 22 and 24(e). The failures to make these disclosures at the right time is sought to be addressed by a post facto circulation of details by way of circulation of a Note to its investors when the issue was raised by SEBI. Also, a post facto intimation to the Investment Committee of the observations of SEBI's inspection and the intimation of the arbitration awards to the IC, can barely be seen to be compliance with the mandate of addressing the issue of conflict of interest, as stated in its PPM. Thus, the allegation that TAIML and its directors as the manager of the AIF, have failed to produce and record complete due diligence before the IC, appears to hold good. The allegations of violation of Regulations 2(1)(b) and 11 do not hold merit.

Issue (ii)- Violation of Provisions of AIF Regulations by Noticee Nos. 4 to 9

54. Noticee Nos. 4 to 9 (excluding Noticee No.5) have given separate replies as stated earlier, having substantially more or less the same contentions but for the difference in the period of appointment of each Director. The replies of the Noticees are also very elaborate on facts and law. The Noticee Nos. 4 to 9, except Noticee No. 5, have produced copies of FORM –DIR-12 and Form 32 to support their contention. However, for the purpose of the present adjudication proceedings, I find it appropriate to broadly summarise the replies of the Noticees, to the extent of

relevance for the present adjudication. The common contention is that the SCN fails to state the purported role of the Noticees in the alleged violations of AIF Regulations. The SCN has been issued against the Noticees on the ground that they were directors of TAIML, the manager of the Fund, without any findings as to the role of the Noticees in the alleged violations. The Inspection report was shown to Noticee No.1 and the response to the Inspection report was also furnished by Noticee No.1. No examination/ enquiry has been made to ascertain the factual position and ascertain the role of the Noticees with respect to the alleged violations. The Noticees submit that upto the issuance of the SCN, there has been no communication with the Noticees or any complaint filed against the Noticees, or any inspections into the assumed alleged conduct of the Noticees. Consequently, the Noticees never had a chance to represent themselves in connection with the present matter unlike Noticee No. 1. Noticees cannot be made vicariously liable for the alleged acts or omissions of TAIML. Noticees were merely acting as the Non-Executive Directors of TAIML. The Noticees have placed reliance on the provisions under the Companies Act where the emphasis is on bringing out the role of directors so as to implicate them in similar proceedings. The Noticees also relied on the MCA clarification with respect to prosecution of directors and certain case laws in this regard. Further the Noticees relied on my own finding in the order passed against Shri Rajagopal (Noticee No. 3) who was an independent director of TAIML , at the relevant time, which read as: "*S. Rajagopal, Noticee No. 3 being an independent director "was not involved in the day to day management of the company and the investment decision were concluded at the IC level.....the final resolution for acquisition of AMRL HCL was taken in the IC meeting itself and I do not find that there is any involvement of knowledge of the Noticee, in the investment decision."*

55. From the individual submissions made by each Noticee, the following table has been made to decide the date of appointment and the role played by the Directors.

Board of Directors

Investment Manager: SREI Alternative Investment Managers Ltd.

Name	Position	Date of Appointment
Mr. Shashi Bhushan Tiwari (Noticee No. 4)	Non-executive Director	18-10-2013
Mr Moses Harding John (Noticee No. 5)	Non-executive Director	25-07-2014
Mr. Parag Keshar Bhattacharjee (Noticee No.6)	Non-executive Director	26-11-2014
Mr. Chandra Sekhar Samal (Noticee No. 7)	Non-executive Director	26-11-2014
Mr. Sanjeev Sancheti (Noticee No. 8)	Non-executive Director	26-11-2014
Mr. Susil Kumar Pal (Noticee No. 9)	Non-executive Director	05-08-2016

56. I am considering the fact that TAIML and its directors, as the manager of the AIF, took the decision to invest in AMR HCL even prior to approval by IC of the AIF. This is clearly reflected in the arbitration/settlement award dated February 28, 2014, wherein the AIF is recorded as the buyer of the loans. It is therefore noted that Manager of the AIF, acting through its Board of Directors/ KMPs, had taken this decision, which as held earlier is not in compliance with the provisions of the AIF Regulations.

57. It is noted that the directors who were on the Board of the AMC during the inspection period have been made Noticees in these proceedings. It is, however, noted from the Table above, that only Noticee No. 4 was part of the Board when the investment decision under question was taken. However, Noticee No. 4, has submitted in his reply that he was a Non – Executive Director from October 18, 2013 to March 15, 2021. The Noticee has also resigned vide his letter dated 15th March 2021. For both purposes he has produced Form 32 and Form DIR 12. On a perusal of the Annexures to the reply, I find that he was in fact appointed on 18/10/2013 as an “additional director” in the “independent’ category. From Form DIR 12 attached as Annexure C, I see that his designation has been changed to “Director” again in the category “Independent”. Subsequently he has ceased to be a director w.e.f 15/03/2021, as stated in his reply. The rest of the directors are Non-Executive Directors of the AIF Manager. TAIML showed all the Noticees along with Dr.Satish Chandra Jha, Mr. Shashi Bhushan Tiwari and S.Rajagopal as “Directors” during the period 2014-2020 vide its response dated 29.10.2020. In another response Noticee Nos. 4 to 9 excluding Noticee No. 5 were shown as Non –

executive directors. The fact that the said Directors were NEDs are also seen from the MCA records. In fact the MCA records attached by the Noticee also showed that Noticee No.5 was also a NED at the relevant point of time. It appears that the examination/inspection culminated fixing up all the directors to be responsible for the violation of the Fund Manager, without identifying the finer details of who actually had the knowledge of the affairs of the SREI Group company, viz. EFPL's loan towards the AMR HCL Group. This is a case where the facts of the matter require specific knowledge of indebtedness of the investee company to one of the Group companies of the Fund Manager.

58. Given the above, I am of the view that contraventions observed on the part of the Company cannot be attributed to Noticees Nos. , 5, 6, 7, 8 and 9, as they had joined the Board of the AMC subsequent to the investment decisions which is under question in the present proceedings. Further, in the case of Noticee No. 4, it is noted that even though he was on Board of the AMC at the relevant time, he is in the category of an independent director. Hence, I am inclined to drop the allegations in the SCN against Noticee Nos. 4, 7, 8 and 9. As regards, Noticee No.6, even though he was the chairperson of the Investment Committee, there is nothing to show that he was in control of the AIF or its group companies, at the time the decision was taken to invest in AMR HCL. In effect, I find that Noticee Nos.4 to 9 have been arrayed in the matter, purely going by the designation and nothing beyond. When I take a close look at the Form 32 and DIR 12 forwarded by these Noticees, including that of Noticee No.5 (which came along with the other collectively filed documents with the MCA), I find that there is nothing to hold them bound in respect of the violation committed by the AIF. Hence, I am inclined to drop the proceedings against Noticee Nos.4 to 9 without imposing any penalty.

Ratification and its Consequences:

59. I note that TAIML, on instructions from SEBI, had sent a letter dated February 10, 2020 to the investors/Contributors of the IRF Scheme, forwarding the SEBI

inspection report on the AIF dated February 05, 2020. I see that the investors/Contributors of the IRF Scheme of the AIF of TAIML had subsequently sent a no-objection letter to the manner in which the acquisition of AMRL HCL shares was done and that they were aware that an investment amount aggregating to Rs. 24 crores was paid to SREI EFPL directly. I note that the No -Objection letters were sent by each of the investors, within ten days of the issuance of the letter. While GMR Corporate Affairs Private Limited and Elevate Portfolio Management Private Limited gave their NOC on February 14, 2020, Nikshepa Infrastructure and Logistics Limited gave its response on February 20,2020. SREI Infrastructure Finance Ltd. and SREI Capital Markets Ltd gave their NOC on February 19, 2020 and the SREI AIML gave its NOC on February 14, 2020.

60. The Learned Counsel for the Noticees submitted that as the investors have been made to understand about the pre-existing loan liability of AMRL to EFPL, by way of a Note circulated in February, 2020 and since the investors have given NOC to the investment, there is no longer an actionable violation that exists as on date for adjudication; rather it has become an academic exercise at this point in time. In this regard, the question arises as to whether the approval of investors to the transaction after 6 years of the investment would obfuscate the regulatory action initiated to enforce the provisions of the Regulations. I am of the view that the Fund Manager cannot take the affirmation of its investors to contend that since the investors have no objection to the subject investment, the activities of the AIF were carried on in accordance with law, and the question of conflict of interest and transparency stand automatically resolved. I am of the view that when there are legal infractions from the side of the Fund Managers, the severity or the consequences of the same cannot be whittled down or undone by subsequent approvals obtained from investors. Thus, I find that the investor's concurrence to the wrongful investment or to the investment made without complying with the substantial requirements laid down in the AIF Regulations, cannot be taken into consideration for the purpose of adjudication.

61. It is evident from the above facts, that Noticee No. 1 as the manager of the AIF of TAIML, failed to disclose the requisite details of the underlying conflict of interest while investing in AMR HCL to the IC and the investors. Noticee No. 1 failed to periodically inform investment decisions, conflicts of interest and risks involved in the investment decisions taken, to the investors of IRF thereby violating the provisions of Regulation 22(b) and (e). Noticee No. 1 failed to address the conflict of interest by following the procedure detailed in its PPM for the Infrastructure Resurrection Fund. Allegations of violation of Regulation 2(1)(b) and 11 do not hold any merit. Likewise, allegations of violation against Noticee nos. 4 to 9 are not substantiated with adequate material and are hereby dropped.

Regulatory Perspective and Conclusions:

62. Before concluding, it is apt to discuss the regulatory perspective and significance of Conflict of Interest and Disclosures as mandated to be part of the PPM of an AIF, in terms of the AIF Regulations.

63. The AIF regulations were envisaged as an enabling framework for privately pooled funds in India to operate in the Indian markets and to encourage startups in identified sectors. Prior to notification of these regulations, SEBI only had a framework for regulating venture capital funds, where registration was not mandatory. The funds registered under the SEBI/VCF regulations enjoy certain tax exemptions. However, these exemptions came along with restrictive investment and operating conditions. AIF regulations were in effect a move towards a more liberalised regulatory structure recognising the need for affording more flexibility to funds depending on the nature of activities carried out by them. The regulations therefore provided multiple categories of registrations, with each category having its specific set of identified conditions and requirements.

64. Further, the AIF regulations imposed a higher ticket size (Rs. 1 crore) on investments made in the fund. Given the same, the nature of the restrictions imposed under the

regulations were less restrictive than the ones provided under the MF or PMS Regulations. The onus instead was placed on the respective funds to disclose the proposed investment approach in the PPM to enable prospective investors to take an informed investment decision. The regulations also provided that any deviation from the disclosure made have to be promptly communicated to investors. Thus, the AIF Regulations intended for the benefit of informed and sophisticated investors, anchored the efficacy of its operations on disclosures in PPM and transparency of information to benefit its investors. Any act of the Fund Manager to clog such information dissemination to the investors would rupture the basic architecture of the Regulations.

Issue (iii) - Quantification of penalty:

65. In view of the above findings, I am inclined to impose an appropriate penalty on Noticee No.1 for the violation of the said SEBI AIF Regulations, 2012 under Section 15HB of the SEBI Act, 1992. Section 15HB reads as below:

Penalty for contravention where no separate penalty has been provided.

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

66. Section 15 J of the SEBI Act, lays down the factors to be taken into account while adjudging the quantum of penalty. One such factor is the repetitive nature of default, which is relevant in the facts of the instant case. The other factors such as disproportionate gains made and loss caused to investors, is difficult to be quantified, in the absence of the current valuation of the investment and quantum of returns, if any, received till date by the investors.

67. I note that in the past, a SCN dated April 10, 2017 was issued to SREI Alternative Investment Trust and SREI AIML for violations of Regulations 2(1)(b), 7(1)(a) and 7(1)(b), 10(d) and 15(1)(c) of the SEBI AIF Regulations, for giving loans to various

companies instead of investing the same, as per definition of AIF. Further, it involved non-compliance of Investment Committee's decision and failure in following Investment Strategy specified in the PPM. Upon adjudication, the AO had imposed a penalty of Rs. 30 Lakhs, jointly and severally, on both the Trust and the Manager.

68. In another matter, SREI AIML and Trust were charged with the violation of the provisions of 2(1)(b) of AIF Regulations for using part of contribution of investments for the purpose of giving loans. A SCN dated February 02, 2018 that was issued to the Noticees got settled vide settlement order dated 25 July, 2018 upon payment of a sum of Rs. 1,17,89,431/-. I find that Noticee No.1 is a repeat violator of the core provisions of AIF Regulations. The past instances show the callousness and total disregard on the side of Noticee No.1 with respect to compliances with legal requirements.

69. I see from the PPM, that the IRF scheme shall pay to the Investment Manager a management fee of 1% p.a. of the aggregate capital contribution drawn and deployed in the manner specified. Therefore, out of the total drawn down amount of 43.8 crores from the IRF fund, the investment manager has deployed 35.35 crores of the fund in a single investee company viz. AMRL HCL and accordingly the fees amounts to approximately 35 lakhs, excluding the expenses. I note that the private investors excluding the Sponsor's group companies constitute 88.36% of the Fund contribution. Therefore, in my opinion, a penalty that can compare with the quantum of fees levied on the private investors for the violations involved, approximated to Rs.30 Lakhs is attracted. Further, bearing in mind the repetitive nature of violations committed by Noticee No.1, as brought out above along with the minimum to maximum range of penalties stipulated under section 15HB (i.e Rs.1 lakh to Rs.1 crore), I am inclined to impose a higher amount as penalty.

G. ORDER

70. Therefore, in exercise of powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty upon Noticee No.1 under Section 15HB of the SEBI Act, 1992 for violation of the provisions of Regulations 21, 22 and 24(e) of SEBI AIF Regulations, 2012, as given below:

Noticee No. (as per the SCN)	Noticee's Name and PAN No.	Amount of penalty (in words)
Noticee No. 1	Trinity Alternative Investment Managers Limited. (Formerly SREI Alternative Investment Trust) Pan No: AAGCS5232F	Rs.50,00,000/- (Rupees Fifty lakhs only)

71. Further, with regard to Noticee No. 2, the SCN dated May 04, 2022 issued to him, is disposed of as abated. The SCN issued to Noticee Nos. 4 to 9 are disposed of without imposition of any penalty, for the reasons stated above.

72. Noticee No.1 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

73. 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.

74. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: August 18, 2023

Place: Mumbai

**GEETHA G
ADJUDICATING OFFICER**