BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/DP/2024-25/31140-31144]

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

In respect of:

Sr. No.	Name of the Noticee	PAN
1.	Anthill Captial Ventures	AAGTA8058A
2.	Anthill Venture Capital Advisors LLP	ABLFA4180D
3.	Prasad Vanga	ABXPV6790N
4.	Sailesh Sigatapu	ARKPS1735P
5.	Kabir Kochhar	AIWPK8591J

In the matter of Anthill Capital Ventures

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had carried out an examination with respect to observations in the Private Placement Memorandum (herein after referred to as "**PPM Audit Report**") of Anthill Capital Ventures (hereinafter referred to as the "**Noticee 1** / **Company/ Fund**") for the financial year 2022-23 to ascertain whether the scheme Anthill Early Stage Fund-1 (hereinafter referred to as "**Scheme**") floated by the Noticee No. 1 is in compliance with SEBI (Alternate Investment Fund) Regulations, 2012 (hereinafter referred to as 'AIF Regulations'), Circulars and Guidelines issued thereunder. The period of examination was from April 1, 2022 to March 31, 2023 (hereinafter referred to as the "**IP**").

2. Based on the findings of examination, SEBI observed certain non-compliances, *inter-alia,* of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**), AIF Regulations and circulars thereunder and initiated adjudication proceedings against Noticee No. 1, its Investment Manager, Anthill Venture Capital Advisors LLP (hereinafter referred to as **"Noticee No. 2**"), and its key managerial personals , Shri

Prasad Vanga, Shri Sailesh Sigatapu and Shri Kabir Kochhar (hereinafter referred to as **Noticee Nos. 3, 4 and 5**, **respectively**). Noticee No. 1 to 5 shall be collectively referred to as **Noticees**.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri Biju S as Adjudicating Officer, vide communique dated May 06, 2024, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under the provisions of the Sections 15EA and 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee No. 1 and under Section 15EA for the alleged violations alleged to have been committed by Noticee Nos. 2 to 5. Subsequent to his transfer, vide communique dated July 29, 2024, the undersigned has been appointed as Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice dated May 22, 2024 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on them under Sections 15EA and 15 HB of the SEBI Act. The SCN, inter alia, alleged the following:

A. Non-obtaining of share certificates in due time

4.1 It is noted that in the PPM Audit Report for the financial year 2021-22, the Auditor, M/S. Hiremath & Rathi, Chartered Accountants in their report dated September 30, 2022 had observed that the "In some cases, there are no share certificate in place till the date of this report and the Fund shall be arranging the same in due course."

4.2 It is observed that the same violation was repeatedly pointed out by the Auditor, first in the PPM Audit Report for financial year 2021-22 and later in the PPM Audit Report for financial year 2022-23. While, from the reply dated February 27, 2024 of Noticee 1, it is noted that the deficiency has now been rectified by obtaining the share certificates, it *should have been done at the time of making the investments itself. Only after the Auditor pointed the deficiency did the fund belatedly obtained the share certificates. It was therefore, alleged that, the Investment Manager (Noticee 2) failed to exercise due care and diligence to safe guard the investments of its investors by ensuring that the necessary documentation/ share certificates be in its proper custody at the time of making the investments.*

4.3 *In view of the above, it was alleged that, the Investment Manager (Noticee No. 2) and the KMPs i.e. Noticee Nos. 3, 4 and 5 failed to exercise proper care and due diligence to safe guard the investments of its investors.*

4.4 *Therefore, it was alleged that Noticee No. 2 is in violation of Regulation 20(1), 20(2) read with Clause 2 (a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations.*

4.5 *It was further alleged that Noticee Nos. 3, 4 and 5 are in violation of Regulation 20(1) and 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations read with Clause 13.1.2 of the Master Circular dated July 31, 2023.*

B. Granting of loans to the portfolio companies

4.6 *The PPM Audit Report for the financial year 2022-23 was perused and it was observed by the Auditor that Scheme had made investments through convertible notes in two of its portfolio entities and Scheme had also granted loan to six of its portfolio entities.*

4.7 *In this regard, Noticee 1 had inter alia stated "The above loans were not intended to be loans. These portfolio companies were in dire need of funds and failing injection might have had to shut down or severely curtail operations. Anthill provided this emergency injection of funds on the understanding that these funds will be towards equity investments, however, given the extraordinary circumstances, these portfolio companies were going through - no agreement could be reached on valuation of the companies / conversion discount etc. in case of future conversion.... Subsequently, some of these loans / debt has been converted into equity as intended originally and Anthill is in the process of converting the remainder into equity."*

4.8 *It was observed that the fund had provided the following details pertaining to the loans extended by the scheme :*

Observations	***Start date of non-compliance***	***Current status of compliance***	***End date of non-compliance***	***Documentary evidence***
Loan to Wiggles	*30/08/2022*	*Closed. Loan Converted into Convertible Note*	*Ended*	*Attached Below Convertible Note Agreement and certificate for the same*
Loan to IOT Monks	*07/05/2021*	*Closed. Repaid.*	*Ended*	*Attached below the details wrt repayment*
Loan to Pulp	*06/12/2022*	*Open Converting loan to equity - WIP*	*31st March 2024*	*WIP*
Loan to Wehouse	*23/03/2023*	*Open Converting loan to equity - WIP*	*31st March 2024*	*WIP*
Loan to Salud	*29/07/2022*	*Open Converting loan to equity - WIP*	*31st March 2024*	*WIP*
Loan to Doctor C	*28/01/2023*	*Open Converting loan to equity - WIP*	*31st March 2024*	*WIP*

4.9 *An AIF as defined under Regulations 2(1)(b) is a pooled investment vehicle which collects funds from investors for investing it. It is seen that Regulation 16(1) uses the expression "invest" in relation to investment conditions. Granting of loan is not an investment activity. This was clarified by way of FAQ issued by SEBI. Thus, it can be concluded that in terms of the AIF Regulations, an AIF is not permitted to give loans.*

4.10 *Further, vide an email dated February 28, 2024, Noticee 1 has submitted the PPM for the scheme and stated that their PPM is silent on the matter of giving loans / advancing debt to portfolio companies. It is stated that the provisions of the PPM cannot traverse beyond the provisions of the Regulations. Thus, it is alleged that, the act of Noticee 1 in extending loans to its investee companies is not in consonance with the terms of the PPM nor as per AIF Regulations.*

4.11 *In view of above, it was alleged that Noticee 1 has not complied with the regulation 16(1), Regulation 20(1) read with clause 1(a) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations.*

4.12 It was further alleged that Noticee 2 has violated the provisions of Regulation 16(1), Regulation 20(1), 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations and Regulation 20(5) of AIF Regulations.

4.13 In addition, it was also alleged that, Noticee 3, 4 and 5 violated the provisions of Regulation 16(1), Regulation 20(1), 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations read with Clause 13.1.2 of the Master Circular dated July 31, 2023.

C. Delay in filing the PPM Audit Report:

4.14 As per the Examination Report, regarding the delay in filing the PPM Audit Report for the financial year 2022-23 with SEBI, it is observed from the quarterly report for December 2023 filed by the Noticee 1 that it had reported having submitted the PPM Audit Report on October 05, 2023. Further, in its email dated October 05, 2023, Noticee 1 has admitted the delay. It is also noted that the PPM Audit Report for the Financial Year 2021-22 was submitted by Noticee 1 with a delay of 7 days to SEBI vide its email dated October 07, 2022. Thus, it is alleged that Noticee 1 has filed the PPM Audit Report for the financial years 2021-22 and 2022-23 with a delay of 7 days and 5 days respectively.

4.15 In view of the above, it was alleged that Noticee 1, 2, 3, 4 and 5 have not complied with the Regulation 28 of the AIF Regulation read with Clause 2.4.2 of the Master Circular dated July 31, 2023.

5. Vide letter dated July 01, 2024, Noticees through their Authorised Representatives (ARs) filed reply to the SCN and made the following submissions:

A. The Investment Manager and KMPs have exercised proper due diligence

5.1 The PPM Audit Report of the Fund for the FY 2021-22 and FY 2022-23 has noted that certain share certificates were belatedly obtained by the Noticees which in the present SCN, has been alleged by SEBI as failure of the Noticees to undertake proper *care and due diligence to safeguard the investments of the investors of the Fund. It is held that the Fund invested in the Compulsorily Convertible Preference Shares of Ronin Wines Private Limited **("CCPS")** at two instances and the same were allotted on September 03, 2022 and February 14, 2023, respectively. However, despite multiple follow-ups and conversations, the share certificates of the said investments were received by the Noticee 1 after certain delays mainly due to operational difficulties faced by Ronin Wines Private Limited and the same were informed by Noticee 1 to the Trustee by email dated October 04, 2023.*

5.2 *With respect to the FY 2021-22, it is submitted that the Auditor while making observations has inadvertently held that there were lapses in obtaining share certificates for certain investments. It is humbly submitted that not only were these alleged lapses operational in nature but only certain solitary instances which were immediately rectified cannot and should not be construed to mean continuous violations. Even otherwise, such alleged lapses did not affect the interest of the investors and the Noticees had obtained all the necessary documentations to evidence investments in the portfolio entities.*

5.3 *With respect to FY 2022-23, the Noticee 1 was prudent in ensuring the documentation was in place and it is reiterated, that the Noticee 1 was in constant touch with Ronin Wines Private Limited with respect to the share certificates. Further, the query from the Auditor was received only on September 27, 2023 to which the Noticee 1 bonafidely reverted that the share certificates had been issued and shall be submitted to the Auditor, once received by the Noticee 1. Furthermore, the same was submitted to the Auditor on October 06, 2023, however, as the PPM Audit Report for FY 2022-23 had already been issued by the Auditor by then, and thus, the observation of the Auditor remained unresolved. Therefore, the delay in obtaining certain share certificates were only due to operational challenges and cannot be construed as a failure of the Noticees to protect the interest of the investors.*

5.4 *It is further submitted that non-receipt of share certificates was never the dispute between the Noticees and the investors of the Fund and hence, the delay in issuance of share certificates by the portfolio entities cannot be construed as failure of Noticees to exercise due care and diligence to safeguard the investments of the investors. The Share certificates evidence right over such shares however, as submitted above, the Noticee 2 was already in receipt of the allotment email and other proofs of investments and non-receipt of the same by the issuer within* *prescribed time cannot be equated to mean that the investments of the investors of the Fund were not made with due care and diligence.*

5.5 *It must be noted that the settled legal standard for due diligence is premised on whether the entity concerned did everything reasonable to discharge its legal obligation and not everything possible. In the present case, the Noticees took prompt initiatives to receive the share certificates in order to be prudent in its approach, however, there is no prima-facie requirement to obtain such certificates as long as there are other proofs of allotment. Moreover, it is untenable to assert that the Noticees failed to exercise due diligence, as there is no loss caused to the fund or the investors on the delayed receipt of the share certificates.*

B. The granting of loans were in the interest of the portfolio companies and not in violation of AIF regulations

5.6 *With respect to the second observation made in the PPM Audit Report for FY 2022-23 that the loans were granted to the portfolio companies in violation of the provisions of the AIF Regulations, it has already been clarified by Noticee 1 through email dated February 27, 2024 that the intention of the loans were never to be treated as loans but to be converted into equity. However, due to various exigencies beyond the control of the Noticees, the loans could not be converted.*

5.7 *Further, at the given point of time, there was ambiguity or whether an AIF can provide loans or not. The FAQ issued by SEBI on August 18, 2016 and as referred in the instant matter is contrary to SEBI's views taken in a subsequent matter of SREI Multiple Asset Investment Trust and SREI Alternative Investment Mangers Limited' wherein SEBI held that loan provided by AIF in compliance with the PPM is not in violation of the SEBI laws.*

5.8 *Thus, it is evident that SEBI itself had permitted disbursal of loans by AIFs subsequent to the said FAQ and there was ambiguity in the market practices and applicable restrictions. However, without prejudice to the above, it is submitted that all the loans have been repaid or converted into equity now with no loss to the investors.*

5.9 *Moreover, such loan was not in violation of Clause 2(d) of the Code of Conduct as provided under the AIF Regulations, which provides that manager must act in a fiduciary capacity towards investors of the AIF and ensure that decisions are taken in the interest of the investor. In the present instance, the grant of loan to the portfolio companies was to ensure* *that the operations of these companies are not affected, which would then have caused severe damage to the investors.*

5.10 As stated above, it is submitted that all the loans have been repaid or converted into equity now with no loss to the investors and, hence, SEBI ought not to take a punitive approach.

C. Delay in filing of the PPM audit report was a bona fide error.

5.11 The PPM Audit Report for FY 2022-23 and FY 2021-22 were filed with a delay of mere 5 (five) days and 7 (seven) days, respectively. Given that the delays are procedural in nature, the Ld. AO should consider taking a cautionary approach.

5.12 Further, the delay was a bona-fide error as for FY 2021-22, as the Noticee 1 was under the impression that such report must be filed with SEBI by the Trustee of the Fund and hence, the PPM Audit Report for the FY 2021-22 was shared with the Trustee for the purposes of review and filing with SEBI soon after the same was received by the Auditor on September 30, 2022.

5.13 It is held that the Noticee 1 was only being prudent in its approach by sending the PPM Audit Report to the Trustee for approval and submission. It cannot be held that the Noticee 1 was taking a casual or lackadaisical approach in filing of the PPM Audit Report to SEBI.

5.14 Furthermore, for FY 2022-23, the Noticee 1 received PPM Audit Report from the Auditor on September 30, 2023 around late evening which was shared with the Trustee for approval on October 01, 2023. The Trustee made certain observations with respect to the PPM Audit Report which was resolved by Noticee 1 prior to submissions of the PPM Audit Report. Thus, the delay in submission in the PPM Audit Report to SEBI by the Noticee 1 was only technical and venial in nature.

No action taken against the Trustee.

5.15 It is humbly submitted that the Trustee is equally bestowed with the duty to oversee the functioning of the fund and ensure the compliance with the SEBI provisions. However, it is notable that SEBI has not made the Trustee, party to the SCN.

5.16 Such a non-inclusion raises concern over the completeness of the regulatory action and the allocation of responsibilities among key stakeholders. This omission clearly evidences that SEBI itself considers the alleged operation to be menial and operational *in nature with no interest of investors being affected at large. Therefore, it is evident that SEBI itself views that the alleged violations are not grave, even **if** considered to be violations, and no far-reaching actions are required.*

No injury caused to any investor.

5.17 It is submitted that the allegations against the Noticees with respect to the violations are operational in nature and have not caused any harm to the investors. In fact, the alleged violations even if seen in vacuum, never posed any danger to the interest of the investors. In the absence of any evidence that such a violation has caused any injury to any investor or has been detrimental to the stock market at large, it is reasonable to consider addressing this matter with a cautionary approach rather than punitive measures.

5.18 Further, allegations against the Noticees are premature and speculative as there is insufficient evidence to support the claim that any wrongdoing has occurred and the same affected the interest of the investors. Further, swift initiatives demonstrate a commitment to rectify any identified shortcomings, thereby challenging the assertion that a violation persists.

D. Alleged violation are technical, venial and procedural in nature

5.19 It is our humble submission that the alleged non-compliances laid out in the SCN are technical, venial and procedural in nature and hence no penalty should be imposed for the same.

5.20 With respect to the same, Noticee has relied upon various orders of Hon'ble SAT to state that no penalty should be levied for the aforesaid violations."

6. Vide the email dated July 26, 2024, Noticees further informed that they have filed settlement application in the matter. Vide email dated October 25, 2024, it was informed by the concerned Division of SEBI that the settlement applications filed by the Noticees have been withdrawn.

7. Subsequently, vide notice of hearing dated November 05, 2024, Noticees were granted an opportunity of personal hearing before the Adjudicating Officer on

November 22, 2024. Vide email dated November 19, 2024, Noticees forwarded name of their Authorised Representatives (ARs).

8. On November 22, 2024, the ARs of the Noticees appeared for the hearing and reiterated the submissions made vide letter dated July 01, 2024. The ARs further submitted that the violations as alleged in the SCN are procedural/ operational and venial lapses. The Fund Manager has taken adequate steps to rectify those lapses. Further, no loss has been caused to the investors. Therefore, the AR has sought leniency in the matter.

9. Vide email dated December 05, 2024, Noticees filed additional submissions to the SCN and reiterated the submissions made vide reply dated July 01, 2024. The Noticees further submitted that they have also placed robust and effective internal controls based on SEBI and auditor's observations and regulatory provisions.

CONSIDERATION OF ISSUES AND EVIDENCE

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

   I. Whether Noticees have violated 16(1), 20(1) read with Clause 1(a) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations, 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations, Regulation 20(5), 28 and Fourth Schedule of the AIF Regulations, Clause 2.4.2 and 13.1.2 of the Master Circular dated July 31, 2023 ?

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

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

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

"16 (1) The following investment conditions shall apply to all Category I Alternative Investment Funds:-

(a) Category I Alternative Investment Fund shall invest in investee companies, venture capital undertakings, special purpose vehicles, limited liability partnerships, in units of other Category I Alternative Investment Funds of the same sub category, or in units of Category II Alternative Investment Funds as specified in this regulation;

20(1) Alternative Investment Fund, key management personnel of the Alternative Investment Fund, trustee, trustee company, directors of the trustee company, designated partners or directors of the Alternative Investment Fund, as the case may be, managers and key management personnel of managers shall abide by the Code of Conduct as specified in the Fourth Schedule. Explanation.– For the purpose of this sub-regulation, 'key management personnel' shall have the meaning as specified by the Board from time to time.

20(2) The Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the Alternative Investment Fund, as the case may be, shall ensure compliance by the Alternative Investment Fund with the Code of Conduct as specified in the Fourth Schedule.

20(5) The Manager shall be responsible for every decision of the Alternative Investment Fund, including ensuring that the decisions are in compliance with the provisions of these regulations, terms of the placement memorandum, agreements made with investors, other fund documents and applicable laws.

28 The Board may at any time call upon the Alternative Investment Fund to file such reports, as the Board may desire, with respect to the activities carried on by the Alternative Investment Fund.

Fourth Schedule

1. Code of Conduct for Alternative Investment Funds

An Alternative Investment Fund shall:

(a) carry out its business activities and invest in accordance with the investment objectives stated in the placement memorandum and other fund documents.

2. Code of Conduct for the Managers of Alternative Investment Funds and key management personnel of Managers and Alternative Investment Funds

Every Manager of Alternative Investment Funds and key management personnel of the manager and Alternative Investment Funds shall:

(a) abide by the Act, Rules, Regulations, Guidelines and Circulars as applicable to Alternative Investment Funds at all times;

……

(c) ensure proper care and exercise due diligence and independent professional judgment in all its decisions;

(d) act in a fiduciary capacity towards investors of the Alternative Investment Fund and ensure that decisions are taken in the interest of the investors;

3. *Code of Conduct for members of the Investment Committee, trustee, trustee company, directors of the trustee company, directors or designated partners of the Alternative Investment Fund*

Members of the Investment Committee, trustee, trustee company, directors of the trustee Company, directors or designated partners of the Alternative Investment Fund shall:

(a) maintain integrity and the highest ethical and professional standards of conduct;

(b) ensure proper care and exercise due diligence and independent professional judgment in carrying out their roles;.”

Issue No. 1. Whether Noticees have violated 16(1), 20(1) read with Clause 1(a) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations, 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations, Regulation 20(5), 28 and Fourth Schedule of the AIF Regulations, Clause 2.4.2 and 13.1.2 of the Master Circular dated July 31, 2023?

12. Now I will proceed to deal with the above allegations on merits.

A. Non-obtaining of share certificates in due time

13. It was alleged in the SCN that the Noticees did not obtain share certificates in due time for the FY 2021-22 and 2022-23.

14. In this regard, it is submitted by the Noticees that in FY 2021-22, the lapses were operational in nature which were immediately rectified and was a solitary instance. For FY 2022-23, Noticees have submitted that share certificates were not received by Noticee No. 1 at the time of submission of PPM and delay was on account of the issuer. The share certificates were forwarded to the Auditors once received by Noticee No. 1. In their defense, Noticees have forwarded the share certificates received by them.

15. I note that the Fund had invested in the Compulsorily Convertible Preference Shares of Ronin Wines Private Limited on 2 instances and the same were allotted on September 03, 2022 and February 14, 2023. For FY 2022-23, I have perused the share certificate submitted by the Noticees to the auditors. I note that folio number and certificate number are not mentioned in the said share certificate. The shares certificate does not have the common seal of the company and no distinctive numbers are provided. Though the stamp duty has been paid and consideration for the shares was paid on April 20, 2023 but there is nothing on record that the Noticees received valid share certificate from Ronin Wines Private Limited. Further, the emails submitted by the Noticees do not show when the share certificates received by them. It is observed from the record that Noticee No. 2 requested for the copy of the share certificate on

September 15, 2022 for the first tranche and on September 28, 2023 for the second tranche. As per the reply of the Noticees, there is no record of Noticees following up for the share certificates with Ronin Wines Pvt. Ltd. between September 15, 2022 to September 28, 2023. There appears to be complete silence/ no follow up on part of the Noticees for almost a year with regard to the share certificates. Therefore, I cannot accept the submissions of the Noticees for the FY 2022-23. Noticee No. 2 being the Investment Manager and the KMPs of Noticee No. 1 were required to conduct the due diligence that valid share certificates are received on time. Therefore, I am of the opinion that the violation of Regulation 20(1), 20(2) read with Clause 2 (a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations by Noticee No. 2 and Regulation 20(1) and 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations read with Clause 13.1.2 of the Master Circular dated July 31, 2023 by Noticee Nos. 3, 4 and 5 is established.

B. Granting of loans to the portfolio companies

16. It is alleged in the SCN that it was observed by the Auditor that in FY 2022-23, Scheme had made investments through convertible notes in two of its portfolio entities and Scheme had also granted loan to six of its portfolio entities.

17. Noticees have submitted that SEBI had permitted disbursal of loans by AIFs subsequent to the FAQs dated August 18, 2016. Noticees have further submitted that the intention of the loans were never to be treated as loans but to be converted into equity and as on date all the loans have been repaid or converted into equity.

18. I note that as per the definition under Regulation 2(i)(b) of AIF Regulations, an AIF is a privately pooled vehicle which collects funds from its investors for investing it in accordance with a defined investment policy for the benefit policy. Regulation 15 of AIF Regulations provide general investment conditions by an AIF. However, it does not provide for the investment by an AIF in terms of loans. Further, FAQs available on

SEBI website update time to time specifically provides that "*since Alternative Investment Fund is a privately pooled investment vehicle, the amount contributed by the investors shall not be utilised for purpose of giving loans*."

19. Thus, as it is seen above, the Regulations specifically bars an AIF to extend loans. However, in the present matter, by own admission the loans extended by the Noticee No. 1 have been repaid.

20. Noticees in their defense have relied upon SEBI order in the matter of SREI Multiple Asset Investment Trust and SREI Alternative Investment Managers Limited wherein SEBI held that loan provided by AIF in compliance with the PPM and not in violation of the SEBI laws.

21. I have perused the said order. I find that reliance on the said order by the Noticees is misplaced. The facts of the aforesaid matter and the present matter are distinctive on account that in the aforesaid matter, as per the clause in PPM, it was permitted to grant loans. However, in the present matter, the PPM does not have any clause with respect to the granting loan as one of the investments by the scheme. Hence, it can be seen that the grant of loan by the scheme was not permitted activity as per the PPM and AIF Regulations. Hence, it is inferred that the scheme had extended loans to various entities in violation of AIF Regulations. Therefore the following violations stand established:

    21.1 Regulation 16(1), Regulation 20(1) read with clause 1(a) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations by Noticee No. 1.

    21.2 Regulation 16(1), Regulation 20(1), 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations and Regulation 20(5) of AIF Regulations by Noticee No. 2

    21.3 Regulation 16(1), Regulation 20(1), 20(2) read with Clause 2(a), 2(c) and 2(d) of the Code of Conduct specified in Fourth Schedule of the AIF Regulations read with Clause 13.1.2 of the Master Circular dated July 31, 2023 by Noticee Nos. 3, 4 and 5.

C. Delay in filing the PPM Audit Report

22. It was alleged in the SCN that the Noticees filed PPM Audit Report for the financial years 2021-22 and 2022-23 with a delay of 7 days and 5 days, respectively.

23. Noticees have submitted that for FY 2021-22, it was a bona fide error that such report must be filed with SEBI by the Trustee of the Fund. For FY 2022-23, Noticees have submitted that PPM Report was received from the Auditors on September 30, 2023 which was shared with the Trustee for the approval on October 01, 2023. The Trustee made certain observations and therefore, filing of PPM was delayed.

24. In this regard, I note that the purpose of a PPM for an AIF is to provide prospective investors with all the necessary information about the AIF. The PPM is a primary document that helps investors understand the investment vehicle and decide whether to invest. Therefore, timely dissemination of such information is important to enable the investors to make informed decision.

25. Noticees, by their admission, have submitted that PPM for FY 2021-22 and 2022-23 was filed with a delay. Regulation 28 of the AIF Regulations provides that if any registered entity fails to submit the periodic reports as desired by the Board, then the Board is empowered to initiate enforcement action. Therefore, violation of Regulation 28 of the AIF Regulation read with Clause 2.4.2 of the Master Circular dated July 31, 2023 by the Noticees is established.

26. Noticees have further submitted that no action has been taken against the Trustee for the aforesaid violations. In this regard, it may be noted that the aforementioned provisions of the AIF Regulations mandate the AIF, its Investment Manager and its KMPs to comply with the provisions of the AIF Regulations. Just because, Trustee is

not a part of the extant proceedings, does not mean that Noticees can avoid their responsibilities.

Issue II: Do the violations, if any, on the part of the Noticees attract monetary penalty under Sections 15EA and 15HB of the SEBI Act?

27. It has been established in the aforesaid paragraphs that Noticee has violated the provisions of law as alleged in the SCN and therefore Noticee is liable for payment of monetary penalty in terms of Section 15EA and 15HB of SEBI Act.

28. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} wherein Hon'ble Supreme Court of India held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*.''

29. The text of Sections 15EA and 15HB of the SEBI Act is reproduced below:

"Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts.

15EA. *Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.*

Penalty for contravention where no separate penalty has been provided.

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

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

30. While determining the quantum of penalty under Sections 15A(a) and 15EB of SEBI Act, it is important to consider the factors stipulated in Section 15J of SEBI Act, which reads as under:

"Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—

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

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

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

31. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees nor the amount of loss, if any, caused to an investor as a result of the default of the Noticees. As regard the repetitive

nature of the default, the default by the Noticees is repetitive in nature as the violations of not obtaining share certificates and delay in filing PPM audit report carried on for 2 financial years. It is also noted that the delay was in a solitary instance and on account of issuer to issue the share certificate and auditors in submitting the audit report to the Noticees.

32. However, Noticees were under a statutory obligation to abide by the provisions of the AIF Regulations and Circulars issued by the Regulator, which they failed to do. The non-compliances on the part of the Noticees as brought out in the preceding paragraphs clearly show that they had failed in their duties and need to be adequately penalized.

<u>ORDER</u>

33. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticees as well as the factors mentioned in section 15J of SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose following penalty on the Noticees. I am of the view that the said penalty is commensurate with the violations committed by Noticees.

Noticee No.	Noticee	Penal Provision	Penalty Amount
1	Anthill Capital Ventures	Section 15EA of SEBI Act	Rs. 1,00,000 (Rupees One Lakh Only)
		Section 15HB of SEBI Act	Rs. 1,00,000 (Rupees One Lakh Only)
2	Anthill Venture Capital Advisors LLP	Section 15EA of SEBI Act	Rs. 1,00,000 (Rupees One Lakh Only)
3.	Prasad Vanga	Section 15EA of SEBI Act	Rs. 1,00,000 (Rupees One Lakh Only)

Noticee No.	Noticee	Penal Provision	Penalty Amount
4.	Sailesh Sigatapu	Section 15EA of SEBI Act	Rs. 1,00,000 (Rupees One Lakh Only)
5.	Kabir Kochhar	Section 15EA of SEBI Act	Rs. 1,00,000 (Rupees One Lakh Only)

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

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

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

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

ASHA SHETTY

Digitally signed by ASHA SHETTY
Date: 2025.01.28 12:12:46 +05'30'

Date : January 28, 2025
Place : Mumbai

Asha Shetty
Adjudicating Officer