BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2023-24/29099

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

In respect of:

Shapoorji Pallonji and Company Pvt. Ltd.
(PAN- AAACS6994C)
(CIN: U45200MH1943PTC00381SP)

In the matter of Shapoorji Pallonji and Company Pvt. Ltd.

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as **'SEBI'**) received a letter dated July 22, 2021 from Shapoorji Pallonji and Company Private Limited (hereinafter also referred to as **"SPCPL" / "Company" / "Noticee" / "You" / "Your"**), inter-alia, informing SEBI that it had converted its listed NCDs bearing ISIN INE404K07012, to term loan on March 31, 2021 in accordance with a One Time Resolution (OTR) plan executed between the company and its lenders.

2. In view of the said letter, suo motu, an examination had been carried out by SEBI in order to examine the compliance status of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 {hereinafter also referred to as, "SEBI LODR Regulations, 2015" / "SEBI (LODR) Regulations, 2015" / "LODR Regulations, 2015" / "LODR Regulations" / "LODR"} by Shapoorji Pallonji and Company Private Limited. The scope of the examination by SEBI covered the compliance by SPCPL with relevant disclosure obligation specified in Chapter III and Chapter V of SEBI (LODR) Regulations, 2015. Based on the chronology of events, the period from June 01, 2020 (deemed date of allotment) to March 31, 2021 (date on which the company has converted its NCDs to term loan) had been selected as the examination period.

3. Based on the findings pursuant to the examination in the matter by SEBI, SEBI had initiated adjudication proceedings under section 15A(b) and 15HB of SEBI Act, 1992 (hereinafter also referred to as **"SEBI Act"**) against the Noticee for alleged violation of following provisions of SEBI (LODR) Regulations, 2015.

Noitcee	***Alleged violations***	***Adjudication proceedings under***
Shapoorji Pallonji and Company Pvt. Ltd.	*Regulation 7(3), 52(1), 52(2), 52(4), 52(5), 52(7) and 52(8), of SEBI (LODR) Regulations, 2015.*	*15A(b) of SEBI Act, 1992*
	Regulation 51, 54(1), 54(2), 56, 59 and 62 of SEBI (LODR) Regulations, 2015.	*15HB of SEBI Act, 1992*

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Upon being satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid alleged violations of various provisions of SEBI (LODR) Regulations, 2015 by the Noitcee, SEBI, in exercise of powers under Section 19 of the SEBI Act, read with Sub-section (1) of Section 15-I of the SEBI Act, and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("Adjudication Rules") appointed Mr Prasanta Mahapatra, CGM, SEBI, as the Adjudicating Officer (AO) to inquire and adjudicate under Sections 15A(b) and 15HB of SEBI Act, for the alleged violations by the Noticee, as stated. Pursuant to transfer of Mr Prasanta Mahapatra, Dr. Anitha Anoop, CGM, SEBI was appointed as the AO in the matter. Pursuant to transfer of Dr. Anitha Anoop, the undersigned was appointed as the AO in the matter vide Communiqué dated September 05, 2022.

C. SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5. A Show Cause Notice No. SEBI/EAD-5/AA/NS/62718/1-2/2022 dated December 19, 2022 (hereinafter also referred to as **"SCN"**) was issued to Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, under Section 15A(b) and 15HB of SEBI Act, 1992 be not imposed on the Noticee for the alleged violations as stated therein.

6. The summary of allegations brought out in the SCN is given below:

"….

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

SPCPL had issued the Non-Convertible Debentures (hereinafter also referred to as NCDs) bearing ISIN No. INE404K07012 worth Rs. 200 crores under Information Memorandum dated May 27, 2020 (IM). The said NCDs were subscribed by Union Bank of India (UBI) and got listed with the Bombay Stock Exchange (hereinafter also referred to as "BSE" / "Exchange" / "Stock Exchange").

SPCPL on September 17, 2020 approached all its lenders requesting for resolution of its debt exposure in accordance with the RBI circular dated August 06, 2020 and subsequent RBI Circular dated September 07, 2020 introducing One Time Resolution (OTR) framework for resolving financial stress caused due to COVID-19 Pandemic.

The lenders invoked OTR on October 26, 2020 followed by execution of Inter-Creditor Agreement on November 24, 2020. The OTR Resolution plan has been successfully approved and implemented by the lenders on March 31, 2021. As per the aforesaid OTR Scheme, the NCDs have been converted into Term Loan.

Subsequent to OTR implementation, SPCPL approached National Securities Depository Limited (NSDL) for extinguishment of ISIN- INE404K07012 and the said ISIN was extinguished as on June 15, 2021. Further, the company approached BSE for delisting of NCDs. In view of its OTR scheme invoked in the month of September 2020, its half yearly results were not published and sent to the Stock Exchange.

Based on the examination in the matter by SEBI, the following has inter alia been observed and/or alleged by SEBI, in respect of the Noticee:

4.1. ***Alleged violation of provisions of Regulation 7(3) of LODR Regulations:***

Regulation 7(3) of LODR Regulations requires submission of compliance certificate signed by the Compliance Officer and representative of the share transfer agent within one month of end of each half of financial year regarding maintenance of all activities in relation to both physical and electronic share transfer facilities either in house or by Registrar to an issue and share transfer agent registered with the Board. The company submitted that it had submitted the compliance certificate to the Stock Exchange on October 14, 2020 (for half year ended September 2020) and on April 14, 2021 (for half year ended March 31, 2021).

*In this regard, SEBI observed that disclosures w.r.t Regulation 7(3) were made by the company on October 14, 2020 and April 14, 2021. In this regard SEBI observed from the aforesaid disclosures that the compliance certificates were signed by the company's whole time director instead of its compliance officer. (Copy of the disclosures are attached as **Annexure-5).***

In view thereof, it is alleged that Noticee has not complied with Regulation 7(3) of LODR Regulations.

4.2. ***Alleged violation of Regulation 51 of LODR Regulations:***

Regulation 51 of LODR Regulations requires listed entities are required to disclose information having bearing on performance/operation of listed entity and/or price sensitive information. In this regard, SEBI observed as under:

4.2.1 *On examining of Exchange comments and its website, SEBI observed that Noticee did not inform the Exchange about the conversion of its NCDs into term loan.*

4.2.2 *Further, from the documents submitted by debenture trustee to SEBI w.r.t to the company, it was observed that the credit rating of the company got revised twice from the date of its issuance (May 29, 2020) till the date of conversion of its NCDs to term loan (i.e. March 31, 2021) but the aforesaid*

information had not been disclosed to the Exchange. Details of the company credit ratings are as under: (Annexure 6)
a. CARE A+ (at the time of issuance- as per term sheet)
b. CARE A- (Date of rating- September 29, 2020)
c. CARE BBB (Date of rating-March 1, 2021)

The company has not submitted the aforesaid information to the Exchange.

In view thereof, it is alleged that Noticee has violated the provisions of regulation 51 of LODR Regulations.

4.3. ***Alleged violation of various provisions of Regulation 52 of LODR Regulations:***

It was observed by SEBI that the company has listed only one ISIN and it had one debenture holder i.e. Union Bank of India. Based on the submissions of the company, it was noted that the company had made arrangement with its debenture holder viz. Union Bank of India to convert NCDs to term loan as part of its resolution plan in accordance with the guidelines issued by RBI vide circular dated August 6, 2020 and September 7, 2020. However, the said resolution plan was approved and implemented by its lender on March 31, 2021. Further, the company had extinguished the ISIN (INE404K07012) on June 15, 2021.

SEBI observed that Noticee had not submitted financials for the period ended September 30, 2020 to the stock exchange. In this regard, the company submitted that company was undertaking restructuring under RBI onetime resolution (OTR) scheme and due to the ongoing pandemic, financial results for the half year ended September 30, 2020 was not reported.

SEBI inter alia observed that the said NCDs were converted to term loan only on March 31, 2021 and thus, the company had been required to disclose the financial for the period ended September 30, 2020 and alleged that Noticee has violated various provisions of Regulation 52 of LODR Regulations, as detailed under:

4.3.1. *Regulation 52(1) of LODR Regulations, which requires listed entity to submit un-audited or audited financial results on a half yearly basis within 45 days from the end of the half year,*
4.3.2. *Regulation 52(2) of LODR Regulations, which requires submission of un-audited half-yearly financial results along with limited review report,*
4.3.3. *Regulation 52(4) of LODR Regulations, which requires disclosure of line items prescribed under Regulation 52(4) along with the half yearly / annual financial results,*
4.3.4. *Regulation 52(5) of LODR Regulations, which requires submission of a certificate signed by the Debenture Trustee taking note of the contents prescribed under regulation 52(4).*
4.3.5. *Regulation 52(7) of LODR Regulations, which requires submission of a statement indicating material deviations, if any, in the use of proceeds along with the half yearly financial results.*
4.3.6. *Regulation 52(8) of LODR Regulations, which requires that the listed entity shall, within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results and statement referred to in Regulation 52 (4), in at least one English national daily newspaper circulating in the whole or substantially the whole of India.*

In view thereof, it is alleged that that Noticee has violated the provisions of regulation 52(1), 52(2), 52(4), 52(5), 52(7) and 52(8) of LODR Regulations.

4.4. ***Alleged violations of Regulation 54(1) and 54(2) of LODR Regulations:***

4.4.1 *Regulation 54(1) of LODR Regulations requires that the listed entity shall maintain hundred percent asset coverage, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.*

In this regard, company submitted that it has maintained 100% asset cover sufficient to discharge the principal amount at all times for the NCDs and that the asset coverage ratio (current assets available for secured debt securities to total borrowings covered under current assets) is 11.09. The Debenture Trustee submitted that the company did not created the security for the NCDs as required.

SEBI observed that as per the term sheet, the Noticee has issued secured NCDs with first ranking pari passu charge over the current assets of the company. On examination of submissions of the debenture trustee (Comments of debenture Trustee attached as Annexure-4), SEBI observed that Noticee has not created the security for its NCDs as required and thus became non-compliant with Regulation 54(1) of LODR Regulations.

In view thereof, it is alleged that Noticee has violated the provision of regulation 54(1) of LODR Regulations.

4.4.2 *Regulation 54(2) of LODR Regulations requires that the listed entities disclose the extent and nature of security created and maintained with respect to secured listed NCDs in the financial statements submitted to the Exchange.*

In this regard, the company submitted that company was undertaking restructuring under RBI onetime resolution (OTR) scheme and due to the ongoing pandemic, financial results for the half year ended September 30, 2020 was not reported.

In this regard SEBI observed that Noticee has not submitted its financials for half year ended September 30, 2020.

In view thereof, it is alleged that Noticee has violated the provision of regulation 54(2) of LODR Regulations.

4.5. ***Alleged violation of provisions of Regulation 56 of LODR Regulations***

Regulation 56 of LODR Regulations requires that the listed entities submit documents viz. Annual Report, notices, resolutions and circulars relating to NCDs, intimations of revision in rating, default, half yearly certificate regarding maintenance of asset cover or any other information sought by debenture trustee.

*In this regard the company submitted that ATSL are the DT of the company and that it had submitted the letters to the trustee. The DT submitted that company has not provided the statutory Auditor's certificate on utilization of funds, half yearly certificate on maintenance of asset cover and annual report. SEBI observed that Noticee failed to submit statutory Auditor's certificate on utilization of funds, half yearly certificate on maintenance of asset cover and annual report (copy of submissions of debenture trustee is attached as **Annexure-4**).*

In view thereof, it is alleged that Noticee has violated provision of regulation 56 of LODR Regulations.

4.6. ***Alleged violation of provisions of regulation 59 of LODR Regulations***

Regulation 59 of LODR Regulations requires that the listed entities take prior approval for any material modification in the structure of NCDs.

In this regard, company submitted that it had informed to BSE that they have not made any changes suggested in the regulation and that vide email dated December 03, 2021, it had informed SEBI that it had obtained consent from the debenture holders and debenture trustee for converting NCDs to term loan. BSE submitted that the company had not made application for any structural changes. SEBI observed that with respect to conversion of NCDs into term loan, Noticee has not taken approval from the stock exchanges as required under Regulation 59 of LODR Regulations.

In view thereof, it is alleged that Noticee has violated provision of regulation 59 of LODR Regulations.

4.7. ***Alleged violated of provisions of Regulation 62 of LODR Regulations***

Regulation 62 of LODR Regulations requires that the listed entities maintain functional website which shall contain the details of financial information, handling of investor grievances, debenture trustees, report, notices, call letters etc.

In this regard, on examination of BSE comments, SEBI observed that Noticee had not updated the following details in its website as required under Regulation 62 of LODR Regulations:

4.7.1. *Notice of meeting of the board of directors where financial results shall be discussed.*
4.7.2. *Financial results, on the conclusion of the meeting of the board of directors where the financial results were approved.*
4.7.3. *Complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc was not updated after FY 2019-20.*
4.7.4. *The information, report, notices, call letters, circulars, proceedings, etc concerning NCRPS or NCDs.*
4.7.5. *All information and reports including compliance reports filed by the listed entity.*

In view thereof, it is alleged that Noticee had not updated the details in its website as required under regulation 62 of LODR Regulations and therefore, Noticee has violated provision of regulation 62 of LODR Regulations.

…."

7. The SCN was duly served on the Noticee through SPAD and by e-mail dated December 20, 2022. Vide email dated December 21, 2022, The receipt of the SCN was acknowledged by Noticee vide its email and letter dated December 29, 2022, and requested for an extension of 30 days to submit its reply on the SCN.

8. Thereafter, vide Hearing Notice reference no. SEBI/HO/EAD-5/AN/SM/64883/1-2/2022 and dated December 30, 2022, an opportunity of personal hearing was provided to the Noticee in the interest of natural justice, on January 18, 2023. Scanned copy of the said Hearing Notice was also sent by email on December 30, 2022. Vide email dated January 13, 2023, the Noticee sought adjournment of the said hearing and requested for further extension of 2 weeks i;e January 27, 2023 to respond to the SCN. Noticee also stated that the date fixed for the personal hearing i;e January 18, 2023 is not convenient to their client’s council and requested that physical hearing be held after they submit their response to the SCN. Vide email dated January 16, 2023 another opportunity of hearing was granted to Noticee on January 24, 2023. Vide email dated January 23, 2023, Noticee again sought adjournment on the ground that their arguing counsel is in a personal difficulty this week and therefore, the Noticee requested to adjourn the personal hearing scheduled on January 24, 2023 to January 31, 2023 at 4:00pm through VC. Noticee also stated that it will file its reply to the show cause Notice before January 31, 2023. Vide email dated January 24, 2023 final opportunity of hearing was granted to Noticee on February 02, 2023 and the Noticee was advised to file its reply by January 31, 2023. Vide its email dated January 30, 2023, Noticee again sought adjournment on the ground of non-availability of its counsel and requested to fix the personal hearing on February 03, 2023. Vide its email dated February 01, 2023, Noticee submitted its reply to the SCN. Vide its email dated February 03, 2023, Noticee once again requested to re-schedule the personal hearing. Vide email dated February 16, 2023, the hearing was rescheduled and the Noticee was once again granted another date for Hearing viz., on February 21, 2023.

9. On the Scheduled hearing date, Noticee 1 appeared through its Authorised Representatives (ARs) for the hearing held through online mode viz. video conferencing. During the hearing the ARs for Noticee relied upon and reiterated the submissions made by Noticee vide letter and email dated February 01, 2023. ARs during the hearing sought time for making additional submissions, accordingly time till February 27, 2023 was allowed. Vide letter dated February 27, 2023, AR for the Noticee made additional written submissions.

10. It is noted that the submissions of the Noticee as reply to the SCN vide letters dated February 01, 2023 and February 27, 2023 are broadly similar save for certain additional contentions made with regard to certain provisions alleged to have been violated and the same have accordingly been dealt in the respective paragraphs dealing with the violations as alleged in respect of the Noticee. Further in this regard, it is noted that while the Noticee vide letters dated February 01, 2023 and February 27, 2023 has, broadly speaking made similar submissions save for different text, the same have been dealt accordingly under paragraphs dealing with respective violations as alleged and for sake of brevity, reference has been made to submissions as stated by the Noticee in either of the letters. Noticee's reply vide email dated February 01, 2023 and February 27, 2023 are reproduced below:

"….

1. *The Notice has charged SPCPL with the alleged failure to comply with various disclosure obligations under the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 ("**LODR Regulations**") in connection with SPCPL's Non-Convertible Debentures ("**NCDs**") for Rs. 200 crores that were listed on the wholesale debt segment of the BSE Limited, for a short period of time between 9 June 2020 to 31 March 2021, during the height of the COVID-19 Pandemic.*

2. *At the threshold, it is pertinent to note that this is the first time SPCPL, which is a private limited company, has ever had a debt security listed and that too at the height of the COVID-19 pandemic, and despite the lender being a single bank, with the only form of lending being a debt security that was technically listed.*

3. *The pandemic had a significant adverse impact on SPCPL as indeed other businesses which led to it undergoing debt restructuring, pursuant to the RBI's debt resolution framework for stressed assets on account of the pandemic.*

4. *The lone subscriber to SPCPL's NCDs was Union Bank of India ("**Union Bank**"), a large and sophisticated financial institution. There was no other subscriber to the NCDs. Indeed these NCDs were not readily available for purchase by investors akin to other listed securities. Therefore, no investor or debenture holder*

was actually affected by any deprivation of any material information, since Union Bank was fully aware of every single item of information covered by the SCN. Put differently, no inability to make an informed investment decision arose owing to the failures alleged in the SCN. Indeed, Union Bank has always been a party to the debt restructuring of the SP Group and was always fully aware of every material development.

5. *Therefore, none of the alleged violations which occurred during the height of the COVID-19 pandemic, even if established, have resulted in any disproportionate gain and/or unfair advantage to SPCPL and/or any prejudice to any stakeholder. None of the alleged violations are repetitive in nature. Apart from this, SPCPL has never been charged with or been guilty of violation of any SEBI law or regulations and this is the first time SPCPL has in fact listed its NCDs.*

6. *At the threshold, the aforesaid context and background would be necessary to bear in mind in appreciation of our submission on merits made below.*

<u>Charges in the Notice</u>

7. *The SCN charges SPCPL with the following:-*

7.1 *The compliance certificate, for the half-year ended September 2020 and March 31, 2021, on maintenance of activities in relation to physical and electronic share transfer facilities, was signed by a Whole Time Director instead of a Compliance Officer, in purported contravention of Regulation 7(3);*

7.2 *It allegedly failed to disclose: (i) the conversion of NCDs into a term loan; (ii) revision in the rating of the NCDs on two occasions from the date of issuance, in alleged contravention of Regulation 51;*

7.3 *It allegedly failed to disclose: (i) the half-yearly results for the half-year ended 30 September 2020 and (ii) other information to be included in the half-yearly results, in alleged violation of Regulations 52(1),(4),(5),(7) and (8);*

7.4 *It allegedly did not maintain 100 percent security cover, sufficient to discharge the principal amount, in alleged contravention of Regulation 54(1);*

7.5 *It allegedly failed to disclose the extent and nature of security created and maintained, in the financial statements, by not disclosing the financial statements, in alleged contravention of Regulation 54(2);*

7.6 *It allegedly failed to provide a statutory auditor's certificate on utilization of funds, half-yearly certificate on maintenance of asset cover and annual report, in alleged contravention of Regulation 56;*

7.7 *It allegedly failed to take prior approval of the stock exchanges, for a purported material modification in the structure of the NCDs, as the NCDs were converted into a term loan, in alleged contravention of Regulation 59;*

7.8 *Its website did not allegedly contain the information stipulated in Regulation 62;*

8. *Accordingly, the Notice calls upon SPCPL to show cause why a monetary penalty ought not to be imposed under Section 15A(b) and Section 15HB of the SEBI Act.*

<u>Gist of the Noticee's Submissions</u>

9. *The proceedings contemplated by the SCN deserve to be dropped without any penalty, adverse order or observation, for the following reasons:-*

9.1 *SPCPL did indeed appoint a registrar and share transfer agent ("**RTA**") who was entrusted with the duty to maintain all activities relating to the debentures. There being just one debenture holder, the compliance certification was a formality, leave aside the sheer triviality of the charge – that the certificate was signed by a whole time director and not a compliance officer. Such a venial and technical breach does not deserve to be met with a penalty;*

9.2 *The NCD was a choice of form of debt. The NCDs had a sole subscriber, who was a commercial bank, which was happy to have the same debt designated in the form of a term loan. The conversion of the NCDs into a term loan was indeed informed to the BSE on 14 April 2021 and the charge in the SCN is vitiated by a fundamental error of fact.*

9.3 *Insofar as the revision in the ratings of the NCDs are concerned, this information was immediately and promptly available in the public domain on the Noticee's website and the websites of the rating agencies, in the form of a press release. In other words, the information was widely disseminated not only by external rating agencies but by the Noticee itself. A mistake in not sending it in the format to the stock exchange, would point to substantial compliance and a technical and venial formal slip-up;*

9.4 *Therefore, the information was available in the public domain and there was no intention to mislead any stakeholder and the only relevant stakeholder. In any case, Union Bank, the lone NCD-holder was fully* *aware of these developments, since credit rating agencies assign ratings, only after information is sought from the lender and ascertaining the existence of any default(s);*

9.5 *The charge of non-disclosure of financial statements for the half-year ended 30 September 2020 to the stock exchanges, was on account of the pandemic and the fact that relevant officials in charge of these matters were working remotely and were engaged in negotiations with lenders and other investors, to ensure financial viability of the Noticee as indeed the SP Group;*

9.6 *The SP Group's financial troubles were a matter of public knowledge and the efforts made by the SP Group to monetise its stake in Tata Sons Private Limited, was also a subject matter of litigation before the Hon'ble Supreme Court and were extensively covered by the media. Therefore, it cannot be said that the non-disclosure of the financial results and other attendant information to the stock exchanges, prejudiced any stakeholder or resulted in any false market being created;*

9.7 *The charge that the Noticee did not maintain 100% asset coverage for discharge of the principal amount of the NCDs is factually incorrect. The SCN has merely relied on a bald assertion by the Debenture Trustee in an email dated 27 December 2021, that "the issuer did not create security". The Debenture Trustee has not examined the current assets of the Noticee (over which a security was required to be created in favour of the Debenture Trustee pursuant to a deed of hypothecation as disclosed in the Information Memorandum) or explained the basis for the assertion that no security was created.*

9.8 *The Noticee indeed had sufficient current assets as per its financial statements for the year ended 31 March 2020, which are annexed as **Exhibit A**, for it to discharge the principal amount. Had the financial statements been sought for and examined by SEBI independently, such a charge would not have been levelled. This is explained in detail in this response and on merits and facts this charge can be met squarely.*

9.9 *The charge of non-disclosure of the nature and extent of security in the half-yearly financial statements, is connected with the charge of non-disclosure of half-yearly financial statements, which has already been dealt with above. Besides, the nature of the security created was already disclosed in the Information Memorandum and this information was in any case available to the lone subscriber to the NCDs – Union Bank. Therefore, no prejudice was occasioned by the alleged non-disclosure.*

9.10 *The alleged failure to provide the auditor's certificate on utilization of issue proceeds along with the financial statements is connected with the charge relating to non-disclosure of financial statements. The extraordinary circumstances that led to the non-disclosure have already been explained above.*

9.11 *In any case, there is no allegation that the Noticee had utilised the proceeds of the issue, contrary to the disclosed objects in the Information Memorandum. Besides, the lone subscriber and holder of the NCDs – Union Bank – had the right to fully access this information under its agreements with the Noticee, and it indeed had used such access. The Noticee was in any case undergoing a debt structuring and was being monitored closely by lenders (including Union Bank) and therefore no stakeholders could have said they were in the dark about its state of affairs.*

9.12 *The conversion of NCDs into a term loan resulting in the extinguishment of the NCDs does not constitute a modification of the terms of the NCDs, for purposes of Regulation 59, and consequently the approval of the stock exchanges was not required. Regulation 59 applies where the terms of the NCDs in terms of either the coupon, redemption or "otherwise" are sought to modified. The words "otherwise" must be read in light of and in the context of the preceding words "terms of redemption, coupon etc". When the terms on which the NCDs are listed, are sought to be altered, care has been taken to ensure that this is effected only with the approval of the stock exchanges. However, this provision has no application, where the NCDs themselves are sought to be extinguished. A modification of the terms of the NCDs must be distinguished from an extinguishment of the NCDs itself. Therefore, the allegation is untenable.*

9.13 *The charge that the Noticee's website did not contain certain information including financial statements etc. is connected with the charge of non-disclosure of financial statements. The Noticee's website was not updated with all the information required, owing to the extraordinary circumstances prevailing on account of the pandemic with most of the employees of the Noticee functioning remotely. There is no allegation that the failure to provide the information led to any information asymmetry or prejudiced stakeholders or that it led to the creation of a false market.*

9.14 *Strictly without prejudice to the submissions above, each of the charges, even if found to be correct, does not warrant imposition of a monetary penalty. A penalty ought not to be imposed merely because there exists a power to do so and the decision to impose a penalty, must not be taken lightly, but ought to take into account the attendant facts and circumstances including the extraordinary constraints occasioned by the pandemic which was at its peak, the fact that there was only one subscriber to the NCDs who was privy to the affairs of the Noticee, the extensive media coverage of the Noticee's precarious financial position etc. – all of which point to the technical and venial nature of the contravention.*

10. *Each of these submissions are elaborated in greater detail below.*

Factual Background

11. *Before dealing with each of the charged violations, we have tabulated certain relevant facts concerning the matter:*

***Facts**:*

#	*Date*	*Particulars*
1)	*01.06.2020*	*SPCPL issued and allotted 2,000 secured, listed, rated, redeemable, non – convertible debentures of Rs. 10,00,000/- (Rupees Ten Lakhs only) each aggregating to Rs. 2,000,000,000/- (Rupees Two Hundred Crores only) ("**NCDs**") to Union Bank of India ("**Union Bank**") being the sole debenture holder of SPCPL.* *Axis Trustee Services Limited was appointed as the Debenture Trustee ("**Debenture Trustee**").*
2)	*09.06.2020*	*The NCDs were listed on the Wholesale Debt Market segment of the Bombay Stock Exchange Limited ("**BSE**").*
3)	*06.08.2020 and 07.09.2020*	*The RBI issued circular no. RBI/2020-21/16 DOR No. BP.BC/3/21.04.048/2020-21 dated 6 August 2020 and subsequent circular dated 7 September 2020 ("**RBI Circulars**") introducing a One Time Resolution Framework for COVID – 19 related stress ("**OTR**") for resolving financial stress caused due to the COVID – 19 pandemic to eligible borrowers with good credit history.*
4)	*17.09.2020*	*SPCPL approached all its lenders requesting for resolution of their respective debts (including Union Bank).*
5)	*26.10.2020*	*SPCPL's lenders invoked OTR, which was followed by the execution of an Inter Creditor Agreement on 24 November 2020, which was also executed by Union Bank, the debenture holder.*
6)	*15.03.2021*	*Letter addressed by State Bank of India along with the proposal to Indian Bank's Association for seeking approval of OTR of SPCPL.*
7)	*30.03.2021*	*Letter from Indian Bank's Association approving the OTR of SPCPL.*
8)	*31.03.2021*	*The OTR was implemented and the NCDs ceased to exist.*
9)	*14.04.2021*	*SPCPL made an application to BSE for delisting of the NCDs.*
10)	*15.06.2021*	*The NCDs bearing ISIN – INE404K07012 were extinguished.*
11)	*18.05.2022*	*The NCDs were delisted by BSE*

12. *SPCPL would like to make the following submissions, which are without prejudice to each other.*

***Notice's submissions**:*

NCDs converted prior to due date of subject LODR compliances

13. *The Board of SPCPL had approved and SPCPL had initiated, on 17 September 2020 the process of resolution of its debts, including conversion of the NCDs held by Union Bank, into a term loan. This action of SPCPL was approved by its lenders including Union Bank on 26 October 2020, and these lenders invoked OTR of SPCPL's debts. The OTR was finally implemented on 31 March 2021. Pursuant to implementation of the OTR, the NCDs stood converted on 31 March 2021. Pertinently, the entire resolution process was undertaken with the consent and under the supervision of all the lenders of SPCPL, including Union Bank.*

14. *Subsequent to implementation of OTR on 31 March 2021, SPCPL made an application to BSE on 14 April 2021 for delisting of the NCDs. While the NCDs, in effect, stood extinguished on 31 March 2021 (pursuant to implementation of OTR) and SPCPL's application for delisting was made as early as 14 April 2021, the NCDs were finally delisted by BSE only on 18 May 2022 and the ISIN for the NCDs was extinguished on 15 June 2021.*

15. *The OTR was finally implemented on 31 March 2021, but the decision to convert the NCDs was taken well before that, including by Union Bank, the sole debenture holder.*

Impact of COVID 19

16. *The COVID-19 pandemic and the accompanying nationwide lockdown, which lasted for over 2 years impacted the administrative working of all businesses and offices, including that of SPCPL. Almost all employees of SPCPL were working from home and / or working in rotation from the office. Financial stress that SPCPL was facing as also the acute problems being faced by its employees, whether it was travel related or health related or financial, all contributed towards certain unintentional / inadvertent lapses creeping into compliance related actions. Accordingly, there were certain, unintentional lapses / delays in complying with certain provisions of the LODR Regulations. However, these unintentional lapses neither resulted in an unconscionable gain to SPCPL, nor resulted in any loss to Union Bank, the only debenture holder.*

17. *Taking note of the unprecedented impact of the COVID – 19 pandemic, SEBI issued several circulars pursuant to which compliance of certain provisions of the LODR Regulations were relaxed and due date(s) extended. The relevant circulars in this regard are briefly tabulated hereunder:*

Sr. no.	*Date*	*Particulars*	*Regulations covered*
1)	*19.03.2020*	*Circular bearing number SEBI/HO/CFD/CMD1/CIR/P/2020/38 regarding relaxation from compliance with certain provisions of LODR Regulations* ***Note**: Relaxation given for compliances due in April / May 2020.*	*7(3), 13(3), 24A, 27(2), 31, 33*
2)	*23.03.2020*	*Circular bearing number SEBI/HO/DDHS/ON/P/2020/41 regarding relaxation from compliance with certain provisions of LODR Regulations inter alia with respect to NCDs* ***Note**: Relaxation given for compliances due in March / April / May 2020.*	*7(3), 13(3), 24A, 27(2), 31, 33, 52*
3)	*12.05.2020*	*Circular bearing number SEBI/HO/CFD/CMD1/CIR/P/2020/79 regarding additional relaxation from compliance with certain provisions of LODR Regulations inter alia with respect to NCDs* ***Note**: Relaxations necessitating out of MCA circulars.*	
4)	*24.06.2020*	*Circular bearing number SEBI/HO/CFD/CMD1/CIR/P/2020/106 regarding additional relaxation from compliance with certain provisions of LODR Regulations viz. Regulation 33 and Regulation 52* ***Note**: Relaxation given for compliances due in March 2020 until 31 July 2020.*	*33, 52*
5)	*29.07.2020*	*Circular bearing number SEBI/HO/CFD/CMD1/CIR/P/2020/140 regarding additional relaxation from compliance with certain provisions of LODR Regulations for the period ended 30 June 2020 until 15 September 2020*	*33*

18. *Thus, SEBI itself recognized and acknowledged that Covid 19 had hampered businesses and the administrative activities of companies, and accordingly decided to grant relaxations/extensions for compliances under the LODR Regulations.*

Sole debenture holder

19. *It is crucial to note that the NCDs were subscribed by a sole debenture holder, i.e. Union Bank. At all times, there was only one holder of these NCDs. Hence, while evaluating the compliance obligation/s of SPCPL, this fact must be kept foremost in mind, and SPCPL must not be equated with other companies who have listed securities with large body of investors. In spirit, LODR requires that Union Bank (the sole debenture holder) remained informed at all times of SPCPL's financial situation and other relevant developments. Pertinently, as stated above, Union Bank was a part of the OTR of SPCPL and was therefore at all material times aware of all the developments in relation to SPCPL including the restructuring of its debts.*

20. *Further, the NCDs were listed on BSE on 09 June 2020. On 17 September 2020, SPCPL decided to restructure its debt. Pursuant to this, the lenders of SPCPL (including Union Bank) invoked OTR for restructuring of SPCPL's debts on 26 October 2020. Since even Union Bank decided to invoke OTR and convert the NCDs (as a part of the larger restructuring), in fairness, the NCDs could not be and / or ought not to have been traded, which as it stands was exactly what Union Bank did, it did not trade these NCDs but continued to hold on to them.*

21. *Pertinently, the NCDs issued to Union Bank was part of a larger financial assistance provided by Union Bank to SPCPL. The total exposure of Union Bank to SPCPL was to the extent of INR 626.25 crores. Even under the agreements pertaining to the other credit facilities provided by Union Bank, Union Bank had the right to require SPCPL to provide financial details of SPCPL and documents and SPCPL has always provided such information when sought.*

22. *Admittedly, no harm, loss or prejudice has been caused to Union Bank (the sole Debenture Holder) or any other person on account of any of the charged violations by SPCPL. Importantly, by its letter dated 08 April 2021 addressed to the Debenture Trustee, Union Bank had confirmed that the NCDs stood extinguished with effect from 31 March 2021 and that the amount was no longer payable as NCDs since they were converted into a term loan. By the said letter, Union Bank also confirmed that it had provided its consent to the same on 26 October 2020. A copy of the letter dated 08 April 2021 is annexed hereto and marked as **Exhibit B**.*

23. *In light of the above, it is submitted that there is no reason for this inquiry against SPCPL. Neither has Union Bank raised any grievance qua the NCDs nor has it suffered any loss on account of any such charged violation. Further, no unfair advantage has been derived by SPCPL. In the absence of any specific loss being caused to anyone, no penalty should be imposed on SPCPL under Sections 15A(b) and/or 15HB of the SEBI Act.*

First listed experience

24. *SPCPL is an unlisted company. Hence, it never had the need to put in place a compliance team for mapping and ensuring compliance with various SEBI regulations and circulars. The listing of these NCDS was the first ever listing experience of SPCPL. Prior to these NCDs, SPCPL had never issued any listed security. Pertinently, the NCDs were also issued right in the midst of the COVID 19 pandemic. SPCPL had to use its existing secretarial staff to manage both the listing action and the subsequent compliances.*

BSE had condoned lapses

25. *BSE had addressed a letter dated 10 October 2022 to SPCPL wherein BSE highlighted certain non – compliances by SPCPL and requested SPCPL to be careful in the future to avoid the reoccurrence of the said lapses. A copy of the letter dated 10 October 2022 is annexed hereto and marked as **Exhibit C**. Considering that BSE had condoned these non – compliances, SEBI ought to not raise these issues again.*

26. *SPCPL shall now proceed to deal with each of the purported violations.*

26.1 *Purported violation no. 1: Alleged violation of provisions of Regulation 7(3) of LODR Regulations*

(a) *The first violation charged relates to SPCPL's purported non-compliance of Regulation 7(3) of the LODR Regulations. Regulation 7(3) of LODR reads as under:*

"The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within thirty days from the end of the financial year, certifying compliance with the requirements of sub-regulation (2)."

(b) *The compliance certificate, which is to be submitted under Regulation 7(3) of LODR, must certify compliance of Regulation 7(2) of the LODR Regulations, viz., all activities in relation to the share transfer facility of a listed entity are maintained either in house or by the Registrar to an issue and share transfer agent registered with the Board. The relevant text of Regulation 7(2) of the LODR Regulations is as under:*

"The listed entity shall ensure that all activities in relation to share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board."

(c) *In terms of Regulation 7(2) of the LODR Regulations, SPCPL appointed one Universal Capital Securities Private Limited ("**Universal**"), as its share transfer agent. Accordingly, in compliance with the requirement of Regulation 7(3) of the LODR Regulations, SPCPL submitted its compliance certificates to the BSE. The said compliance certificates submitted to the BSE, and which are in question, viz. compliance certificates dated 14 October 2020 and 14 April 2021, have been signed by a whole time director of SPCPL and Universal, in its capacity as the share transfer agent.*

(d) *It is not in dispute that the compliance certificate has been submitted to BSE. It is also not in dispute that SPCPL has complied with Regulation 7(2) of the LODR Regulations. The charge is that the compliance certificate has been signed by a whole time director and not by a compliance officer. It is important to not lose sight of the fact that what is relevant is whether SPCPL is in compliance with the underlying* *requirements, viz. having in place a share transfer facility. Secondly, it is also important that this compliance is disclosed to the exchange – which was also duly done. The fact that this disclosure was signed by whole time director and not the compliance officer cannot in any manner dilute or impact the substance of the compliance. Secondly, a whole time director is not an employee at a level lower that the compliance officer. In fact, the compliance officer reports to the whole time directors. In view of this, and the fact that there has been complete compliance of Regulation 7(2) and substantial compliance of Regulation 7(3), the present allegation ought not to be seriously pursued against SPCPL considering that this alleged violation is purely hyper technical. In view of this, coupled with the fact that the share transfer agent has endorsed this compliance by SPCPL, it is humbly submitted that the allegation that SPCPL has not complied with Regulation 7 (3) of the LODR Regulations is harsh and unwarranted.*

26.2 *Purported violation no. 2: Alleged violation of Regulation 51 of LODR Regulations*

(a) The purported second violation relates to non-disclosure of information having bearing on performance / operation of listed entity and / or price sensitive information. The relevant extract of Regulation 51 of LODR Regulations, as at the time of NCDs being listed is as under:

"(1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend or redemption of non-convertible securities.

Explanation.-The expression 'promptly inform', shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party

(2) Without prejudice to the generality of sub-regulation (1), the listed entity who has issued or is issuing non-convertible debt securities and/or non-convertible redeemable preference shares shall make disclosures as specified in Part B of Schedule III."

(b) The two heads under which the purported contraventions have been bifurcated in the Notice are as under:

- *Failure by SPCPL to intimate BSE about the conversion of NCDs into term loan; and*
- *Failure by SPCPL to intimate BSE of change in its credit rating.*

(c) At the outset, it is submitted that the aforesaid two heads have no impact on the performance / operation of the listed entity. Secondly, the said information is not price sensitive information. Thirdly, the only entity for whose benefit all such information was required to be submitted, viz. Union Bank, was always in the know of such information in a timely manner since it had already opted for conversion of NCDs into a term loan on 26 October 2020.

Failure by SPCPL to intimate BSE about the conversion of NCDs into term loan

*(d) SPCPL disputes and denies that it had failed to intimate BSE about the conversion of NCDs into a term loan. SPCPL had vide its letter dated 14 April 2021 and email dated 20 July 2021, intimated BSE of the conversion and extinguishment of the NCDs. Copies of the letter dated 14 April 2021 and email dated 20 July 2021 are annexed hereto and marked as **Exhibit D** and **Exhibit E** respectively. The said letter and email evidence that SPCPL had in fact intimated BSE of the conversion of its NCDs into a term loan.*

(e) In terms of the explanation to Regulation 51(1) of the LODR Regulations, SPCPL had as soon as practically possible informed BSE of the conversion of the NCDs on 14 April 2021. Therefore, the allegations that SPCPL failed to intimate BSE about the conversion of NCDs into term loan cannot be sustained and is denied.

Failure by SPCPL to intimate BSE of change in its credit rating

*(f) SPCPL states and submits that change in credit rating of NCDs cannot and ought not to be construed as information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend or redemption of non-convertible securities. Intimation of any change in credit rating is also not specified in Part B of Schedule III of the LODR Regulations. In these circumstances, the question of disclosing such an event to BSE does not arise. It may not be out of place to state that the intention of Regulation 51 is to intimate information which is either price sensitive or would have an impact on the payment of interest or dividend or redemption of non – convertible securities. Pertinently, change in credit rating of SPCPL cannot, by any extent, be construed to be information that is price sensitive. In any event the information is also independently published by Credit Analysis and Research Limited ("**CARE**"). So, this information is also widely known on account of such publication. It also cannot be construed to be information which would affect payment of interest or dividend or redemption of non-convertible securities, on account of the fact that Union Bank had already agreed on conversion of the NCDs to term loan on 26 October 2020. With respect to the change in credit rating to A- on 29 September 2020, the said change was on account of SPCPL's decision to restructure its debts. As is more particularly stated hereinabove, the OTR of SPCPL was undertaken after all the lenders of SPCPL (including Union Bank), approved and invoked the OTR of SPCPL. Undisputedly, Union Bank was a part of the entire OTR process of SPCPL and has at all times been aware of material developments in relation to SPCPL. It has never been*

Union Bank's grievance that any of the corporate actions were taken by SPCPL without its knowledge or the fact that any purported non disclosures or purported violations have adversely impacted Union Bank.

(g) *Without prejudice to the foregoing, SPCPL states that it has duly complied with the requirement with respect to change in the credit rating of NCDs, by publishing the relevant information on its website: https://www.shapoorjipallonji.com/Media/Corporate/. Thus, all concerned (i.e. the BSE, Union Bank and the Debenture Trustee) were duly aware of the change in credit rating of the Company. In addition to the above, by its letter dated 30 June 2021, SPCPL had duly submitted the credit rating (along with historical changes) to the Debenture Trustee. In this regard, all stakeholders were duly aware of the change in credit rating.*

(h) *In view of the foregoing, it is submitted that there has been no violation whatsoever of Regulation 51 of the LODR Regulations. Assuming arguendo even if there is a violation, the same is merely technical as the requirements of Regulation 51 of the LODR Regulations have been complied with in full spirit.*

26.3 Purported violation no. 3: Alleged violation of Regulation 52 of LODR Regulations

(a) *The third purported violation relates to breach of Regulation 52 of LODR Regulations, more particularly:*
i. *SPCPL has purportedly failed to file the un-audited or audited financial results on a half yearly basis within 45 days from 30 September 2020 (Regulation 52(1));*
ii. *SPCPL has purportedly failed to file un-audited half yearly financials along with limited review report (Regulation 52(2));*
iii. *SPCPL has purportedly failed to disclose line items prescribed under Regulation 52(4) along with half yearly / annual financial results;*
iv. *SPCPL has purportedly failed to submit a certificate signed by Debenture Trustee taking note of line items prescribed under Regulation 52(4) (Regulation 52(5));*
v. *SPCPL has purportedly failed to submit a statement indicating material deviations, if any, in the use of proceeds along with the half yearly financial results (Regulation 52(7));*
vi. *SPCPL has purportedly failed to publish the financial results and statement referred to in Regulation 52(4) in one English national daily newspaper (Regulation 52(8));*

(b) *At the outset, SPCPL denies that it was required to make the necessary compliances under Regulation 52 of the LODR Regulations because the NCDs were converted to term loan only on 31 March 2021. As is evident from the sequence of events above, the OTR was invoked and approved by the lenders of SPCPL on 26 October 2020.*

(c) *As also stated above, it is an admitted fact that no harm, loss or prejudice has been caused to Union Bank (the sole Debenture holder) on account of any of the purported violation by SPCPL. Union Bank, has throughout been involved in the OTR process of SPCPL and thus, was at all times aware of all the developments in SPCPL. As a lender (and subscriber of the NCDs), Union Bank had the necessary covenants in the term sheet to seek information and clarification (including financials) from SPCPL if necessary. In any event, the financials were shared with the lenders, including Union Bank*

(d) *Without prejudice to the foregoing, from paragraph no. 17 above it is clear that taking note of the impact of COVID 19 pandemic, SEBI extended various timelines for quarterly and half yearly compliances. It is crucial to take note of Circular stated at #5 of the table under paragraph no. 17 certain additional relaxations were given by SEBI from compliance with certain provisions of LODR Regulations for the period ended 30 June 2020 until 15 September 2020. Considering the fact that time was extended until 15 September 2020 for the period ended 30 June 2020, the basis of relaxation and extension ought to be kept in mind also for compliances due on 30 September 2020.*

26.4 Purported violation no. 4: Alleged violation of Regulation 54(1) and 54(2) of LODR Regulations

(a) *The fourth violation under the Notice relates to breach of Regulation 54(1) and 54(2) of the LODR Regulations. Relevant extracts are reproduced hereunder:*

"(1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred percent asset cover sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.

(2) The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities."

(b) *The said violation under Regulation 54 of the LODR Regulations is bifurcated into two heads:*
- *Regulation 54(1): The first pertains to purported failure by SPCPL to maintain hundred percent asset coverage; and*
- *Regulation 54(2): The second pertains to failure by SPCPL to disclose the asset coverage in the financial statements.*

Failure by SPCPL to maintain hundred percent asset coverage

(c) SPCPL disputes and denies that it had not maintained hundred percent asset cover sufficient to discharge the principal amount of NCDs at all times. The said fact has already been conveyed to SEBI vide SPCPL's letter dated 20 December 2021. Vide the said letter, SPCPL had provided detailed explanation of asset cover with respect to the NCDs. The said letter shows that the asset cover of the NCDs was in the ratio of 11.09. The relevant extract of the letter dated 20 December 2021 is as under:

Sr. no.	Particulars		Amount (in Lakhs)
1)	Current Assets available for secured Debt Securities (As per the latest Audited Financial Statements of the Company i.e. 31.03.2020)		924631.24
	Total (A)		924631.24
2)	Working capital facilities covered under Current Assets (As on 30.09.2020) Standard Chartered Bank Cash Credit Union Bank of India Cash Credit Union Bank of India Cash Credit WCDL IDBI Bank Ltd Cash Credit WCDL IDBI Bank Ltd Cash Credit Bank of India Cash Credit Bank of India Cash Credit WCDL	900 2400 3600 2000 3000 1500 1000	
	Total (B)		14400
Long term loans covered under Current assets (As on 30.09.2020) Bank of Baroda Long Term Loan Union Bank (Non-Convertible Debentures)		49,000 20,000	
	Total (C)		69,000
	Total (D) (B + C)		83,400
	Asset Coverage Ratio (A/D)		11.09

The above table clearly shows that SPCPL had duly complied with the requirement of Regulation 54(1) of LODR Regulations and maintained hundred percent asset cover sufficient to discharge the principal amount of NCDs at all times. A copy of the letter dated 20 December 2021 is annexed hereto and marked as **Exhibit F**.

Failure by SPCPL to disclose the asset coverage in the financial statements.

(d) With respect to the allegation that SPCPL has not disclosed the extent and nature of security created and maintained with respect to secured listed NCDs in the financial statements, SPCPL repeats and reiterates that it was undertaking restructuring under the RBI OTR and due to the ongoing pandemic, the financial results for the half year ended 30 September 2020 was inadvertently not reported.

26.5 Purported violation no. 5: Alleged violation of Regulation 56 of LODR Regulations

(a) The fifth violation under the Notice relates to failure by SPCPL to furnish documents such as the statutory auditor's certificate on utilization of funds, half yearly certificate on maintenance of asset cover and annual report to the Debenture Trustee. In this regard, the relevant extract of Regulation 56 of LODR, as on the relevant date is as under:

"(1) The listed entity shall forward the following to the debenture trustee promptly:

(a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised: Provided that in the case of debentures or preference shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.

(b) a copy of all notices, resolutions and circulars relating to-

(i) new issue of non convertible debt securities at the same time as they are sent to shareholders/ holders of non convertible debt securities;

(ii) the meetings of holders of non-convertible debt securities at the same time as they are sent to the holders of non convertible debt securities or advertised in the media including those relating to proceedings of the *meetings;*

(c) intimations regarding:

(i) any revision in the rating;

(ii) any default in timely payment of interest or redemption or both in respect of the non convertible debt securities;

(iii) failure to create charge on the assets;

(d) a half-yearly certificate regarding maintenance of hundred percent asset cover in respect of listed non-convertible debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results:

Provided that submission of such half yearly certificates is not applicable in cases where a listed entity is a bank or non banking financial companies registered with Reserve Bank of India or where bonds are secured by a Government guarantee

Provided that the submission of half yearly certificate is not applicable where bonds are secured by a Government guarantee."

(b) In this regard it is submitted that SPCPL was also severely impacted by the COVID19 pandemic. On account of this, the financial position of SPCPL was extremely precarious and all efforts of SPCPL's key managerial personnel were directed towards the financial restructuring of SPCPL. Further, the ultimate beneficiary, Union Bank (the sole debenture holder) and all other stakeholders were at all times aware of all the material developments with respect to SPCPL on account of the OTR. Not only was Union Bank a part of the Inter Creditor Agreement but it was also on the committee which drove the OTR of SPCPL. In light of this, clearly, Union Bank at all times was aware of all the material developments of SPCPL.

(c) The object and purpose of having a debenture trustee is to ensure that the trustee tracks the developments concerning the company, periodically, such that the debenture holder's interest is protected and kept secure. Now, considering the fact that the sole debenture holder and SPCPL's stakeholders were fully aware of all relevant facts concerning SPCPL, the fact that there was an inadvertent omission in making the aforesaid disclosures to the Debenture Trustee should be treated as a mere technical violation.

(d) Without prejudice to the above, it is submitted that the purported non – compliance by SPCPL has neither resulted in (a) any disproportionate gain or unfair advantage to SPCPL, nor (b) has it resulted in any loss to any investor or investor group and nor (c) is the default repetitive in nature.

(e) Accordingly, SPCPL requests the Adjudicating officer to consider the above and not impose a penalty under Section 15A(b) and/or 15HB.

26.6 <u>*Purported violation no. 6: Alleged violation of Regulation 59 of LODR Regulations*</u>

(a) SEBI has alleged that with respect to conversion of NCDs into term loan, SPCPL has not taken approval from the stock exchanges as required under Regulation 59 of the LODR Regulations. The relevant extract of Regulation 59 of the LODR Regulations is as under:

(1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non-convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to:

(a)the structure of the non-convertible debt securities debenture in terms of coupon, redemption, or otherwise.
(b)the structure of the non-convertible redeemable preference shares in terms of dividend, redemption, or otherwise.

(b) SPCPL submits that no material modification has been made to the structure of the NCDs. Pursuant to the invocation of OTR by SPCPL's lenders, including Union Bank, the NCDs were converted to a term loan of the same quantum. A modification to the terms of the NCDs are distinct from the conversion and consequent extinguishment of the NCDs themselves. In the latter case, the requirement of obtaining prior approval of the stock exchange does not arise.

(c) Regulation 59 applies where the terms of the NCDs in terms of either the coupon, redemption or "otherwise" are sought to modified. The words "otherwise" must be read in light of and in the context of the preceding words "terms of redemption, coupon etc". When the terms on which the NCDs are listed, are sought to be altered, care has been taken to ensure that this is effected only with the approval of the stock exchanges. However, this provision has no application, where the NCDs themselves are sought to be extinguished. A modification of the terms of the NCDs must be distinguished from an extinguishment of the NCDs itself. Therefore, the allegation is untenable.

(d) Without prejudice to the foregoing, SPCPL repeats that on account of COVID 19, it was under substantial financial stress, which necessitated urgent restructuring of its debts. On account of this, the lenders of SPCPL invoked the OTR on 26 October 2020. This was extremely crucial for the survival of SPCPL, and time was the essence of the OTR. After due approval from its lenders, the Inter Creditor Agreement was executed. Thereafter, a letter dated 15 March 2021 was addressed by State Bank of India to the Indian Bank's Association, seeking its approval on the OTR of SPCPL. The said approval was received from Indian Bank's

Association on 30 March 2021. Pertinently, since the OTR was to be implemented on 31 March 2021, even if Regulation 59 of the LODR Regulations was applicable to the present case, due to paucity of time, SPCPL could not have obtained prior approval of BSE. A copy of the letter dated 30 March 2021 is annexed hereto and marked as ***Exhibit G****.*

(e) *Furthermore, the entire OTR was being driven by the lenders of SPCPL (including Union Bank – the sole debenture holder). Since Union Bank was at all times involved in the restructuring and had also provided its consent, it is submitted that the LODR compliance requirements of SPCPL cannot be held at par with other companies who have listed securities with a wide public base and a lenient view ought to be taken by the Adjudicating Officer.*

26.7 *Purported violation no. 7: Alleged violation of Regulation 62 of LODR Regulations*

(a) *This allegation pertains to failure by SPCPL to update certain details on its website. Pertinently, the impact of the COVID 19 pandemic commenced on 25 March 2020 and continued up until 28 February 2022. The OTR of the Company was undertaken in the midst of COVID 19 pandemic. Most of the employees of SPCPL were functioning remotely and at a limited capacity. On account of this, the staff who were responsible to undertake the updating and maintenance of the website of SPCPL were unable to do so. This was beyond the control of SPCPL. No loss has been caused to any investor and neither has SPCPL made any undue and disproportionate gain on account of this.*

(b) *Furthermore, it is also crucial to note that on account of COVID, SPCPL had also made a necessary application to the MCA seeking extension of time in filing of its annual accounts. On account of this, for FY 19 – 20 the standalone accounts could be prepared only on 6 February 2021 and the consolidated accounts could be prepared only on 9 June 2021. Consequently, the AGM of SPCPL for FY 19 – 20 could be held only on 30 June 2021. Since the accounts of the Company were not approved by the shareholders till 30 June 2021, the same could not be published on the website of SPCPL. However, pursuant to approval from the shareholders, the website has been updated with the accounts.*

No monetary penalty warranted

27. *In light of the facts and circumstances as mentioned above, we humbly request the Adjudicating Officer to take an overall view of the matter and not levy any penalty on SPCPL as the purported non – compliances/ violations have neither resulted in any disproportionate gain or unfair advantage to SPCPL, nor have they resulted in any loss to any investor or investor group. Further, SPCPL has received a notice such as this for the first time and thus, the purported non – compliances/ violations are not repetitive in nature. Moreover, the violations, if any, are inadvertent and unintentional. SPCPL has at all times acted in a bona-fide manner without having any vested interests.*

28. *A monetary penalty is not warranted in the facts and circumstances of the case inter-alia on account of the above facts and no useful purpose would be served in inflicting the Noticee with a penalty – that too long after the NCDs have ceased to be listed.*

29. *The Hon'ble SAT has in various instances exercised its discretion to not levy any penalty or has substituted a penalty imposed by SEBI with a warning in certain cases having regard to the relevant facts and circumstances. It has also held that while considering the factors enumerated in Section 15J of the SEBI Act, the competent authority should also give due weightage to the aim and object of the SEBI Act, the impact of the violation and other mitigating factors which depend on the facts and circumstances of each case and include absence of market manipulation, no investors' interest having been adversely affected etc.*[1]

30. *In* ***Piramal Enterprises v. SEBI***[2]*, SAT held that "the object of the Act is not only to protect the investors but also the securities market…SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures…a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty. Other factors should be considered...".*

31. *In light of the above, it is submitted that it is not mandatory for the adjudicating officer to impose a penalty in all cases of violation of the Regulations. It is submitted that Section 15A(b) and 15HB read with Section 15J and 15I, confers discretion of the adjudicating officer to determine whether a penalty should be levied or not as well as determine the quantum of such penalty.*

32. *In* ***Siddharth Chaturvedi v. SEBI***[3]*, the Hon'ble Supreme Court, interpreting Section 15J of the SEBI Act, held: -*

"It is very difficult, keeping in view, particularly, two important legal facets-one the doctrine of harmonious construction of a statute; and two, the fact that we are construing a penalty provision of a statute which is to be strictly construed, Section 15A, post amendment in 2002, is suddenly given a pride of place, and Section 15J is made to yield entirely to it. ***The familiar expression "notwithstanding anything contained" does not appear in the amended Section 15A. This being the case, it is a little difficult to appreciate as to how one can construe Section 15A, as amended, in isolation, without regard to Section 15J.*** *In fact, the facts of the present case would go to show that* ***where there is allegedly only a technical default, and the three parameters of Section 15J would allegedly be satisfied*** *by the Appellants, namely, that no*

*disproportionate or unfair advantage has been made as a result of the default; no loss has been caused to an investor or group of investors as a result of the default; and there is in fact, no repetitive nature of default, **no penalty at all ought to be imposed.**"*

33. *In **Adjudicating Officer, SEBI v. Bhavesh Pabari**,[4] it was held that:*

"if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15A to Section 15HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15A(a) to 15HA have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy. Provision of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions.

…

We, therefore, deem it appropriate to hold that the provisions of Section 15J were never eclipsed and had continued to apply in terms thereof to the defaults under Section 15A(a) of the SEBI Act.

…

***We would hold the legislative intent was not to prescribe minimum mandatory penalty** of Rs.1 lakh per day during which the default and failure had continued. We would prefer read and interpret Section 15A(a) as it was between 25th October, 2002 and 7th September, 2014 in line with the Amendment Act 27 of 2014 as giving discretion to the Adjudicating Officer to impose minimum penalty of Rs.1 lakh subject to maximum penalty of Rs.1 crore, keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15J of the SEBI Act."*

34. *Further, in **PG Electroplast & Ors. v. SEBI**,[5] it has been specifically held by SAT that "if it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the SEBI Act."*

35. *Therefore, for the foregoing reasons, the proceedings contemplated by the SCN are liable to be dropped without any penalty, adverse direction or order.*

36. *SPCPL reserves its right to make further submissions if required and would like to avail the opportunity of a personal hearing.*

…."

.

Further, Noticee vide letter dated February 27, 2023 made following submissions:

"

…..

Submissions of SPCPL

3. Response to the charge under Regulation 7(3) - Compliance Certificate signed by a Whole Time Director instead of a Compliance Officer[1]:-

The alleged contravention is technical and venial because: -

a. *The certificate was signed by Mr. Firoze K. Bhathena, who is a whole time director on the Board of SPCPL, the issuer company. Compliance officers report to the Board of Directors and have to work under the superintendence and oversight of the Board. Therefore, if a certificate is signed by the Whole Time Director, it is signed by an individual who is senior to the Compliance Officer. The certificate was signed by a person in a position of far greater authority than a compliance officer - and one who is in charge of the day to day business of SPCPL.*

b. *Even under regulations issued by SEBI, the compliance officer reports to the directors (**See Regulation 6(2)(b) of the LODR Regulations**);*

c. *Besides the compliance certificate was itself a formality as it merely requires a confirmation that all activities pertaining to transfers of securities, are either carried out in house or by a Registrar & Share Transfer Agent. As stated in the reply, SPCPL indeed had a Registrar & Share Transfer Agent i.e. Universal Capital; and*

d. *Besides, SPCPL had just one debenture holder – Union Bank - rendering any activities for transfer of securities moot.*

4. Response to the charge pertaining to Non-disclosure of: (a) NCDs into a term loan and (b) the revision in the rating of the NCDs on two occasions, in alleged violation of Regulation 51[2]:-

The charge of non-disclosure is untenable because:-

*a. SPCPL vide its letter dated 14 April 2021 and email dated 20 July 2021 duly informed BSE of the conversion and extinguishment of the NCDs. Copies of the said letter dated 14 April 2021 and email dated 20 July 2021 are annexed at **Exhibit D** and **Exhibit E** of the Reply (See **Pages 27 to 29**);*

b. The extinguishment of the NCDs was not a modification of the terms of the NCDs – the very existence of the NCDs came to an end in mutual consent with the sole lender under the NCDs viz. Union Bank;

c. The change in the credit rating of the NCDs was in the public domain in the form of press release issued by the rating agency, CARE on 29 September 2020 and 1 March 2021. The press release with the rating rationale was also posted on CARE's website. The same information was also posted on SPCPL's website, subsequently, – thereby ensuring that the very regulatory objective of the disclosure to the stock exchange was met in substance. This constitutes substantial compliance;

*d. As a result, this information was widely known quite apart from, in any case, being available to the only relevant stakeholder, Union Bank. A copy of the press release issued by CARE on 29 September 2020 and 01 March 2021 is annexed as **Annexure A** and a copy of the screenshot from SPCPL's website showing disclosure of the ratings is annexed as **Annexure B**;*

e. Besides, Union Bank, the sole debenture holder, was a part of the entire OTR process of SPCPL and has at all times been aware of material developments in relation to SPCPL; and

f. The mere fact that the information was not disclosed in the applicable format to the stock exchanges, in a situation where there was just one debenture holder and a sole lender, who was in any case in the know and indeed, even the public was in know, would warrant a finding that there is substantial compliance and no violation, and therefore no case for a penalty is made out.

5. Response to the charge pertaining to non-submission to the stock-exchanges of: (i) the half-yearly results for the half-year ended 30 September 2020; (ii) other information to be included as part of the half-yearly results, in alleged violation of Regulations 52(1),(4),(5),(7) and (8)[3]:-

No penalty is warranted on account of the alleged non-disclosures because:-

*a. SPCPL's financial health was well known and available in the public domain since it was: (i) undergoing a OTR under the aegis of a RBI formulated scheme for stressed assets on account of the COVID-19 pandemic and (ii) attempting to monetise its stake in Tata Sons which was a subject matter of litigation before the Hon'ble Supreme Court – all of which was reported in the media. Copies of press articles in the public domain issued around September 2020 (when its half-yearly results were due) are annexed as **Annexure C**;*

b. The sole debenture holder was fully in the loop on the results. There was no other debenture-holder and the NCDs were technically listed;

c. SEBI as indeed the Ministry of Corporate Affairs have acknowledged that the pandemic impacted the ability of companies to make disclosures in the ordinary course of business and deferred many of the timelines. The Reply sets out the various measures taken by SEBI on its own in this regard. A lenient view of whether here is a violation at all, is warranted and any interpretation of facts that leads to a finding of even a technical and venial contravention should be shunned;

d. The NCDs were listed at the height of the pandemic and this is in fact the first time that SPCPL has had any security listed. The non-disclosures therefore were inadvertent and attributable to the impact of the pandemic;

e. The technical nature of the breach is evident from the fact that the financial information of SPCPL was available to the sole debenture holder – Union Bank – which was part of the consortium of lenders – that was actively involved in the debt restructuring;

f. *Union Bank was fully involved in every step of the conversion of the NCDs into a term loan. Therefore, any purported non-disclosure by SPCPL of the aforesaid regulation has not had any substantive or other impact on Union Bank of India or any other concerned stakeholder;*

g. *SEBI, in other cases of non-disclosure, where an issuer of NCDs had not even gotten its financial results approved by its directors and that too for a period prior to the pandemic, has taken a reasonable view and imposed a penalty of 3 lakhs on the issuer. SPCPL stands on a far superior footing and no penalty is at all warranted. (**See Order dated 16 December 2020, in the matter of Sinew Developers Pvt. Ltd which is annexed as Annexure D);***

6. ***Response to the charge pertaining to non-submission of statutory auditor's certificate on utilization of funds, half yearly certificate on maintenance of asset cover and the annual report, to the debenture trustee in alleged violation of Regulation 56[4]:-***

This charge is untenable and does not warrant a penalty because:-

a. *SPCPL was under a bona-fide impression that the statutory auditor's certificate on utilisation of funds was to be given, only if there was a material deviation from the disclosed objects of the issue. There having been no deviation in the utilization of the issue proceeds, there was no need for such a certification as believed by SPCPL;*

b. *Indeed, Regulation 52(7) of the LODR Regulations, prior to its amendment with effect from September 7, 2021 vide the LODR Regulations (Fifth Amendment) Regulations, 2021 ("**LODR Fifth Amendment**"), stated that "The listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, **a statement indicating material deviations, if any, in the use of proceeds** of issue of non-convertible debt securities and non-convertible redeemable preference shares from the objects stated in the offer document.";*

c. *On a plain reading of Regulation 52(7), it is clear that unless there was a deviation, no such statement was required to be furnished to the exchanges. SPCPL was under the bona-fide impression that this interpretation would extend to Regulation 59 as well which requires information on utilization of funds to be furnished to the debenture trustee. Besides, there is no allegation that the funds were utilized contrary to the terms of the issue;*

d. *Union Bank as a participant in the OTR was privy to the affairs of SPCPL and therefore in any event, no prejudice whatsoever has been occasioned by the alleged non-disclosure;*

e. *It is noteworthy that SEBI amended the LODR Regulations with effect from September 7, 2021 which required issuer companies to provide "a statement indicating the utilization of issue proceeds of non-convertible securities, which shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieve." Admittedly, this amendment cannot be retrospectively applied to SPCPL since its NCDs ceased to exist with effect from April 1, 2021;*

f. *Therefore, when SEBI did not even mandate disclosure of such information to the stock exchanges at the relevant time, the non-furnishing of such information to the debenture trustee, is at best, a technical and venial breach;*

g. *Moreover, at the relevant time, SEBI did not even mandate filing of the annual report to the stock exchanges, for issuers of listed debt securities. Pursuant to the LODR Fifth Amendment **with effect from September 7, 2021**, Regulation 53 was amended by inserting a sub-regulation which required a copy of the annual report to be filed with the stock exchanges and the debenture trustee. This too cannot be applied to SPCPL as the NCDs ceased to exist on April 1, 2021. Indeed, the SEBI Board memorandum which proposed the amendments to the LODR Regulations itself stated:-*

*"Regulation 53 of the LODR Regulations prescribes a list of disclosures to be made in the Annual Report. **However, the regulation does not specifically mandate submission of Annual Report to Stock Exchanges.** It is pertinent to note that issuers who have listed their specified securities are required to submit Annual Report with Stock Exchanges and publish on website of listed entities…*

*Availability of Annual Report in the public domain would be useful for investors and other stakeholders at large, as it includes information related to the company, auditors report, directors report, etc. **Accordingly, it is proposed to prescribe debt listed entities for submission of Annual Report with Stock Exchanges and publish on its website. Further, timeline for submission of Annual Report may be made similar to that applicable for issuers of specified securities.**"*

h. *Therefore, when SEBI did not mandate disclosure of the annual report to the stock exchanges at the relevant time, the non-furnishing of such information to the debenture trustee, is at best, a technical and venial breach;*

7. ***Response to the charge pertaining to failure to create security for the NCDs in alleged contravention of Regulation 54(1)[5]:-***

The charge is untenable as:-

a. *The debenture trustee has wrongly stated that no "security cover" was created ignoring the fact SPCPL had sufficient current assets (**See financial statements as on March 31, 2020 @ Page 23 of the Reply**).*

b. *Approvals of other lenders for creation of security was also required and being a high-stressed time with the OTR being worked on, it was not a rapid exercise to get such no-objections from other lenders;*

c. *Any grievance of a delay in creation of security cannot be conflated with non-creation of security;*

8. ***Response to the charge pertaining to alleged failure to update the website in alleged violation of Regulation 62[6]:-***

The charge is untenable as:-

a. *The SCN has wrongly relied on the provisions of Regulation 62, as amended pursuant to the LODR Fifth Amendment which came into force on September 6, 2021. Prior to the amendment, Regulation 62(1)(b) required an issuer to provide "financial information including complete copy of the annual report including balance sheet, profit and loss account, directors report etc.";*

b. *Indeed, it was only post the LODR Fifth Amendment Regulations that Regulation 62(1)(b) required inter-alia "financial information including: (i) **notice of meeting of the board of directors where financial results shall be discussed; (ii) financial results**, on the conclusion of the meeting of the board of directors where the financial results were approved", to be provided.*

c. *The SCN has however, in addition to charging SPCPL for failure to provide the annual report together with the financial results and letters, notices concerning NCDs, has also charged SPCPL for failure to provide: (i) notice of meeting of the board of directors where financial results shall be discussed and (ii) financial results on conclusion of the board meeting. The latter was not required to be furnished at the relevant time; and*

d. *The non-disclosure of the financial information on the website is connected with the charge pertaining to non-disclosure of financial results which has been explained earlier.*

9. ***Response to the charge pertaining to failure to take approval of the exchanges for conversion of the NCDs in violation of Regulation 59:-***

a. *This has already been dealt with in paras 26.6 (a) to 26.6 (e) of the Reply @ Pages 18 to 19 and the submissions are not being repeated in the interests of brevity; and*

b. *Suffice it to say, there was no modification of terms of the NCDs, whereas the very existence of the NCD came to an end. A prepayment of the NCD in the form of an accelerated conversation into a term loan, and that too when the NCD of Rs. 200 crores was just a part of the total exposure of over Rs. 600 crores to Union Bank, is not a modification of the terms of the NCD, but an extinguishment of the NCD.*

…..
"
.

D. CONSIDERATION OF ISSUES AND FINDINGS

ISSUE I - Whether the Noticee has violated the provisions of LODR Regulations, 2015, as alleged in the SCN and as also brought out under Para 3 above?

ISSUE II - Do the violations, if any, attract monetary penalty under Section 15A(b) and 15HB of SEBI Act 1992?

ISSUE III - If so, what should be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

ISSUE I - Whether the Noticee has violated the provisions of LODR Regulations, 2015, as alleged in the SCN and as also brought out under Para 3 above?

The relevant text of the various provisions alleged to have been violated are reproduced as under:

Regulation 7(3) of LODR Regulations

"….

(3) The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within [44][thirty days from the] end of [45][***] the financial year, certifying compliance with the requirements of sub-regulation (2).
…."

Regulation 51 of LODR Regulations

"….

Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.
51.(1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend [248][or redemption of non-convertible securities].
[249][Explanation -The expression 'promptly inform', shall imply that the stock exchange shall be informed as soon as reasonably possible but not later than twenty-four hours from the date of occurrence of the event or receipt of information. In case the disclosure is made after twenty-four hours of the date of occurrence of the event or receipt of information, the listed entity shall, along with such disclosures provide an explanation for the delay]

[250][(2) Without prejudice to the generality of sub-regulation (1), the listed entity who has 251[listed non-convertible securities] shall make disclosures as specified in Part B of Schedule III.]

[252][(3) The listed entity shall disclose on its website, all such events or information which have been disclosed to the stock exchange(s) under this regulation and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.]

…."

Regulation 52(1), 52(2), 52(4), 52(5), 52(7) and 52(8) of LODR Regulations

"….
Financial Results.
52.[253][(1) The listed entity shall prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board within forty-five days from the end of the quarter, other than last quarter, to the recognised stock exchange(s):
[254][Provided that for the last quarter of the financial year, the listed entity shall submit un-audited or audited quarterly and year to date standalone financial results within sixty days from the end of the quarter to the recognised stock exchange(s):]
Provided [255][further]that in case of entities which have listed their debt securities, a copy of the financial results submitted to stock exchanges shall also be provided to Debenture Trustees on the same day [256][***].]

(2) The listed entity shall comply with following requirements with respect to preparation, approval, authentication and publication of annual and [257][quarterly] financial results:

(a)[258][Un-audited financial results on quarterly basis shall be accompanied by limited review report prepared by the statutory auditors of the listed entity, in the format as specified by the Board:
Provided that in case of issuers whose accounts are audited by the Comptroller and Auditor General of India, the report shall be provided by any practising Chartered Accountant.]
(b)[259][The quarterly] results shall be taken on record by the board of directors and signed by the managing director / executive director.
(c)The audited results for the year shall be submitted to the recognised stock exchange(s) in the same format as is applicable for 260[quarterly]financial results.
(d)[261][The annual audited standalone and consolidated financial results for the financial year shall be submitted to the stock exchange(s) within sixty days from the end of the financial year along with the audit report:
[262][Provided that issuers, which are required to be audited by the Comptroller and Auditor General of India under applicable law, shall submit:

(i) un-audited financial results along with the limited review report issued by the Comptroller and Auditor General of India or an auditor appointed by the Comptroller and Auditor General of India or a Practising Chartered Accountant, to the stock exchange(s), within sixty days from the end of the financial year; and
(ii) the financial results, audited by the Comptroller and Auditor General of India, to the stock exchange(s), within nine months from the end of the financial year.]

(e)Modified opinion(s) in [263][audit reports/limited review reports] that have a bearing on the interest payment/ dividend payment pertaining to non-convertible [264][securities]/ redemption or principal repayment capacity of the listed entity shall be appropriately and adequately addressed by the board of directors while publishing the accounts for the said period.

[265][(f)[266][***]]

[267][(2A) The listed entity shall submit a statement of assets and liabilities and statement of cash flows as at the end of every half year, by way of a note, along with the financial results.]
…."
"….
(4) [278][The listed entity, while submitting quarterly and annual financial results, shall disclose the following line items along with the financial results:
(a) debt-equity ratio;
(b) debt service coverage ratio;
(c) interest service coverage ratio;
(d) outstanding redeemable preference shares (quantity and value);
(e) capital redemption reserve/debenture redemption reserve;
(f) net worth;
(g) net profit after tax;
(h) earnings per share:
(i) current ratio;
(j) long term debt to working capital;
(k) bad debts to Account receivable ratio;
(l) current liability ratio;
(m) total debts to total assets;
(n) debtors' turnover;
(o) inventory turnover;
(p) operating margin percent;
(q) net profit margin percent:
Provided that if the information mentioned in sub-regulation (4) above is not applicable to the listed entity, it shall disclose such other ratio/equivalent financial information, as may be required to be maintained under applicable laws, if any.][279][***]

[280](5)[***]}
…."

"….

(7) [282][The listed entity shall submit to the stock exchange(s), along with the quarterly financial results, a statement indicating the utilisation of the issue proceeds of non-convertible securities, in such format as may be specified by the Board, till such proceeds of issue have been fully utilised or the purpose for which the proceeds were raised has been achieved.]

(7A) [283][The listed entity shall submit to the stock exchange(s), along with the quarterly financial results, a statement disclosing material deviation(s) (if any) in the use of issue proceeds of non-convertible securities from the objects of the issue, in such format as may be specified by the Board, till such proceeds have been fully utilised or the purpose for which the proceeds were raised has been achieved.]

(8) The listed entity shall, within two [284][working] days of the conclusion of the meeting of the board of directors, publish the financial results and [285][the line items]referred to in sub-regulation (4), in at least one English national daily newspaper circulating in the whole or substantially the whole of India[286][:]
[287][Provided that if the listed entity has submitted both standalone and consolidated financial results, to the stock exchange(s), it shall publish consolidated financial results along with the line items referred to in sub-regulation (4), in the newspaper.]
…."

Regulation 54(1) and 54 (2) of LODR Regulations

"….

[291][Security Cover].
54. [292][(1) In respect of its 293[secured] listed non-convertible debt securities, the listed entity shall maintain hundred per cent. [294][security cover or higher security cover] as per the terms of offer document/Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount [295][and the interest thereon] at all times for the non-convertible debt securities issued.]
(2) The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.
…."

Regulation 56 of LODR Regulations

"….
Documents and Intimation to Debenture Trustees.
56. (1) The listed entity shall forward the following to the debenture trustee promptly:
(a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised:
Provided that in the case of debentures or preference shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.
(b) a copy of all notices, resolutions and circulars relating to-
(i) new issue of non convertible debt securities at the same time as they are sent to shareholders/ holders of non convertible debt securities;
(ii) the meetings of holders of non-convertible debt securities at the same time as they are sent to the holders of non convertible debt securities or advertised in the media including those relating to proceedings of the meetings;
(c) intimations regarding :
(i) any revision in the rating;
(ii) any default in timely payment of interest or redemption or both in respect of the non convertible debt securities;
(iii) failure to create charge on the assets;
[300][(iv) all covenants of the issue (including side letters, accelerated payment clause, etc.)]
[301][(d) a half-yearly certificate regarding maintenance of hundred percent [302][security cover or higher security cover]as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed non-convertible debt securities, by the statutory auditor, along with the [303][financial results, in the manner and format as specified by the Board]:Provided that the submission of [304][this]certificate is not applicable where bonds are secured by a Government guarantee.]

[305][(1A) The listed entity shall also disclose to the Debenture Trustee at the same time as it has intimated to the stock exchange, all material events and/or information as disclosed under regulation 51 of these regulations in so far as it relates to the interest, principal, issue and terms of non-convertible debt securities,

rating, creation of charge on the assets, notices, resolutions and meetings of holders of non-convertible debt securities.]

(2) The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.

(3) The listed entity may, subject to the consent of the debenture trustee, send the information stipulated in sub-regulation (1), in electronic form/fax. …"

…."

Regulation 59 of LODR Regulations

"…

Structure of non convertible debt securities and non convertible redeemable preference shares.

59. (1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :

(a) the structure of the [318][non-convertible debt securities] debenture in terms of coupon, [319][***]redemption, or otherwise.

(b) the structure of the non-convertible redeemable preference shares in terms of dividend [320][***], redemption, or otherwise.

(2) The approval of the stock exchange referred to in sub-regulation (1) shall be made only after:

(a) approval of the board of directors and the debenture trustee [321][***] and

(b) [322][obtaining consent in writing of the holders of not less than three-fourths, by value of holders of that class of securities:

Provided that the listed entity shall provide the facility of remote e-voting to facilitate such consent.]

…."

Regulation 62 of LODR Regulations

"….

62. (1)The listed entity shall maintain a functional website containing the following information about the listed entity:-

(a) details of its business;

[331][(aa) composition of the Board;]

(b) [332][financial information including:

(i) notice of meeting of the board of directors where financial results shall be discussed;

(ii) financial results, on the conclusion of the meeting of the board of directors where the financial results were approved;

(iii)complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;]

(c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;

(d) email address for grievance redressal and other relevant details;

(e) name of the debenture trustees with full contact details;

(f) the information, report, notices, call letters, circulars, proceedings, etc concerning non-convertible redeemable preference shares or non-convertible debt securities;

(g) all in formation and reports including compliance reports filed by the listed entity;

(h) information with respect to the following [333][***]:

(i)default by issuer to pay interest [334][***]or redemption amount;

(ii)failure to create a charge on the assets;

(iii)[335][***]

[336][(i) all credit ratings obtained by the entity for all its listed non-convertible securities, updated immediately upon any revision in the ratings;

(j) statements of deviation(s) or variation(s) as specified in sub-regulation (7) and sub-regulation (7A) of regulation 52 of these regulations;

(k) annual return as provided under section 92 of the Companies Act, 2013 and the rules made thereunder.]

[337][(1A)The listed entities to whom regulations 15 to regulation 27 are applicable shall also make the following additional disclosures on their website:

(a) composition of the various committees of the board of directors; (b) terms and conditions of appointment of independent directors;

(c) code of conduct of the board of directors and senior management personnel;

(d) details of establishment of vigil mechanism/ whistle blower policy;

(e) criteria of making payments to non-executive directors, if the same has not been disclosed in the annual report;

(f) secretarial compliance report as per sub-regulation (2) of regulation 24A of these regulations;

(g) policy on dealing with related party transactions;

(h) policy for determining 'material' subsidiaries;

(i) details of familiarization programmes imparted to independent directors including the following details:-

(i) number of programmes attended by the independent directors (during the year and on a cumulative basis till date),

(ii) number of hours spent by the independent directors in such programmes (during the year and on cumulative basis till date), and

(iii) other relevant details.]

(2) The listed entity may also issue a press release with respect to the events specified in [338][sub-regulations(1)and (1A)].

(3) The listed entity shall ensure that the contents of the website are correct and updated at any given point of time.

[339][(4) The listed entity shall update any change in the content of its website within two working days from the date of such change in content.]

….."

.

***(**Note: For detailed /complete /exact text of the provisions, relevant Acts /Regulations /Circulars etc., may please be referred)*

11. It is noted that the Noticee as part of its submissions has raised certain technical contentions which have, broadly speaking been repeatedly raised throughout. Accordingly, before proceeding to deal with the matter on merit, I would first deal with the technical contentions repeatedly mentioned by the Noticee in its submissions vide letter dated February 01, 2023 to the SCN.

11.1. I note that Noticee has repeatedly submitted, w.r.t alleged violation of Regulation 7(3), 51, 52(1), 52(2), 52(4), 52(5), 52(7) and 52(8), 56 of LODR Regulation, 2015, that the alleged violations are technical breach and does not deserve to be met with a penalty. In this regard, I note that the submissions of the Noticee are in nature of admission in so far as it has inter alia submitted that alleged violations are technical breach and /or the same have not been disputed by the Noticee. As regards the contention of the Noticee that the said violations were technical breach, the same has also been dealt in paragraphs dealing with the respective alleged provisions.

11.2. I note that the Noticee has repeatedly submitted w.r.t alleged violation of LODR Regulation, 2015 "*None of the alleged violations which occurred during the height of the COVID-19 pandemic, even if established, have resulted in any disproportionate gain and/or unfair advantage to SPCPL and/or any prejudice to any stakeholder. None of the alleged violations are repetitive in nature. Apart from this, SPCPL has never been charged with or been guilty of violation of any SEBI law or regulations and this is the first time SPCPL has in fact listed its NCDs."* In this regard, in my opinion, 'violation of provisions of law', as alleged and '*disproportionate gain and /or unfair advantage to SPCPL and /or any prejudice to any stakeholder'* are two distinct aspects and the latter cannot do away with the alleged violations. At best, such contentions can be mitigating factors, as are also part of Section 15J to be considered while adjudging matters under adjudication. In this regard, reliance is also placed on the order of Hon'ble SAT in the matter of ***Shri Virendrakumar Jayantilal Patel vs. SEBI*** (Misc. application no.140 of 2014 and appeal no.299 of 2014) dated October 14, 2014, Hon'ble SAT inter alia held:

> "….
> *Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.*
> *…."*
> .

11.3. I note that Noticee has repeatedly submitted, w.r.t alleged violation of Regulation 52, 54, 56 and 62 of LODR Regulations that *COVID-19* *pandemic and the accompanying nationwide lockdown, which lasted for over 2 years impacted the administrative working of all businesses and offices, including that of SPCPL. Almost all employees of SPCPL were working from home and / or working in rotation from the office. Financial stress that SPCPL was facing as also the acute problems being faced by its employees, whether it was travel related or health related or financial, all contributed towards certain unintentional / inadvertent lapses creeping into compliance related actions."*

In this regard, I note that the submissions of the Noticee are in the nature of admission in so far as it has inter alia been submitted by the Noticee, '…*all contributed towards certain unintentional / inadvertent lapses creeping into compliance related actions…*'. This apart, in my opinion, the provisions alleged to have been violated were /are requirements of extant applicable securities laws, which SEBI is duty-bound to enforce. As regards, situation arising out of covid-19 pandemic, I note that Noticee as part of its submissions has itself inter alia drawn reference to and cited several instances of relaxations allowed by SEBI, albeit relating to provisions other than those alleged to have been violated and subject matter of instant proceedings, which evidently indicates that having regard to the situations arising out of covid-19, wherever deemed necessary, relaxations had been allowed by the regulator viz., SEBI. In any case, Noticee was at liberty to approach the relevant authority then, SEBI in present context, for any relaxation that it may have desired but did not have the option to not comply with the extant applicable provisions of law. In view thereof and in particular considering that the provisions of securities laws allegedly violated by the Noticee, were applicable not just for the Noticee as a listed company but for the entire market viz., all listed companies, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

11.4. Noticee has repeatedly submitted w.r.t alleged violations of Regulation 51, 52, 56, of LODR Regulations, 2015 that the sole debenture holder remained informed at all times of SPCPL's financial situation and other relevant developments.

In this regard, considering that the requirements as per the stated provisions were about disclosure inter alia to the stock exchange /debenture trustee, in my opinion, the contention of the noticee is out of context and accordingly devoid of merit and hence not acceptable.

12. I now proceed with in respect to each of the alleged violation against the Noticee as alleged vide the SCN, as hereunder:

12.1. **It was inter alia alleged in the SCN that Noticee had not complied with Regulation 7(3) of LODR Regulations.**

12.1.1. In this regard, SEBI observed that in respect of the disclosures w.r.t Regulation 7(3) made by the company on October 14, 2020 and April 14, 2021, the compliance certificates were signed by the company's whole time director instead of its compliance officer.

12.1.2. Here it would first be relevant to draw reference to the relevant provisions of the LODR Regulation alleged to have been violated, which is reproduced as under:

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
"
…
Share Transfer Agent.

7. (3) The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within [44][thirty days from the] end of [45][***] the financial year, certifying compliance with the requirements of sub- regulation (2).
…"

.

[44] Substituted for "one month of" by the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5.5.2021.
[45] The words "each half of" omitted by the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5.5.2021.

12.1.3. In this regard, the Noticee as reply to the SCN vide letter dated February 01, 2023 has submitted that, "SPCPL appointed one Universal Capital Securities Private Limited ("Universal"), as its share transfer agent. Accordingly, in compliance with the requirement of Regulation 7(3) of the LODR Regulations, SPCPL submitted its compliance certificates to the BSE. The said compliance certificates submitted to the BSE, and which are in question, viz. compliance certificates dated October 14, 2020 and April 14, 2021, have been signed by a whole time director of SPCPL and Universal, in its capacity as the share transfer agent."

12.1.4. Further, the Noticee has submitted that "*It is important to not lose sight of the fact that what is relevant is whether SPCPL is in compliance with the underlying requirements, viz. having in place a share transfer facility. Secondly, it is also important that this compliance is disclosed to the exchange – which was also duly done. The fact that this disclosure was signed by whole time director and not the compliance officer cannot in any manner dilute or impact the substance of the compliance. Secondly, a whole time director is not an employee at a level lower that the compliance officer. In fact, the compliance officer reports to the whole time directors. In view of this, and the fact that there has been complete compliance of Regulation 7(2) and substantial compliance of Regulation 7(3), the present allegation ought not to be seriously pursued against SPCPL considering that this alleged violation is purely hyper technical.*"

12.1.5. In this regard, it is noted that the submissions of the Noticee are in nature of admission in so far as that Noticee has not disputed that the compliance certificates dated October 14, 2020 and April 14, 2021 with regard to disclosures under Regulation 7(3) were not signed by the compliance officer of the Noticee. Further in this regard, from the material available on record, it is noted that Ms. Gandhali Upadhye was the Company Secretary and Compliance Officer of the Noticee as on the date of listing and that she had resigned from the position of company secretary and compliance officer of the company with effect from December 11, 2020 and that Ms. Sharmila Biswas was appointed as the Company Secretary and Compliance Officer of the Company to hold office with effect from December 11, 2020. In short, the Noticee did have a compliance officer during the relevant point of time.

12.1.6. I note that the Noticee has inter alia contended that the compliance officer reports to the whole time directors. In this regard, it would also be relevant to draw reference to provisions of Regulation 6 of SEBI LODR Regulations, 2015. I note that SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 lays down a framework including by way of various regulations casting an obligation applicable inter alia to listed entities in India and one of the primary requirements is about appointment of a qualified company secretary as the compliance officer. As per provisions of Regulation 6 of LODR Regulations, 2015, besides the requirement of being a qualified Company Secretary the Compliance Officer of the listed entity is inter alia responsible for ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit, co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time, ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations etc.

12.1.7. It is thus evident that special status has been afforded to the position of Compliance Officer as per provisions of LODR Regulations, 2015 in so far as provisions of LODR Regulations mandate such a position to be by a person having specific professional qualification i.e., qualified company secretary and specific obligations and responsibilities been cast upon the Compliance Officer as per the provisions of LODR Regulations. Notwithstanding the contention that the compliance officer reported to the whole time directors, the compliance officer had the obligation to perform his duties independent of the whole time director and having regard to provisions of LODR Regulations, in particular Regulation 6 of the LODR Regulations, 2015. That the provisions of the Regulation 7(3) specifically required that the said compliance certificate be duly signed by the compliance officer of the listed entity, cannot be overlooked.

12.1.8. In any case, I also note that that save for what had been contended by the Noticee, the Noticee has not demonstrated and /or provided any reasons whatsoever as why the said certificate was not signed by the Compliance Officer, despite there being compliance officers during the relevant period and despite Regulation 7(3) of LODR Regulations being categorical that, 'the listed entity shall submit a compliance certificate to the exchange, duly signed by … the compliance officer of the listed entity…'. In other words, in the instant matter, I note that despite there being a compliance officer and requirement as per provisions of law, the compliance certificates were signed by other than the compliance officer and no reason as to what were the compelling circumstances for such a deviation, that too repeatedly viz., on two occasions involving different points of time, have been provided. Accordingly, the contentions of the Noticee in this regard are devoid of merit and cannot be accepted.

12.1.9. Further in this regard, I note that the Noticee as reply to the SCN vide letter dated February 27, 2023 had inter alia broadly contended on similar grounds save for certain additional contentions which are being dealt as follows. It had inter alia been contended by the Noticee that, '… Even under regulations issued by SEBI, the compliance officer reports to the directors (See Regulation 6(2)(b) of the LODR Regulations);…'. In this regard it would be relevant to draw reference to the provisions of Regulation 6(2)(b) of LODR Regulations which reads as follows:

'

…

Compliance Officer and his [40][/her] Obligations.

…..

***6.** (2) The compliance officer of the listed entity shall be responsible for-*

….

(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.

… '

.

12.1.10. I note the expression used in Regulation 6(2)(b) is 'Board' and not 'Directors' and /or 'Board of Directors'. Further, I note that expression 'Board' has been defined under Regulation 2(1)(c) of LODR Regulations, which is reproduced as under:

'

…

Definitions.

2. (1) In these regulations, unless the context otherwise requires:—

…

(c) "Board" means the Securities and Exchange Board of India established under section 3 of the Act ;

…'

.

Accordingly, the requirement of Regulation 6(2)(b) as cited by the Noticee ought to be read along with relevant provisions of LODR Regulations, viz., Regulation 2(1)(c) in instant matter. In view thereof, the contention of the Noticee in this regard is evidently misplaced and out of context and hence cannot be accepted.

12.1.11. In view thereof and in particular in backdrop of the fact that provisions of LODR Regulations universally apply to the listed entities and not just Noticee alone, special status accorded to the position of the Compliance

Officer of a listed entities in so far as specific obligations and /or responsibilities have been cast upon the Compliance Officer as per the provisions of LODR Regulations, as also briefly touched upon in the foregoing, the fact that the provisions of Regulations 7(3) of LODR Regulations, 2015, specifically required that the compliance certificate be inter alia signed by the compliance officer of the listed entity viz., Noticee in present matter, that the Noticee had Compliance Officer during relevant point of time, that no reasons have been provided as to why the said compliance certificates, on more than one occasion, were signed by someone other than the Compliance Officer of the Noticee, despite the fact that the provisions of securities law required so, in my opinion, such deviation is nothing but in nature of clear defiance of the applicable provision of law viz., Regulation 7(3) of LODR Regulations, 2015 in the instant matter.

12.1.12. In view thereof, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I hold that the allegation that that Noticee had not complied with Regulation 7(3) of LODR Regulation, stands established.

12.2. **It was inter alia alleged in the SCN that the Noticee had violated the provisions of Regulation 51 of LODR Regulations.**

12.2.1. In this regard, from the material available on record it is noted that SEBI had inter alia observed that the Noticee did not inform the Exchange about the conversion of its NCDs into term loan and further that the credit rating of the company got revised twice from the date of its issuance (May 29, 2020) till the date of conversion of its NCDs to term loan (i.e. March 31, 2021) but the said information had not been disclosed to the Exchange.

12.2.2. In this regard, it would be pertinent to draw reference to relevant provisions of Regulation 51 of SEBI LODR Regulations, 2015 which inter alia reads as under:

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

"….

Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.

51. (1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend [248][or redemption of non-convertible securities].

…..

[250][(2) Without prejudice to the generality of sub-regulation (1), the listed entity who has [251][listed non-convertible securities] shall make disclosures as specified in Part B of Schedule III.]

[252][(3) The listed entity shall disclose on its website, all such events or information which have been disclosed to the stock exchange(s) under this regulation and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.]

…."

12.2.3. In this regard, it is noted that the Noticee vide its submissions has inter alia contented that, '… *it is submitted that the aforesaid two heads have no impact on the performance /operation of the listed entity. Secondly, the said information is not price sensitive information. Thirdly, the only entity for whose benefit all such information was required to be submitted, viz. Union Bank, was always in the know of such information in a timely manner since it had already opted for conversion of NCDs into a term loan on 26 October 2020.*

12.2.4. In this regard, as regards the allegation pertaining to revisions in rating, I note that the Noticee has not disputed the revisions in ratings, however has inter alia contended about same having no impact. I note that Noticee has inter alia also contended that change in credit rating is not specified in Part B of Schedule III of the LODR Regulations.

12.2.5. In this regard, I find it relevant to draw reference to Regulation 51(2) which specifically requires listed entities to make disclosures as specified in Part B of Schedule III. I note that 'revision in the rating' is specifically covered under Clause 13 of Part A of Part B of Schedule III r/w Regulation 51(2) of LODR Regulations, as an event consequent to happening of which listed entities are obligated to promptly inform the stock exchange(s). Thus, Noticee as listed entity was obligated to promptly inform the stock exchange, which it failed to do. In view thereof the contention of the Noticee in this regard is evidently misplaced and hence devoid of merit and not acceptable.

12.2.6. Further, I note that regulations do not provide any leverage that disclosure would not be required if there was only one holder of security. If the contentions of Noticee are to be accepted, it would compromise the intent/ foundation structure/ foundation of disclosure of based regime. Considering that revision in the rating was specifically covered under Clause 13 of Part A of Part B of Regulation 51(2) of LODR Regulations, Noticee was required to make relevant disclosures in this regard as per extant applicable provisions.

12.2.7. Relevant text of Clause 13 of Part A of Part B of Schedule III r/w Regulation 51(2) of LODR Regulations, is reproduced as under:

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

PART B: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: NON-CONVERTIBLE [377][***] SECURITIES [378][***]

[**See **Regulation 51(2)]

A. The listed entity shall promptly inform [379][***] the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend [380][or redemption payment] of non-convertible [381][***] securities [382][***] including :

"

…..

(13) any revision in the rating;
…..
"
.

12.2.8. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable and the allegation that, the credit rating of the company got revised twice from the date of its issuance till the date of conversion of its NCDs to term loan, but the said information had not been disclosed to the Exchange stands established.

In view thereof, in this regard, I hold that Noticee had violated the provisions of Regulation 51 of LODR Regulations.

12.2.9. As regards the other allegation that Noticee did not inform the Exchange about the conversion of its NCDs into term loan, I note that in this regard, the Noticee has inter alia disputed and denied that it had failed to intimate BSE about the conversion of NCDs into a term loan inter alia stating that SPCPL had *vide* its letter dated 14 April 2021 intimated BSE of the conversion of the NCDs. In this regard, as part of its submissions, the Noticee has inter alia also contended that, '…In terms of the explanation to Regulation 51(1) of the LODR Regulations, SPCPL had *as soon as practically possible* informed BSE of the conversion of the NCDs on 14 April 2021. Therefore, the allegations that SPCPL failed to intimate BSE about the conversion of NCDs into term loan cannot be sustained and is denied….'. In this regard, I note that while as per SEBI on examining of Exchange comments and its website, it was observed that Noticee did not inform the Exchange about the conversion of its NCDs into term loan, however as per material available on record specific documents relating to comments of the stock exchange and website, basis which SEBI had observed so, could not be found on record. Further in this regard, I note that relevant details like date of document relating to comments of the Exchange had also not been cited. Accordingly, having regard to the facts and circumstances of the matter, material available on record, benefit of doubt is allowed to the Noticee, in this regard.

12.2.10. In view thereof, I hold that the allegation that the Noticee did not inform the Exchange about the conversion of its NCDs into term loan does not stand established.

12.3. **It was inter alia alleged in the SCN that the Noticee had violated the provisions of Regulation 52(1), 52(2), 52(4), 52(5), 52(7) and 52(8) of LODR Regulations, 2015.**

12.3.1. Broadly speaking, following was inter alia alleged in respect of Regulation 52 of LODR Regulations:

"….

1.1.1. Regulation 52(1) of LODR Regulations, which requires listed entity to submit un-audited or audited financial results on a half yearly basis within 45 days from the end of the half year,

1.1.2. Regulation 52(2) of LODR Regulations, which requires submission of un-audited half-yearly financial results along with limited review report,

1.1.3. Regulation 52(4) of LODR Regulations, which requires disclosure of line items prescribed under Regulation 52(4) along with the half yearly / annual financial results,

1.1.4. Regulation 52(5) of LODR Regulations, which requires submission of a certificate signed by the Debenture Trustee taking note of the contents prescribed under regulation 52(4).

1.1.5. Regulation 52(7) of LODR Regulations, which requires submission of a statement indicating material deviations, if any, in the use of proceeds along with the half yearly financial results.

1.1.6. Regulation 52(8) of LODR Regulations, which requires that the listed entity shall, within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results and statement referred to in Regulation 52 (4), in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

…."

12.3.2. I note that while Regulation 52(1) of SEBI (LODR) Regulations, 2015 requires for submission of the financial results within forty-five days from the end of the half year and other alleged provisions viz., Regulation 52(2), 52(4), 52(5), 52(7) and 52(8) are related to Regulation 52(1) and therefore incidental and if Regulation 52(1) itself is not complied the others being incidental would inevitably follow.

12.3.3. In this regard, it was inter alia observed by SEBI that Noticee had not submitted financials for the period ended September 30, 2020 to the Stock Exchange. In this regard, the company had submitted to SEBI that it was undertaking restructuring under RBI onetime resolution (OTR) scheme and due to the ongoing pandemic, financial results for the half year ended September 30, 2020 was not reported.

12.3.4. In this regard, I note that Noticee had inter alia contending ' …. SPCPL's financial health was well known and available in the public domain…, sole debenture holder was fully in the loop on the results…, non-disclosures therefore were inadvertent and attributable to the impact of the pandemic…, technical nature of the breach is evident from the fact that the financial information of SPCPL was available to the sole debenture holder – Union Bank…, Union Bank was fully involved in every step of the conversion of the NCDs into a term loan. Therefore, any purported non-disclosure by SPCPL of the aforesaid regulation has not had any substantive or other impact on Union Bank of India or any other concerned stakeholder…,' stated that no penalty is warranted on account of the alleged non-disclosure. In this regard, firstly I note that the submissions of the Noticee are in nature of admission in so far it has inter alia been stated by the Noticee that, ' …non-disclosures therefore were inadvertent …'. Further in this regard, I note that while the provisions of Regulation 52 inter alia relate to requirement of submission of information to the recognized stock exchange(s) and /or Debenture Trustee the submission of the Noticee contend about sole debenture holder being in loop etc., and hence out of context. In my opinion, the provisions of the Regulation being applicable to entire class of listed entities and there being no exception as such as regards same not being applicable in case there is only one security holder, as being contended by the Noticee, is devoid of merit and cannot be accepted. Noticee has inter alia also drawn reference to adjudication order in the matter of Sinew Developers Pvt. Ltd (cited order for brevity). In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn may be devoid of merit. I also note that the cited order inter alia deals with violation of one of the LODR Regulations viz., Regulation 52 while the instant proceedings relate to alleged violation of LODR Regulations other than Regulation 52. I also note that in the order cited by the Noticee itself, penalty had been levied.

12.3.5. In this regard, the Noticee as reply to the SCN had submitted that *"SPCPL denies that it was required to make the necessary compliances under Regulation 52 of the LODR Regulations because the NCDs were converted to term loan only on 31 March 2021. As is evident from the sequence of events above, the OTR was invoked and approved by the lenders of SPCPL on 26 October 2020."*

12.3.6. In this regard, I note that the submissions of the Noticee as reply to SEBI and as reply to the SCN are in nature of admission in so far, as per SEBI the Noticee had inter alia contended that financial results for the half year ended September 30, 2020 was not reported and as reply to the SCN it has inter alia contended that it was not required to make necessary compliances under Regulation 52 of the LODR Regulations.

12.3.7. As regards the contention of the Noticee that SPCPL denies that it was required to make the necessary compliances under Regulation 52 of the LODR Regulations, considering that Noticee continued to be a listed entity during relevant period and that as per Noticee itself the NCDs got converted /extinguished on March 31, 2021, the contention of the Noticee in this regard is devoid of merit and hence not acceptable.

12.3.8. Further in this regard, I also note that as per the material available on record, Noticee vide its letter dated February 13, 2021 to Axis Trustee Services Limited (hereinafter also referred to as 'Debenture Trustee' / 'DT' / 'ATSL' / 'Trustee') had itself inter alia stated that "*The Company is yet to submit half yearly results for the half year ended 30.09.2020.* ". In this regard, I note that submissions of the Noticee now are contrary to the nature of communication by the Noticee to the Debenture Trustee during February 2021 and hence submissions as reply to the SCN now are nothing but apparently an afterthought and hence devoid of merit and not acceptable.

12.3.9. The Noticee has inter alia also contented that, "…*Taking note of the unprecedented impact of the COVID – 19 pandemic, SEBI issued several circulars pursuant to which compliance of certain provisions of the LODR Regulations were relaxed and due date(s) extended."* The Noticee has cited SEBI Circular bearing number SEBI/HO/DDHS/ON/P/2020/41 regarding relaxation from compliance with certain provisions of LODR Regulations inter alia with respect to NCDs, Circular bearing number SEBI/HO/CFD/CMD1/CIR/P/2020/106 regarding additional relaxation from compliance with certain provisions of LODR Regulations viz. Regulation 33 and Regulation 52. I note from the abovementioned Circulars that in the former Circular, Relaxation was given for compliances due in March / April / May 2020 and in the later circular, relaxation was given for compliances due in March 2020 until 31 July 2020. Considering that the allegation in this regard is regarding not disclosing financials for the period ended September 30, 2020 the contention of the Noticee citing said two SEBI Circulars is out of context and devoid of merit and not acceptable.

12.3.10. In view thereof, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I hold that the allegation that the Noticee had violated the provisions of

Regulation 52(1), 52(2), 52(4), 52(5), 52(7) and 52(8) of LODR Regulations, 2015, stands established.

12.4. **It was inter alia alleged in the SCN that Noticee has violated Regulation 54(1) and 54(2) of LODR Regulations.**

Here it would be relevant to draw reference to the provisions of the Regulation 54(1) and 54(2), which requires as follows:

> "….
>
> *Regulation 54(1) of LODR Regulations requires that the listed entity shall maintain hundred percent asset coverage, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.*
>
> *Further, regulation 54(2) of LODR Regulations requires that the listed entities disclose the extent and nature of security created and maintained with respect to secured listed NCDs in the financial statements submitted to the Exchange.*
>
> ….
> "

12.4.1. Alleged Violation of Provisions of Regulation 54(1) of LODR Regulations:

12.4.2. In this regard, SEBI had inter alia observed that as per the term sheet, the company had issued secured NCDs with first ranking *pari passu* charge over the current assets of the company and that as per the reply of the debenture trustee the company had not created the security for its NCDs as required.

12.4.3. With regard to the alleged violation of Regulation 54(1) of LODR Regulations, Noticee vide its submission dated February 01, 2023 has submitted that *"SPCPL disputes and denies that it had not maintained hundred percent asset cover sufficient to discharge the principal amount of NCDs at all times. The said fact has already been conveyed to SEBI vide SPCPL's letter dated 20 December 2021. Vide the said letter, SPCPL* *had provided detailed explanation of asset cover with respect to the NCDs. The said letter shows that the asset cover of the NCDs was in the ratio of 11.09."*

12.4.4. In this regard, it is noted that while Noticee had contended so, however no documentary evidence had been provided by the Noticee. Accordingly, the submissions of the Noticee remain a mere statement and hence not acceptable. Further, in this regard, it is also noted from the material available on record that SEBI had sought details of compliance in this regard from the Debenture Trustee. Debenture Trustee vide its email dated January 03, 2022 inter alia confirmed that, 'the issuer did not create the security'.

12.4.5. Further in this regard, I also note from the copy of Noticee's letter dated February 13, 2021 addressed to the Debenture Trustee bearing subject, 'Compliance for the quarter ended 31st December, 2020 in the matter of Debentures issued by Shapoorji Pallonji And Company Private Limited', that the Noticee under Para 2 of Annexure III to said letter, drawing reference to ISIN INE404K07012 had inter alia submitted that, '… No security has been created by the Company for the NCD issue till date and therefore no security documents are executed by the Company and no insurance policy is required to be taken by the Company in this regard.'. In the same letter Noticee had under Para 4 of the Annexure III also submitted that, 'The debentures are not yet secured by receivables/book debts.', and also that, 'The Security for Debentures is yet to be created.'. Further as regards failure to create a charge on the assets, the Noticee under Para d-viii of Annexure III of its said letter dated February 13, 2021, relating to information with respect to the following events published in the website of the Company, if any, had submitted, '…No Objection Certificate yet to be received from existing lenders to create pari passu charge on the assets of the Company…' and under sub-para d-x of Para 4 it had submitted, 'The Company has not yet created any Security and it is proposed to create Security on the Current Assets of the Company.'.

12.4.6. In this regard Noticee vide letter dated February 27, 2023 inter alia also submitted as under:

> "
> …
>
> ***<u>Response to the charge pertaining to failure to create security for the NCDs in alleged contravention of Regulation 54(1)[5]:-</u>***
>
> *The charge is untenable as:-*
>
> c. *The debenture trustee has wrongly stated that no "security cover" was created ignoring the fact SPCPL had sufficient current assets (**See financial statements as on March 31, 2020 @ Page 23 of the Reply**).*
>
> d. *Approvals of other lenders for creation of security was also required and being a high-stressed time with the OTR being worked on, it was not a rapid exercise to get such no-objections from other lenders;*
>
> e. *Any grievance of a delay in creation of security cannot be conflated with non-creation of security;*
>
> *…*
> *"*
> *.*

12.4.7. In this regard, firstly I note that the submissions of the Noticee are conflicting in nature in so far as while initially it has been contended that, 'The *debenture trustee has wrongly stated that no "security cover" was created…', subsequently it has also been stated '… Approvals of other lenders for creation of security was also required and … , it was not a rapid exercise to get such no-objections from other lenders … ' and also that, ' … Any … delay in creation of security cannot be conflated with non-creation of security…' .* This apart, I note that while the Noticee has submitted so, neither copies of relevant documents with regard to creation of asset cover viz., Deed of Hypothecation {executed between the Issuer and the Debenture Trustee for creation of first pari pasu charge on the Current Assets in favour of the Debenture Trustee for the benefit of the Debenture Holder(s)}, have been submitted nor relevant details like date of Deed of Hypothecation, type of charge, date of creation of charge etc, have been provided rendering the submission as mere assertions being without relevant supporting details and documents.

12.4.8. In this regard, I note that as per the information memorandum the Debentures were to be secured in favour of the Debenture Trustee for the benefit of the Debenture Holders by way of a first ranking pari passu charge over the Current Assets of the Company by way of the Deed of Hypothecation. Nor has the Noticee submitted evidence with regard to uploading of the same on the website of the stock exchange, where the debt securities had been listed, within five working days of execution of the same, as was required in terms of the information memorandum.

12.4.9. In view thereof, having regard to the facts and circumstances of the matter, material available on record and submissions of Noticee, I hold that the allegation that Noticee has violated Regulation 54(1) of LODR Regulations, stands established.

Alleged violation of provisions of Regulation 54(2) of LODR Regulations:

12.4.10. As regards the alleged violation of Regulation 54(2) of LODR Regulations, it would be relevant to draw reference to the provisions of the said regulation, which are reproduced as under:

> ***Securities and Exchange Board of India (Listing Obligations And Disclosure Requirements) Regulations, 2015***
> *"*
> *…..*
> ***Asset Cover.***
> ***54. (2)*** *The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.*
> ***…..***
> *"*
> *.*

12.4.11. I note that as per Regulation 54(2) of LODR Regulations, 2015 a listed entity is required to disclose the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities in its quarterly, half-yearly, year-to-date and annual financial statements to the Stock Exchanges. In the instant matter, Noticee was thus required to disclose the extent and nature of security created and maintained with respect to its NCDs. In this regard, SEBI observed that Noticee has not submitted its financials for half year ended September 30, 2020 and in view thereof it was inter alia alleged that Noticee has violated the provision of regulation 54(2) of LODR Regulations.

12.4.12. With regard to the alleged violation of Regulation 54(2) of LODR Regulations, 2015, I note that Noticee as part of its submissions vide its letter dated February 01, 2023 had inter alia under Sub Para d of Para 26.4 submitted as under:

'

…..
Failure by SPCPL to disclose the asset coverage in the financial statements.

(d) With respect to the allegation that SPCPL has not disclosed the extent and nature of security created and maintained with respect to secured listed NCDs in the financial statements, SPCPL repeats and reiterates that it was undertaking restructuring under the RBI OTR and due to the ongoing pandemic, the financial results for the half year ended 30 September 2020 was inadvertently not reported.

…..
"

.

12.4.13. From the above, it is evident that the Noticee has not disputed the allegation and instead submissions of the Noticee are in nature of admission. As regards the contentions that it was undertaking restructuring and ongoing pandemic, I note that Noticee has not demonstrated that for the cited scenarios liberty /exception was allowed from required compliance with the extant applicable provisions of law and accordingly, going by the material available on record and submissions of the Noticee, in so far Noticee has itself admitted that the financial results for the half year ended September 30, 2020 were inadvertently not reported, the allegation that Noticee had violated the provision of regulation 54(2) of LODR Regulations, stands established.

12.4.14. In view thereof, having regard to the facts and circumstances of the matter, material available on record and submissions of Noticee, I hold that the allegation that Noticee has violated Regulation 54(2) of LODR Regulations, stands established.

In view thereof, I find that Noticee has violated provisions of Regulation 54(1) and 54(2) of LODR Regulations, 2015.

12.5. **It was inter alia alleged in the SCN that Noticee has violated Regulation 56 of LODR.**

12.5.1. Regulation 56 of LODR Regulations requires that the listed entities submit documents viz. Annual Report, notices, resolutions and circulars relating to NCDs, intimations of revision in rating, default, half yearly certificate regarding maintenance of asset cover or any other information sought by debenture trustee.

12.5.2. In this regard SEBI inter alia observed that the company had submitted that ATSL was the DT of the company and that the company had submitted the letters to the trustee. However SEBI observed that as per the ATSL, the company had not provided the statutory auditor's certificate on utilization of funds, half yearly certificate on maintenance of asset cover and annual report. Accordingly, it was inter alia alleged that the Noticee had violated the provisions of Regulation 56 of LODR Regulations.

12.5.3. In this regard, Noticee as reply to the SCN has broadly submitted that, *'… SPCPL was also severely impacted by the COVID19 pandemic. On account of this, the financial position of SPCPL was extremely precarious and all efforts of SPCPL's key managerial personnel were directed towards the financial restructuring of SPCPL … the ultimate beneficiary, Union Bank (the sole debenture holder) and all other stakeholders were at all times aware of all the material developments with respect to SPCPL on account of the OTR. … The object and purpose of having a debenture trustee is to ensure that the trustee tracks the developments concerning the company, periodically, such that the debenture holder's interest is protected and kept secure. Now, considering the fact that the sole debenture holder and SPCPL's stakeholders were fully aware of all relevant facts concerning SPCPL, the fact that there was an inadvertent omission in making the aforesaid disclosures to the Debenture Trustee should be treated as a mere technical violation.*

12.5.4. In this regard Noticee as part of its submissions vide letter dated February 27, 2023 inter alia also contended as under:

"

…..

f. *SPCPL was under a bona-fide impression that the statutory auditor's certificate on utilisation of funds was to be given, only if there was a material deviation from the disclosed objects of the issue. There having been no deviation in the utilization of the issue proceeds, there was no need for such a certification as believed by SPCPL;*

g. *Indeed, Regulation 52(7) of the LODR Regulations, prior to its amendment with effect from September 7, 2021 vide the LODR Regulations (Fifth Amendment) Regulations, 2021 ("**LODR Fifth Amendment**"), stated that "The listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, **a statement indicating material deviations, if any, in the use of proceeds** of issue of non-convertible debt securities and non-convertible redeemable preference shares from the objects stated in the offer document.";*

h. *On a plain reading of Regulation 52(7), it is clear that unless there was a deviation, no such statement was required to be furnished to the exchanges. SPCPL was under the bona-fide impression that this interpretation would extend to Regulation*

59 as well which requires information on utilization of funds to be furnished to the debenture trustee. Besides, there is no allegation that the funds were utilized contrary to the terms of the issue;

i. *Union Bank as a participant in the OTR was privy to the affairs of SPCPL and therefore in any event, no prejudice whatsoever has been occasioned by the alleged non-disclosure;*

j. *It is noteworthy that SEBI amended the LODR Regulations with effect from September 7, 2021 which required issuer companies to provide "a statement indicating the utilization of issue proceeds of non-convertible securities, which shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieve." Admittedly, this amendment cannot be retrospectively applied to SPCPL since its NCDs ceased to exist with effect from April 1, 2021;*

k. *Therefore, when SEBI did not even mandate disclosure of such information to the stock exchanges at the relevant time, the non-furnishing of such information to the debenture trustee, is at best, a technical and venial breach;*

l. *Moreover, at the relevant time, SEBI did not even mandate filing of the annual report to the stock exchanges, for issuers of listed debt securities. Pursuant to the LODR Fifth Amendment* ***with effect from September 7, 2021****, Regulation 53 was amended by inserting a sub-regulation which required a copy of the annual report to be filed with the stock exchanges and the debenture trustee. This too cannot be applied to SPCPL as the NCDs ceased to exist on April 1, 2021. Indeed, the SEBI Board memorandum which proposed the amendments to the LODR Regulations itself stated:-*

"Regulation 53 of the LODR Regulations prescribes a list of disclosures to be made in the Annual Report. ***However, the regulation does not specifically mandate submission of Annual Report to Stock Exchanges.*** *It is pertinent to note that issuers who have listed their specified securities are required to submit Annual Report with Stock Exchanges and publish on website of listed entities…*

Availability of Annual Report in the public domain would be useful for investors and other stakeholders at large, as it includes information related to the company, auditors report, directors report, etc. ***Accordingly, it is proposed to prescribe debt listed entities for submission of Annual Report with Stock Exchanges and publish on its website. Further, timeline for submission of Annual Report may be made similar to that applicable for issuers of specified securities.****"*

m. *Therefore, when SEBI did not mandate disclosure of the annual report to the stock exchanges at the relevant time, the non-furnishing of such information to the debenture trustee, is at best, a technical and venial breach;*
…..
'.

12.5.5. In this regard, firstly I note that the Noticee has not disputed the alleged violation of Regulation 56 and the submissions of the Noticee are in nature of admission in so far as Noticee has itself inter alia submitted that, '*the fact that there was an inadvertent omission in making the aforesaid disclosures to the Debenture Trustee should be treated as a mere technical violation…',* and that*, 'there was no need for such a certification as believed by SPCPL…',* and that*, 'non-furnishing of such information to the debenture trustee, is at best, a technical and venial breach'.*

12.5.6. Further in this regard, I note that the Noticee has inter alia contended and taken defense of requirements under Regulation 52(7). As regards Noticee's plea about Regulation 52(7) for alleged non-compliance with regard to provisions of Regulation 56, I note that the said two Regulations are distinct and mutually exclusive as is also evident from the plain reading of the title to the said Regulations itself viz., *'Documents and Intimation to*

Debenture Trustees' being Title to Regulation 56 and *' [294][Intimations/] other submissions to stock exchange(s)'* being Title to Regulation 57. Accordingly, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

12.5.7. In this regard, I note that while alleged violation is regarding non submission of documents /information to the Debenture Trustee, Noticee has contended about Regulation 52(7) provisions of which relate to submission of information /documents to the Stock Exchange and hence out of context. Also Noticee has inter alia contended that unless there was deviation no such statement was required to be furnished to the exchanges. In this regard, besides the contention being related to a different regulation and hence out of context, as also stated above, in my opinion, certificate of utilization and statement relating to deviation are two distinct aspects. In any case if the contention of the Noticee in this regard were to be accepted, the requirement of provisions of Regulation 56 would be rendered infructuous. As regards the contention of the Noticee that, '*SPCPL was under a bona-fide impression that the statutory auditor's certificate on utilisation of funds was to be given, only if there was a material deviation from the disclosed objects of the issue…',* in my opinion certificate in respect of utilization of funds and statement related to deviation are two distinct and diverse aspects. In any case, I note that the said contention are qualified and in nature of admission in so far as Noticee has inter alia submitted that, '*SPCPL was under….impression that…*'. As regards the contention of the Noticee that there was no allegation that the funds were utilized contrary to the terms of the issue, in my opinion considering that the alleged violation is inter alia regarding non submission of certificate on utilization of funds, the contention of the Noticee is out of context. As regards the contention of the Noticee that, '*Union Bank as a participant in the OTR was privy to the affairs of SPCPL and therefore in any event, no prejudice whatsoever has been occasioned by the alleged non-disclosure,* I note that while the alleged violation is related to provisions of Regulation 56 which inter alia relate to documents and intimation to Debenture Trustees, the contention of the Noticee are related to Debenture Holder and hence contention of the Noticee in this regard are out of context and cannot be accepted.

12.5.8. As regard Noticee's submission taking defense of Regulation 52(7) inter alia contending, *'.It is noteworthy that SEBI amended the LODR Regulations with effect from September 7, 2021 which required issuer companies to provide "a statement indicating the utilization of issue proceeds of non-convertible securities, which shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieve." Admittedly, this amendment cannot be retrospectively applied to SPCPL since its NCDs ceased to exist with effect from April 1, 2021…Therefore, when SEBI did not even mandate disclosure of such information to the stock exchanges at the relevant time, the non-furnishing of such information to the debenture trustee, is at best, a technical and venial breach',* firstly I note that the submission of the Noticee are in nature of admission. This apart, here too, I note that while the alleged violation is related to provisions of Regulation 56 which inter alia relate to documents and intimation to Debenture Trustees, the contention of the Noticee is related to Regulation 52(7) provisions of which relate to submission to the Stock Exchange(s) and hence contention of the Noticee in this regard are out of context and cannot be accepted.

12.5.9. Noticee has also inter alia contended that, 'when SEBI did not mandate disclosure of the annual report to the stock exchanges at the relevant time, the non-furnishing of such information to the debenture trustee, is at best, a technical and venial breach'. In this regard, besides noting that the submissions of the Noticee are in nature of admission, I reiterate that in my opinion the requirement of documents and intimation to the Debenture

Trustee as stipulated under provisions of Regulation 56 and requirement of submissions to Stock Exchange as under provisions of Regulation 57 being related to two distinct market intermediaries i.e., DT and Stock Exchange(s) would construe to be two diverse and distinct requirements /aspects and accordingly the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

12.5.10. Further in this regard, I also note that while the Noticee has inter alia contended all other stakeholders were at all times aware of all the material developments, no details whatsoever as regards other stakeholders have been provided nor has the Noticee demonstrated as to how such other stakeholders were at all times aware. In my opinion, in a disclosure based regime, it is platforms like that of stock exchanges where the security is listed would any of the stakeholders would look for information and any information otherwise shared and /or available on select one to one basis may not as such construe to be publicly available information or an information devoid of information asymmetry. In any case, in my opinion such a defense does not do away with the requirement of extant applicable provisions of law.

12.5.11. In view thereof, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, the allegation that the Noticee failed to submit statutory Auditor's certificate on utilization of funds, half yearly certificate on maintenance of asset cover and annual report to the Debenture Trustee, stands established.

In view thereof, I hold that the Noticee has violated provision of regulation 56 of LODR Regulations.

12.6. **It was inter alia alleged in the SCN that Noticee has violated provisions of regulation 59 of LODR Regulations.**

12.6.1. As regards the alleged violation of Regulation 59 of LODR Regulations, it would be relevant to draw reference to the provisions of the said regulation, which are reproduced as under:

"…

Structure of non convertible debt securities and non convertible redeemable preference shares.

59. (1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :

(a) the structure of the [318][non-convertible debt securities] debenture in terms of coupon, [319][***]redemption, or otherwise.
(b) the structure of the non-convertible redeemable preference shares in terms of dividend [320][***], redemption, or otherwise.

(2) The approval of the stock exchange referred to in sub-regulation (1) shall be made only after:

(a) approval of the board of directors and the debenture trustee [321][***] and
(b) [322][obtaining consent in writing of the holders of not less than three-fourths, by value of holders of that class of securities:
Provided that the listed entity shall provide the facility of remote e-voting to facilitate such consent.]

…."
.

12.6.2. In this regard, SEBI observed that the company had submitted that it had informed to BSE that they have not made any changes suggested in the regulation and that vide email dated December 03, 2021, it had informed SEBI that it had obtained consent from the debenture holders and debenture trustee for converting NCDs to term loan. However, BSE submitted that the company had not made application for any structural changes. Accordingly, SEBI observed that with respect to conversion of NCDs into term loan, Noticee has not taken approval from the stock exchanges as required and it was alleged that Noticee has violated provision of regulation 59 of LODR Regulations.

12.6.3. In this regard, Noticee as reply to the SCN inter alia submitted, '*The conversion of NCDs* into *a term loan resulting in the extinguishment of the NCDs does not constitute a modification of the terms of the NCDs, for purposes of Regulation 59, and consequently the approval of the stock exchanges was not required. Regulation 59 applies where the terms of the NCDs in terms of either the coupon, redemption or "otherwise" are* *sought to modified. The words "otherwise" must be read in light of and in the context of the preceding words "terms of redemption, coupon etc". When the terms on which the NCDs are listed, are sought to be altered, care has been taken to ensure that this is effected only with the approval of the stock exchanges. However, this provision has no application, where the NCDs themselves are sought to be extinguished. A modification of the terms of the NCDs must be distinguished from an extinguishment of the NCDs itself. Therefore, the allegation is untenable.".*

12.6.4. In this regard, I note that the Noticee has not demonstrated as how the terms "modification" is distinct from "conversion". From bare reading of the provisions, it is evident that for any material change in the non-convertible debt securities, the listed entity is required to take prior approval of the stock exchange(s). In the instant matter the Noticee has contended that, '*the words "otherwise" must be read in light of and in the context of the preceding words "terms of redemption, coupon etc". '.* In my opinion such an interpretation would be contrary to the spirit of the LODR Regulations as everything then will get confined and restricted to only aspects of redemption and coupon only. Otherwise too, if the expression 'otherwise' were to be interpreted in context of preceding words, logically speaking there may not have been any need for such an expression. Thus, in my opinion the expression 'otherwise' has to be interpreted in a wider sense and having regard to the aspect of materiality and the spirit of the LODR Regulations. In my opinion, conversion of an existing security viz., Two Thousand Non Convertible Debentures of Face Value INR Ten Lakhs each, aggregating to INR Two Hundred Crores, into loan leading to extinguishment of the ISIN INE404K07012, besides the fact that the conversion was of a security which otherwise was issued as 'Non Convertible' instrument and hence involved change in the very character /nature of the instrument itself would construe to be a material modification as it not only involved change in the character of the security issued but also led to the said listed security ceasing to exist.

12.6.5. This apart, had conversion not been a material modification there would not have been the need and/or requirement of seeking approvals from the Debenture Trustees and /or Debenture Holders. In the instant matter, Noticee had itself inter alia submitted that it had obtained the approval of the debenture trustee and consent of the debenture holder.

12.6.6. As regards the contention of the Noticee that, *'…the entire OTR was being driven by the lenders of SPCPL (including Union Bank – the sole debenture holder). Since Union Bank was at all times involved in the restructuring and had also provided its consent, it is submitted that the LODR compliance requirements of SPCPL cannot be held at par with other companies who have listed securities with a wide public base…',* in my opinion it would be relevant to consider this in light of the fact that firstly there is no specific exemption as such provided in this regard and secondly this ought to be viewed having regard to the spirit of the LODR Regulations which would be evident from plain reading of Regulation 11 of the LODR Regulations which inter alia reads as follows, *'The listed entity shall ensure that any scheme of arrangement ….. reconstruction /reduction of capital etc. ….. does not in any way violate, override or limit the provisions of securities laws or requirements of the stock exchange(s):…' .* Accordingly, the contention of the Noticee in this regard is devoid of merit and hence not acceptable.

12.6.7. Further in this regard, in my opinion, it would also be relevant to consider that the concept of prior approvals, prior approval of Stock Exchange in instant matter, are laid down inter alia having regard to aspects like protection of interest of investors, standardized framework /parity in requirements, safety and orderly functioning of the securities market etc.

12.6.8. Since the NCDs were listed on BSE, therefore, it was the obligation of the Noticee to take the prior approval from the Stock exchange before going ahead with any such material change.

12.6.9. In view thereof, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I hold that the allegation that the Noticee as listed company by not taking prior approval from the stock exchange as required under Regulation 59 and thus violated provisions of Regulation 59 of LODR Regulations, stands established.

In view thereof, I hold that the Noticee has violated provision of regulation 59 of LODR Regulations.

12.7. **It was inter alia alleged in the SCN that Noticee had not updated the details in its website as required under regulation 62 of LODR Regulations and therefore Noticee had violated provision of Regulation 62 of LODR Regulations.**

12.7.1. In this regard, it is noted that Regulation 62 of LODR Regulations, 2015 requires that the listed entities maintain functional website which shall contain the details of financial information, handling of investor grievances, debenture trustees, report, notices, call letters etc.

12.7.2. In this regard, SEBI had inter alia observed that Noticee had not updated the following details in its website as required under Regulation 62 of LODR Regulations:

- Notice of meeting of the board of directors where financial results shall be discussed (‘notice of meeting’ for brevity, under instant para).
- Financial results, on the conclusion of the meeting of the board of directors where the financial results were approved (‘financial results’ for brevity, under instant para).
- Complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc was not updated after FY 2019-20.
- The information, report, notices, call letters, circulars, proceedings, etc concerning NCRPS or NCDs.
- All information and reports including compliance reports filed by the listed entity.

12.7.3. In view thereof, it was inter alia alleged that Noticee had not updated the details in its website as required under regulation 62 of LODR Regulations and therefore Noticee has violated provision of regulation 62 of LODR Regulations. Briefly stated it was alleged that Noticee had not updated its website about five details as stated.

12.7.4. In this regard, Noticee as reply to the SCN inter alia submitted, ‘*This allegation pertains to failure by SPCPL to update certain details on its website. Pertinently, the impact of the COVID 19 pandemic commenced on 25 March 2020 and continued up until 28 February 2022. The OTR of the Company was undertaken in the midst of COVID 19 pandemic. Most of the employees of SPCPL were functioning remotely and at a limited capacity. On account of this, the staff who were responsible to undertake the updating and maintenance of the website of SPCPL were unable to do so. This was beyond the control of SPCPL. No loss has been caused to any investor and neither has SPCPL made any undue and disproportionate gain on account of this*’, and that , ‘*Furthermore, it is also crucial to note that on account of COVID, SPCPL had also made a* *necessary application to the MCA seeking extension of time in filing of its annual accounts. On account of this, for FY 19 – 20 the standalone accounts could be prepared only on 6 February 2021 and the consolidated accounts could be prepared only on 9 June 2021. Consequently, the AGM of SPCPL for FY 19 – 20 could be held only on 30 June 2021. Since the accounts of the Company were not approved by the shareholders till 30 June 2021, the same could not be published on the website of SPCPL. However, pursuant to approval from the shareholders, the website has been updated with the accounts….*'.

12.7.5. In this regard, I note that the submissions of the Noticee are in nature of admission in so far as it has inter alia submitted that, '*… the staff who were responsible to undertake the updating and maintenance of the website of SPCPL were unable to do so …'.*

12.7.6. As regards the contention of the Noticee that it had made necessary application to the MCA, besides the aspect that the alleged violations are with regard to provisions of securities laws viz., LODR Regulations, which are administered by SEBI and not MCA, I also note that the submissions of the Noticee are incomplete /lacking in so far as these are without indicating the outcome of its request seeking extension of time, without specific details like date of request etc., and without any supporting documents whatsoever etc. Accordingly, in my view, the contentions of the Noticee in this regard, are devoid of merit and not acceptable.

12.7.7. Further in this regard, I also note that the Noticee has not demonstrated that any relaxation in this regard was provided even though Noticee as part of its submissions has otherwise itself stated, '…Taking note of the unprecedented impact of the COVID – 19 pandemic, SEBI issued several circulars pursuant to which compliance of certain provisions of the LODR Regulations were relaxed and due date(s) extended. The relevant circulars in this regard are briefly tabulated hereunder…'. In any case, considering that relaxation were provided otherwise by the SEBI with regard to certain other Regulations of LODR Regulations, in my opinion Noticee was at liberty to approach the authority then, SEBI in instant case, for any relaxation desired by it owing to prevailing circumstances having any genuine market wide impact but did not had the liberty to not comply with the extant applicable provisions of law.

12.7.8. Further in this regard, Noticee vide letter dated February 27, 2023 inter alia submitted as under:

"
…

Response to the charge pertaining to alleged failure to update the website in alleged violation of Regulation 62[6]:-

The charge is untenable as:-

a. *The SCN has wrongly relied on the provisions of Regulation 62, as amended pursuant to the LODR Fifth Amendment which came into force on September 6, 2021. Prior to the amendment, Regulation 62(1)(b) required an issuer to provide "financial information including complete copy of the annual report including balance sheet, profit and loss account, directors report etc.";*

b. *Indeed, it was only post the LODR Fifth Amendment Regulations that Regulation 62(1)(b) required inter-alia "financial information including: (i)* ***notice of meeting of the board of directors where financial results shall be discussed; (ii) financial results****, on the conclusion of the meeting of the board of directors where the financial results were approved", to be provided.*

c. *The SCN has however, in addition to charging SPCPL for failure to provide the annual report together with the financial results and letters, notices concerning NCDs, has also charged SPCPL for failure to provide: (i) notice of meeting of the board of directors where financial results shall be discussed and (ii) financial results on conclusion of the board meeting. The latter was not required to be furnished at the relevant time; and*

d. *The non-disclosure of the financial information on the website is connected with the charge pertaining to non-disclosure of financial results which has been explained earlier.*

…
".

12.7.9. As regards, contention of the Noticee that, '… SCN has wrongly relied on the provisions of Regulation 62, as amended pursuant to the LODR Fifth Amendment which came into force on September 6, 2021...' and that, '...Indeed, it was only post the LODR Fifth Amendment Regulations that Regulation 62(1)(b) required inter-alia "financial information including: (i) notice of meeting of the board of directors where financial results shall be discussed; (ii) financial results, on the conclusion of the meeting of the board of directors where the financial results were approved". In other words, Noticee has inter alia contended that 'notice of meeting' and 'financial results' were expressly included in the provisions as substituted by the SEBI LODR Fifth Amendment Regulations, 2021 wef September 07, 2021.

12.7.10. In this regard, as regards 'notice of meeting', I note that material on record does not bring out how the same fell within the meaning of expression 'financial informtion'. Having regard to same and the contentions raised by Noticee, benefit of doubt is allowed to the Noticee, as regards alleged violation relating to Noticee not having updated its website with the notice of meeting of the board of directors.

12.7.11. As regards, alleged violation relating to 'financial results', I note that the wordings of the extant provisions inter alia read as *'…'financial information' including…..'*. Accordingly, in my opinion the said provision is not restrictive but inclusive in nature and hence has to be inferred accordingly and hence would inter alia cover information other than annual report etc. Hence, in my opinion, there is no iota of doubt that 'financial results' would fall within the meaning of expression 'financial information'.

12.7.12. In view thereof, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I hold that the allegation that the Noticee had not updated the stated details in its website as required under regulation 62 of LODR Regulations, in so far as related to four out of five details, stands established.

In view thereof, I hold that Noticee had violated provision of Regulation 62 of LODR Regulations.

Issue II: If yes, whether the Noticee is liable for imposition of monetary penalty under provisions of Section 15A(b) and 15HB of the SEBI Act, 1992.

13. It has been established in the preceding paragraphs that Noticee has violated the stated provisions of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015.

14. In this regard, reliance is placed upon the order of the **Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } –** wherein the Hon'ble Supreme Court of India had inter alia held:

> *"*
> *…*
> *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*
> *…*
> *".*

15. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section **Section 15A(b) and 15HB of the SEBI Act, 1992**, which reads as under:

> ***Penalty for failure to furnish information, return, etc***
> ***Section 15A.*** *If any person, who is required under this Act or any rules or regulations made thereunder*
> *(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*
>
> *……*
>
> *"*
>
> *"*
>
> *……*
>
> ***Penalty for contravention where no separate penalty has been provided.***

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

……

".

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

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992 and 23J of SC(R) Act, 1956?

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

"….

Factors to be taken into account while adjudging quantum of penalty

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

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

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

c) *the repetitive nature of the default.*

….

".

17. In the instant case, I find that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Moreover, there is nothing on record to show that the violations

committed by the Noticee are repetitive in nature. I note that the Noticee has repeatedly contended about then prevailing covid-19 pandemic and that there was only one debenture holder etc. However, I cannot also ignore the fact that the Noticee has failed to comply with provisions of LODR, Regulations 2015 as detailed in preceding paragraphs.

E. ORDER

18. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty of Rs. 7,00,000/- (Seven Lakhs only) on the Noticee viz. Shapoorji Pallonji and Company Pvt. Ltd. under the provisions of section 15A(b) and 15HB of SEBI Act 1992 and as per details in table below. I am of the view that the said penalty will commensurate with the violation committed by the Noticee.

Name of Noticee	Penalty Under Provisions	Penalty Amount (Rs.)
Shapoorji Pallonji and Company Pvt. Ltd.	Section 15A(b) of SEBI Act, 1992	2,00,000/- (Two Lakhs only)
	Section 15HB of SEBI Act, 1992	5,00,000/- (Five Lakhs only)
TOTAL		7,00,000/- (Seven Lakhs only)

19. The Noticee 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

20. 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.

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

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