BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/JR/2022-23/18792]

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

In respect of:
Futurefone Limited
PAN: AACCF9307N

In the matter of Futurefone Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination to ascertain compliance status of M/s. Futurefone Limited (hereinafter referred to as **"Noticee")** as required under the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") for the period April 01, 2020 to August 31, 2021 (hereinafter referred to as "**Examination period**") in respect of the Non-convertible Debentures (hereinafter referred to as "**NCD**") issued by the Noticee.

2. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee under the provisions of section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and section 15A(b) of the SEBI Act for the alleged violations of the relevant provisions of the securities law.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide Communiqué dated March 11, 2022 to conduct adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Rules**") for the alleged violations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated May 12, 2022 (hereinafter referred to as 'SCN') was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under sections 15HB and 15A(b) of SEBI Act for the alleged violations of regulations 6(1), 51(1), 54(1), 56(1)(d), 57(2), 62, 7(3), 13(3), 50(1), 52(1), 52(4), 52(5), 52(8) and 57(1) of LODR Regulations. Although the SCN was delivered to the Noticee through speed post acknowledgment due on May 17, 2022, no reply was received from it.

5. In the interest of natural justice and in terms of rule 4(3) of the Rules, an opportunity of personal hearing was given to the Noticee to appear before the Adjudicating Officer on August 18, 2022 vide notice dated August 1, 2022. No one appeared on the scheduled date of hearing although the notice was delivered to the Noticee on August 4, 2022 vide speed post acknowledgment due. Another opportunity of personal hearing was given to the Noticee on August 25, 2022 which was delivered to the Noticee on August 22, 2022 through speed post acknowledgment due. However, once again, no one appeared on the scheduled date.

6. I note that sufficient opportunities have been provided to the Noticee to represent its case by way of reply to the SCN and also by way of personal hearing. However, it is a matter of record that Noticee failed to furnish its reply and also failed to appear for the personal hearing fixed on the stipulated date despite the service of the SCN. Therefore, in the absence of reply from the Noticee and/or its failure to make personal appearance, I am inclined to presume that the Noticee has

nothing to offer in its defense and therefore, it has admitted to the allegations levelled against the Noticee in the SCN. In this context, Hon'ble SAT in the matter of Sanjay Kumar Tayal vs SEBI, vide Order dated February 11, 2014 held that "*appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted to the charges levelled against them in the show cause notice."*

CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

   (a) Whether the Noticee has violated regulations 6(1), 51(1), 54(1), 56(1)(d), 57(2), 62, 7(3), 13(3), 50(1), 52(1), 52(4), 52(5), 52(8) and 57(1) of LODR Regulations?
   (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15HB and 15A(b) of the SEBI Act for the alleged violation?; and,
   (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

8. Before moving forward, it is pertinent to refer to the relevant provisions which are reproduced hereunder:-

   "6(1) A listed entity shall appoint a qualified company secretary as the compliance officer.

   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 thirty days from the end of the financial year, certifying compliance with the requirements of sub- regulation (2).

13(3) The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

50(1) The listed entity shall give prior intimation to the stock exchange of at least two working days in advance, excluding the date of the intimation and the date of the meeting of the board of directors, about the Board meeting in which any of the following proposals is to be considered:
(a) an alteration in the form or nature of non-convertible securities that are listed on the stock exchange or in the rights or privileges of the holders thereof;
(b) an alteration in the date of the interest/ dividend/ redemption payment of non-convertible securities;
(c) financial results viz. quarterly or annual, as the case may be;
(d) fund raising by way of issuance of non-convertible securities; or
(e) any matter affecting the rights or interests of holders of non-convertible securities.

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 245 [or redemption of non-convertible securities.

52(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):
Provided 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 the information is submitted to stock exchanges.

52(4) The listed entity, while submitting quarterly / annual financial results, shall disclose the following line items along with the financial results:

(a) credit rating and change in credit rating (if any) (now omitted)

(b) asset cover available, in case of non convertible debt securities; (now omitted)

(c) debt-equity ratio;

(d) previous due date for the payment of interest/ dividend for non-convertible redeemable preference shares/ repayment of principal of non-convertible preference shares /non convertible debt securities and whether the same has been paid or not; and, (now omitted)

(e) "next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest/ dividend of non-convertible preference shares payable and the redemption amount;" (now omitted)

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

(m) current ratio;

(n) long term debt to working capital;

(o) bad debts to Account receivable ratio;

(p) current liability ratio;

(q) total debts to total assets;

(r) debtors turnover;

(s) inventory turnover;

(t) operating margin (%);

(u) net profit margin (%);

(v) sector specific equivalent ratios, as applicable

Provided that the requirement of disclosures of debt service coverage ratio and interest service coverage ratio shall not be applicable for banks or non banking financial companies/housing finance companies registered with the Reserve Bank of India.

52(5) The listed entity shall, within seven working days from the date of submission of the information required under sub- regulation (4), submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.

52(8) The listed entity shall, within two working days of the conclusion of the meeting of the board of directors, publish the financial results and statement referred to in sub-regulation (4), in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

54(1) In respect of its secured listed non-convertible debt securities, the listed entity shall maintain hundred per cent. 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 and the interest thereon at all times for the non-convertible debt securities issued.

56 (1)(d) A half-yearly certificate regarding maintenance of hundred percent 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 financial results, in the manner and format as specified by the Board]: Provided that the submission of this certificate is not applicable where bonds are secured by a Government guarantee.

57(1) The listed entity shall submit a certificate to the stock exchange within one working day of the interest or dividend or principal becoming due regarding status of payment in case of non-convertible securities.

57(2) The listed entity shall provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 have been complied with. (now omitted)

62 "(1) The listed entity shall maintain a functional website containing the following information about the listed entity:- (a)details of its business;
(aa) composition of the Board;
(b) 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 information and reports including compliance reports filed by the listed entity;

(h) information with respect to the following

(i) default by issuer to pay interest or redemption amount;.

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

(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.

(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 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.

(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."

Issue (a): Whether the Noticee has violated regulations 6(1), 51(1), 54(1), 56(1)(d), 57(2), 62, 7(3), 13(3), 50(1), 52(1), 52(4), 52(5), 52(8) and 57(1) of LODR Regulations?

9. I now proceed to discuss the allegations and my observations on the basis of the documents available on record:

A: <u>Appointment of Compliance Officer</u>

10. In terms of regulation 6(1) of the LODR Regulations, the Noticee is required to appoint a qualified company secretary as the Compliance Officer of the company. It was alleged that the Noticee had appointed Mr. Chirag Rakholia as the Company Secretary and Compliance Officer. However, he vacated the office w.e.f. December 31, 2020. Thereafter the Noticee did not have a Compliance Officer during the examination period which is allegedly in violation of Regulation 6(1) of the LODR Regulations.

11. Finding:
    i. It is observed that compliance status was sought from BSE. BSE vide email dated November 17, 2021 submitted that no Company Secretary is appointed. The Noticee had appointed Chirag Rakholia as the Company Secretary and Compliance Officer. However, he vacated the office w.e.f. December 31, 2020. As there was no Company Secretary as Compliance

Officer during the examination period, it is established that it has not complied with regulation 6(1) of LODR Regulations.

B: Compliance Certificate

12. In terms of Regulation 7(3) of the LODR Regulations, the Noticee is required to submit the compliance certificate for half year ended September 2020 and March 2021. It was alleged that no information regarding compliance with the provisions of the regulation was provided by the Noticee which is allegedly in violation of regulation 7(3) of the LODR Regulations.

13. Finding:

    i. It was observed from the reply of BSE vide email dated November 17, 2021 that the Noticee had not submitted that compliance certificate for half year ended September 2020 and March 2021. Thus, as the Noticee had not submitted the compliance certificate, it is established that the Noticee has violated regulation 7(3) of LODR Regulations.

C: Statement of Investor Complaints:

14. In terms of regulation 13(3) of LODR Regulations, the Noticee is required to file with the stock exchange(s) on a quarterly basis, within twenty-one days from the end of each quarter, a statement giving the number of investor complaints. The compliance status of the Noticee was as under;

Qtr. Ended	Status
31.03.20	Not submitted
30.06.20	Not submitted
30.09.20	Delayed. Submitted on 08.03.21 (delay of 137 days)
31.12.20	Delayed. Submitted on 08.03.21 (delay of 46 days)
31.03.21	Complied
30.06.21	Complied

15. It is alleged that the Noticee did not submit the statement for quarters ended March 31, 2020 and June 30, 2020 and submitted the statement after a delay of 137 days and 46 days for the quarters ended September 30, 2020 and December 31, 2020, respectively. Hence, it is alleged that the Noticee failed to comply with Regulation 13(3) of the LODR Regulations.

16. Finding:

i. It is observed from the email of BSE dated November 17, 2021 that the Noticee had failed to submit the statement of quarters ended March 31, 2020 and June 30, 2020 and submitted with a delay of 137 days for the quarter ended September 30, 2020 and delay of 46 days for the quarter ended December 31, 2020. The reason given by the Noticee to BSE was due to the immediate lockdown and non-movement of persons occurred due to Covid 19 pandemic, the Noticee was unable to comply with the regulatory requirements. I observe that due to the sudden countrywide lockdown imposed, life on a whole came to a standstill. In such a situation it would not have been possible for the Noticee to make the relevant submissions. I also observe that SEBI had considered the hardships of the companies and extended the timeline to comply by 3 weeks. The Noticee yet failed to file the relevant details for the quarter ended March 31, 2020 and June 30, 2020. In view of the above, I am find that the allegation of violation of regulation 13(3) of LODR Regulations by the Noticee stands established.

D: Payment of interest and redemption amount

17. In terms of regulation 50(1) of the LODR Regulations, the Noticee is required to intimate the stock exchange(s), at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable. It is alleged that the Noticee did not give the information, as required above which is not in compliance with regulation 50(1) of LODR Regulations.

18. Finding:

i. As observed from the email of BSE dated November 17, 2021, the Noticee did not intimate the stock exchange(s), at least eleven working days before the date on and from which the interest on debentures and bonds and redemption amount of redeemable shares or debenture and bonds shall be payable. In view of the above, I find that the Noticee has violated regulation 50(1) of LODR Regulations.

E: <u>Information on performance / operation of the Company</u> <u>Allegation</u>

19. In terms of regulation 51 (1) of the LODR Regulations, the Noticee is required to promptly intimate to the stock exchange, all information having bearing on the performance/ operation of the company. However, BSE in its email reply dated December 06, 2021 submitted that the Noticee did not file any intimation with BSE about default by the company which is allegedly not in compliance with regulation 51 (1) of LODR Regulations.

20. Finding:

i. It is observed from the reply of BSE dated December 6, 2021, that the company did not intimate the stock exchange all the information having bearing on the performance/ operation of the company i.e. the intimation of any default to the exchange. In view of the above, I find that the Noticee has violated regulation 51(1) of LODR Regulations.

F: <u>Submission of unaudited or audited financial results</u>

21. In terms of regulation 52(1) of the LODR Regulations, the Noticee is required to submit unaudited or audited financial results on quarterly basis with 45 days from the end of the quarter to the stock exchange(s). BSE vide its email dated November 17, 2021 submitted that the company filed financial results with delay as mentioned under:

Half year ended	Due Date	Actual Submission date	Delay (no. of days)
31.03.20	31.07.20	29.09.20	59
30.09.20	15.11.20	21.12.20	36
31.03.21	30.06.21	31.08.21	61

22. As the Noticee had submitted its half yearly financial results, with a delay, it is alleged that the Noticee had failed to comply with the Regulation 52(1) of the LODR Regulations.

23. Findings:

i. As per regulation 52(1) of LODR regulations, the Noticee had to file the audited and unaudited quarterly financial statements within forty-five days of the completion of the quarter. Further, SEBI had issued circular dated June 24, 2020 extending the timeline of submission of half yearly/ annual financial results for the period ending March 31, 2020 to July 31, 2020. From the email of BSE dated November 17, 2021, it is observed that the Noticee has filed the financial results with delay the Noticee did not give any explanation why such delay had occurred on the part of the Noticee to file the financial results. In view of the above, I find that the Noticee has violated regulation 52(1) of LODR Regulations.

G: <u>Disclosure of line items</u>

24. In terms of regulation 52 (4) of the LODR Regulations, the Noticee is required to disclose line items prescribed under the regulation along with the half yearly/ annual financial results. However, BSE, vide its email dated November 17, 2021 had submitted that the Noticee had partially complied with regulation 52(4). Further, vide its email dated December 22, 2021, BSE clarified that following line items were not disclosed by the Noticee along with its financial results for the periods ended on March 31, 2020, September 30, 2020 and March 31, 2021:

    i. Credit rating and changes in credit rating

ii. Asset cover available

iii. Next due dates of payment

Hence, it is alleged that the Noticee had not fully complied with regulation 52 (4) of the LODR Regulations.

25. Findings:

i. I observe from the email of BSE dated November 17, 2021 and further clarificatory email dated December 22, 2021 that the Noticee had not disclosed regarding the credit rating, asset cover availability and next due date of payment to the stock exchange for the periods ended on March 31, 2020, September 30, 2020 and March 31, 2021. Therefore, I find that the Noticee has not complied with regulation 52(4) of LODR Regulations.

H: <u>Certificate of Debenture Trustee</u>

26. In terms of regulation 52 (5) of the LODR Regulations, the Noticee is required to submit to stock exchange(s), a certificate signed by the Debenture Trustee taking note of the contents prescribed under Regulation 52(4). BSE in its reply dated November 17, 2021 submitted that the company did not file the certificate as required which is not in compliance with regulation 52 (5) of the LODR Regulations (now omitted).

27. Findings:

i. I observe from the email of BSE dated November 17, 2021 that the Noticee failed to submit a certificate signed by the Debenture Trustee taking note of the contents prescribed under regulation 52(4) of LODR Regulations. Therefore, I find that the Noticee has violated regulation 52(5) of LODR Regulations.

I: <u>Publication of financial results</u>

28. In terms of Regulation 52 (8) of the LODR Regulations, the Noticee is required to publish its financial results in at least one English national daily newspaper. BSE submitted the reply of the Noticee in this regard, whereby the Noticee submitted that due to covid-19 pandemic, the financial results for half year and financial year ended March 2020 and half year ended September 2020 could not be published.

In view of the above, it is alleged that the Noticee did not comply with regulation 52 (8) of the LODR Regulations.

29. Finding:

i. I observe from the email of BSE dated November 17, 2021 that the Noticee had failed to publish the financial results in one English national daily newspaper due to covid related lockdown. Considering the exceptional circumstances of the covid related lockdown, SEBI issued circular dated April 17, 2022 which exempted any requirement under this provision till May 15, 2020. Further, through SEBI circular dated May 12, 2020, the same was extended till June 30, 2020. SEBI circular dated June 24, 2020 extended the said timeline till July 31, 2020. Therefore, I find that the Noticee was exempted from making the publication of the financial statement for the year ended March 31, 2020. However, I find that the Noticee failed to publish the financial results for the year ended September 31, 2020 for which no exemption was given. Therefore, I find that the Noticee has violated regulation 52(8) of LODR Regulations for failing to publish the financial results for half year ended September 30, 2020.

J: <u>Maintenance of Asset Cover</u>

30. In terms of regulation 54(1) of the LODR Regulations, the Noticee is required to maintain 100% asset cover sufficient to discharge the principal amount at all times for Non-Convertible Debt Securities. BSE vide its email dated December 24, 2021 submitted a letter from the Noticee dated December 23, 2021 wherein the Noticee had provided calculation of the Asset Cover Ratio, which was required to be 100% or higher as per the terms of offer document /Debenture Trustee Deed. However, the Asset Cover Ratio as submitted by the Noticee was as under:

Period ending on	**Asset Cover Ratio (times)**
March 2020	1.01
September 2020	0.95
March 2021	0.90

From the above table, it is observed that the Noticee did not comply with the requirement and therefore it had violated Regulation 54(1) of the LODR Regulations.

31. Finding:

i. As per regulation 54(1) of LODR Regulations, the Noticee is required maintain 100% security cover sufficient to discharge the principal amount and interest of all listed NCDs. However, from the letter dated December 23, 2021 of the Noticee it is observed that for quarter ending September 2020 and March 2021, the Noticee did not have the requisite security cover. Thus, the violation of regulation 54(1) of LODR Regulations by the Noticee is established.

K: <u>Certificate of Statutory Auditor</u>

32. In terms of regulation 56(1)(d) of the LODR Regulations, the Noticee is required to submit a half yearly certificate from the statutory auditor to the Debenture Trustee (DT). However, the DT vide its email dated December 17, 2021 and December 20, 2021 submitted that the half yearly certificate from the Statutory Auditor under Regulation 56(1) (d) was still awaited from the Noticee for the half year ended March 31, 2021 which is allegedly in violation of regulation 56 of the LODR Regulations.

33. Finding:

i. DT, Catalyst Trusteeship Limited, vide email dated December 17, 2021 submitted that the Noticee had partially complied with the requirement under regulation 56 of LODR Regulations. It further clarified that the half yearly certificate from the statutory auditor under regulation 56(1)(d) of LODR regulations is not submitted for the half year ended March 31, 2021. Hence, I find that the Noticee has failed to comply with regulation 56(1)(d) of LODR Regulations.

L: Submission of certificate to Stock Exchange

34. In terms of regulation 57(1) of LODR Regulations, the Noticee is required to submit a certificate to the stock exchange within two days of the interest or principal or both becoming due, stating that it has made timely payment of interests or principal obligations or both in respect of the non-convertible debt securities. From the reply filed by the BSE vide email dated November 17, 2021, it was observed that the Noticee had not submitted the information as required under this regulation. This is allegedly in violation of regulation 57(1) of LODR Regulations in respect of the NCDs.

35. Finding:

    i. I observe from the email of BSE dated November 17, 2021 that the Noticee failed to submit a certificate to the stock exchange within two days of the interest or principal or both being due stating that it has made timely payment of interests or principal obligation. Thus, I find that the Noticee has violated regulation 57(1) of LODR Regulations.

M: Undertaking to Stock Exchange :

36. In terms of Regulation 57(2) of LODR Regulations, the Noticee is required to provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to DT in terms of Trust Deed and SEBI (Issue and Listing of Debt Securities) Regulations, 2008, have been complied with. From the reply filed by the BSE vide email dated November 17, 2021 it was observed that the Noticee had not submitted the information as required under this regulation. Hence, it is alleged that the Noticee had not complied with Regulation 57(2) of LODR Regulations (now omitted).

37. Finding:

    i. I observe from the email of BSE dated November 17, 2021 that the Noticee did not provide an undertaking to the stock exchange for the year ended March 31, 2020 stating that all documents and intimations required to be submitted to DT in terms of Trust Deed and SEBI (Issue and Listing of Debt

Securities) Regulations, 2008, have been complied with and has thus violated regulation 57(2) of LODR Regulations.

N: <u>Maintenance of Website:</u>

38. In terms of regulation 62 of LODR Regulations, the Noticee is required to maintain a functional website containing the information of the company. BSE vide its email reply dated November 17, 2021 submitted that the Noticee did not have a functional website. Thus it is alleged that the Noticee failed to comply with Regulation 62 of the LODR Regulations.

39. Finding:

    i. From the email of BSE dated November 17, 2021, it is observed that the Noticee did not have any functional website which is in violation of regulation 62 of LODR Regulations.

Issue (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15HB and 15A(b) of the SEBI Act for the alleged violation?

40. The above violations, as brought out in the foregoing paragraphs, make the Noticee liable for monetary penalty under section 15HB of the SEBI Act (for violation of regulations 6(1), 51(1), 54(1), 56(1)(d), 57(2) and 62 of LODR Regulations) and section 15A(b) of the SEBI Act (for violation of regulations 7(3), 13(3), 50(1), 52(1), 52(4), 52(5), 52(8), 57(1) of LODR Regulations). Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…*". The text of section 15HB and 15A(b) of the SEBI Act is reproduced below:

<u>SEBI Act</u>

<u>Penalty for contravention where no separate penalty has been provided.</u>

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

<u>Penalty for failure to furnish information, return, etc.</u>

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, 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;

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

Factors to be taken into account by the adjudicating officer.

15J. *While adjudging quantum of penalty under section 15-I, the Securities and Exchange Board of India 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.

42. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such violations by the Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of violations by the Noticee.

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

ORDER

43. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the SEBI AO Rules I hereby impose a penalty as follows:

Violations of provisions of LODR Regulations	Penalty under provision of SEBI Act	Amount of penalty
6(1)	Section 15A(b)	Rs. 2,00,000/- (Rupees Two Lakh only)
51(1)		
54(1)		
56(1)(d)		
57(2)		
62		
7(3)	Section 15HB	Rs. 2,00,000/- (Rupees Two Lakh only)
13(3)		
50(1)		
52(1)		
52(4)		
52(5)		
52(8)		
57(1)		
TOTAL		**Rs. 4,00,000/- (Rupees Four Lakh only)**

I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the Noticee.

44. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI -

Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - IV [**EFD 1-DRA-4**] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

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

46. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

47. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : August 30, 2022
Place : Mumbai

BARNALI MUKHERJEE
ADJUDICATING OFFICER