BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BM/JR/2023-24/ 30180 – 30181

UNDER SECTION15-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:

Nutricircle Limited
PAN: AABCR1368N

Sunil Kumar Agarwal
PAN: ADNPA8277H

In the matter of Nutricircle Limited (formerly known as Shreeyash Industries Limited)

Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination to find out any non-compliance of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") by Nutricircle Limited (hereinafter referred to as "**Noticee 1**") and Mr. Sunil Kumar Agarwal (hereinafter referred to as "**Noticee 2**") (collectively known as "**Noticees**").

Appointment of Adjudicating Officer:

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO"** vide communique dated January 3, 2024 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge under the provisions of sections 15A(b) and 15HB of the SEBI Act for the aforesaid alleged violations committed by the Noticee 1 and

section 15HB of SEBI Act for the aforesaid alleged violations committed by the Noticees.

<u>Show Cause Notice, Reply and Personal Hearing</u>:

3. Show Cause Notice dated January 5, 2024 (hereinafter referred to as 'SCN') was issued in terms of rule 4(1) of the Rules read with section 15-I of the SEBI Act to the Noticees alleging, inter alia, the following:

   a) It was alleged that during examination, certain non-compliance of LODR Regulations by Noticee 1 was observed and the comments of Noticee 1 was sought. The company responded vide email dated December 15, 2023 which is reproduced below:

Sr No.	**SEBI LODR Regulation**	**Compliance for Quarter**	**Date of Submission as per BSE**	**Allegation**	***Company's Response dated 15-Dec-23***
1.	13(3): Investor Grievance Report - Quarterly within 21 days	March-16	23-Apr-16	Delayed submission, thus violation of Reg 13(3)	*It is more than 7- years. Needs to verify from the records and as date there were no record showing any Investors Grievances Pending.*
2.	33(3): Financial Results	Year ended March 2016	07-Jun-16	Delayed submission, thus violation of Reg 33(3)	*It is more than 7- years. Needs to verify from the records. Also The SE not intimated to us about any delay in filing.*
3.	33(3): Financial Results	September-16	19-Nov-16	Delayed submission, thus violation of Reg 33(3)	*It is more than 7- years. Needs to verify from the records. Also The SE not intimated to us about any delay in filing.*
4.	40(9): Certificate from PCS in relation to Transfer or Transmission or transposition of securities within one month from the end of	September-`16	14-Nov-16	Delayed submission, thus violation of Reg 40(9)	*It is more than 7- years. Needs to verify from the records. Also The SE not intimated to us about any delay in filing*

Sr No.	SEBI LODR Regulation	Compliance for Quarter	Date of Submission as per BSE	Allegation	*Company's Response dated 15-Dec-23*
	each half of the financial year				
5.	47: Financial Result Advertisement in newspaper	Dec 2015 to June 2017 (7 quarters)	Not Received	Not published in the newspaper, thus violation of Reg 47(1)(b)	*It is more than 7- years. Needs to verify from the records. Also The SE not intimated to us about any delay in filing**
6.	47: Financial Result Advertisement in newspaper	June-18	16-Aug-18	Delayed publication, thus violation of Reg 47(1)(b)	*It is more than 6- years. Needs to verify from the records.*
7.	47: Financial Result Advertisement in newspaper	September-20	17-Nov-20	Delayed publication, thus violation of Reg 47(1)(b)	*The delay of 2- days may be on account of Block of the NEWS paper. The matter has no significance now and it was COVID period*
8.	47: Financial Result Advertisement in newspaper	March-21	27-May-21	Delayed publication, thus violation of Reg 47(1)(b)	*The delay of 1- day may be on account of Block of the NEWS paper. The matter has no significance now and it was COVID period*
9.	47: Financial Result Advertisement in newspaper	December-21	31-Jan-22	Delayed publication, thus violation of Reg 47(1)(b)	
10.	47: Board Meeting Advertisement in newspaper	Dec 2015 to Sept 2017 (8 quarters)	Not Received	Not published in the newspaper, thus violation of Reg 47(1)(a)	*The matter is 9 to 7 year old. The matter has no significance now.*
11.	47: Board Meeting Advertisement in newspaper	March-18	Not Received	Not published in the newspaper, thus violation	*The matter is 6 year old. The matter has no significance now*

Sr No.	SEBI LODR Regulation	Compliance for Quarter	Date of Submission as per BSE	Allegation	*Company's Response dated 15-Dec-23*
				of Reg 47(1)(a)	
12.	47: Board Meeting Advertisement in newspaper	December-19	04-Feb-20	Delayed publication, thus violation of Reg 47(1)(a)	*The delay was 5-days and 3 year old. The matter has no significance now*

b) Further, the details of current and past Compliance Officer(s) of Noticee 1 was sought and it was observed from their response that for the FY 2015-16 to FY 2017-18, Noticee 2 was appointed as the Compliance Officer of Noticee 1. However, it is noted from Noticee 1's submission dated December 18, 2023 that Noticee 2 is not a member of ICSI and is thus not a qualified Company Secretary and this is alleged to be in violation of regulation 6(1) of the LODR Regulations.

c) In view of the above, it is alleged that Noticee 1 has violated regulations 13(3), 33(3), 40(9), 47(1)(a) and 47(1)(b) on multiple counts during the years 2015-16 to 2021-22. Further, it is alleged that the Noticees have violated regulation 6(1) of LODR Regulations.

4. The SCN was duly delivered to the Noticees. Noticees, vide letter dated February 12, 2024 replied to the SCN stating, inter alia, the following:

- *The Securities and Exchange Board of India {SEBI) (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 (Listing Regulations) lays down the provisions for effective corporate governance and fair disclosures by listed companies in India.*

- *The SEBI from time to time framed the Non-compliances with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities which includes imposition offines .*

- *It has mandated by the Regulator (SEBI) that :-" Every recognized stock exchange shall review the compliance status of the listed entities and shall issue* *notices to the non-compliant listed entities within 30 days from the due date of submission of information.*

- *Non-compliant listed entity shall ensure compliance with the requirement(s) and pay fines as per the circular within 15 days from the date of such notice.*

- *If the non-compliant listed entity fails to comply with the aforesaid requirement(s) and/or pay fine levied within the stipulated period as per the notice stated above, the concerned recognized stock exchange(s) shall, upon expiry of the period indicated in the notice, shall issue notices to the promoter(s) of such non-compliant entities, to ensure compliance with the requirement(s) and pay fines within 10 days from the date of such notice. While issuing the aforementioned notices, the recognized stock exchange shall also send intimation to other recognized stock exchange(s) where the shares of the non-compliant entity are listed.*

- *In the present above referred matters as mentioned, the non-compliances referred to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities which includes imposition of fines is completely silence about the impositions of any mode of proceedings, fines and adjudications for the stated delay/violations, what is the reason for the AO to issue the above SCN under section 15A(b) and 15HB and 15-I of SEBI Act for the alleged aforesaid violation of provision of LODR Regulations.*

- *It is surprising to note that the AO (1) after along and inordinate delay and (2) without specifying any reason that when the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities which includes imposition of fines which with proper deliberation has not specified any mode of proceedings , fines and adjudications for the stated delay/violations initiated the proceedings under section 15A(b) and 15HB and 15-I of SEBI Act for the alleged aforesaid violation of provision of LODR Regulations, (3) not justifying how the equilibrium of the market affected and (4)reason how the proceedings for non-event based and historic matter now needs adjudication. The AO also in his SCN silent about the SE role as per the SOP in this matter.*

- *We hereby submit that in the present case the Non compliances referred to from the year 2016 to 2022 which is 7 years old. As per our record we never received any notice from the SE informing the Company about the above SEBI LODR, 2015 violation(s) and any imposition of the monetary fine. Hence the Adjudication* *proceedings today is ultra vires the scope and regulation and that after an inordinate delay.*

Sr No.	SEBI LODR Regulation	Compliance for Quarter	Date of Submission as per BSE	Allegation	*Delay no. of days in filing*
1.	13(3): Investor Grievance Report - Quarterly within 21 days	March-16	23-Apr-16	Delayed submission, thus violation of Reg 13(3)	*2 days*
REPLY	*There were no investor grievances pending for the quarter ended 31st March 2016. 22nd April 2016 was a Friday and 23rd April was a Saturday. This NIL report has not affected any stake holders.*				
2.	33(3): Financial Results	Year ended March 2016	07-Jun-16	Delayed submission, thus violation of Reg 33(3)	*7 days*
REPLY	*It is difficult to retrieve date from the Company e-mail and from physical mode of Company to ascertain the reason for filing the same on 7 April, 2016 as the matter is more than 7 year old. Also, as per the information available at site the company filed their Board Meeting outcome on 30May 2016 informing the stakeholders about the adoption of financials*				
3.	33(3): Financial Results	September-16	19-Nov-16	Delayed submission, thus violation of Reg 33(3)	*5 days*
REPLY	*The Financials of the Company for the quarter ended 30th September 2016 was filed on 14th September 2016.* *Also, as per the information available at site the company filed their Board Meeting outcome on 14 September 2016 informing the stakeholders about the adoption of financials. It was the Limited review report that was inadvertently missed while filing the financials and the same was once again filed on 19 September 2016.*				
4.	40(9): Certificate from PCS in relation to Transfer or Transmission or transposition of securities within one	September-`16	14-Nov-16	Delayed submission, thus violation of Reg 40(9)	*14 days*

Sr No.	SEBI LODR Regulation	Compliance for Quarter	Date of Submission as per BSE	Allegation	*Delay no. of days in filing*
	month from the end of each half of the financial year				
REPLY	*There were no delay in transfer or transmission of securities. The PCS report at that time was for the inter use of the SE/ SEBI.* *The delay has not impacted or affected any stakeholders right. Because of inordinate delay of the SE/ SEBI informing the said violations, it could be difficult to give any appropriate reasons.*				
5.	47: Financial Result Advertisement in newspaper	Dec 2015 to June 2017 (7 quarters)	Not Received	Not published in the newspaper, thus violation of Reg 47(1)(b)	*Not submitted*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements.* *We further submit that the financials were duly filed on due dated with the SE.*				
6.	47: Financial Result Advertisement in newspaper	June-18	16-Aug-18	Delayed publication, thus violation of Reg 47(1)(b)	*1 day*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements.* *We further submit that the financials were duly filed on due dated with the SE.*				
7.	47: Financial Result Advertisement in newspaper	September-20	17-Nov-20	Delayed publication, thus violation of Reg 47(1)(b)	*2 days*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements.* *We further submit that the financials were duly filed on due dated with the SE. Also it was covid 19 period.*				
8.	47: Financial Result Advertisement in newspaper	March-21	27-May-21	Delayed publication, thus violation of Reg 47(1)(b)	*1 day*

Sr No.	SEBI LODR Regulation	Compliance for Quarter	Date of Submission as per BSE	Allegation	*Delay no. of days in filing*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements. We further submit that the financials were duly filed on due dated with the SE. Also it was covid 19 period.*				
9.	47: Financial Result Advertisement in newspaper	December-21	31-Jan-22	Delayed publication, thus violation of Reg 47(1)(b)	*1 day*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements. The advertisement was on due dates but filed by a delay of 1 day as the paper was received one day delay.*				
10.	47: Board Meeting Advertisement in newspaper	Dec 2015 to Sept 2017 (8 quarters)	Not Received	Not published in the newspaper, thus violation of Reg 47(1)(a)	*Not submitted*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements. The Company informed to the SE about the Board meeting intimations and there were no delay.*				
11.	47: Board Meeting Advertisement in newspaper	March-18	Not Received	Not published in the newspaper, thus violation of Reg 47(1)(a)	*Not submitted*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements. The Company informed to the SE about the Board meeting intimations and there were no delay.*				
12.	47: Board Meeting Advertisement in newspaper	December-19	04-Feb-20	Delayed publication, thus violation of Reg 47(1)(a)	*30 days*

Sr No.	SEBI LODR Regulation	Compliance for Quarter	Date of Submission as per BSE	Allegation	*Delay no. of days in filing*
REPLY	*Because of inordinate delay of the SE/SEBI informing the said violations, it could be difficult to give any appropriate reasons or find copy of the advertisements.* *The Company informed to the SE about the Board meeting intimations and there were no delay.* *At that time it was pre-covid period and people were under severe shock.*				

- *It is submitted that the SE to give us a proper notice to rectify the non-compliance as to ensure the compliance as per clause (5) of the above Circulars. The SE failed to follow the same. And when the SCN was issued the compliances were either meet with or no bearing upon the security market due to in-ordinate delay and this delay information the securities market participants already discounted. There were no single complaint of any stakeholders relied by the SEBI while preparing the said SCN.*

- *In light of the above, it would be evident that not only is the delay unexplained and gross but SE has not placed a fair and accurate depiction of the factual records and failed to comply on its part the applicable requirements of the SEBI Circulars relating to imposition of any SOP fine.*

- *You have not issued any notices to the non-compliant listed entities within 30 days from the due date of submission of information. Non-compliant listed entity shall ensure compliance with the requirement(s) and pay fines as per the circular within 15 days from the date of such notice. If the non-compliant listed entity fails to comply with the aforesaid requirement(s) and/or pay fine levied within the stipulated period as per the notice stated above. So the SE cannot issue the Notice and nor have a right to impose any fine.*

- *With reference to the Point no. 4 of the SCN that Mr Sunil Kumar Agarwal was appointed as the Compliance officer of the company From FY 2015-16 to FY 2017-18 . The Company has a Company Secretary during the relevant period namely Mr.Kamalkant Thakur appointed on 29.09.2018 (Membership No.44226) and thereafter Ms. Daljit Kaur was appointed as Company Secretary on 15.O5.2019 (Membership No. 49984)*

- *However the Board considering the past secretarial experience of Mr Sunil Kumar Agarwal appointed him as a compliance officer of the company.*

- *Mr Sunil Kumar Agarwal never claimed that he was a qualified Company Secretary. In light of the above, it is submitted that the SCN is liable to be set aside on this ground alone.*

5. In the interest of natural justice, an opportunity of personal hearing was given to the Noticees on March 6, 2024 vide notice dated February 21, 2024. Vide email dated February 27, 2024, the Noticees requested for another date of personal hearing. Acceding to their request another opportunity of personal hearing was given to the Noticees on March 21, 2024 vide email dated February 27, 2024. The Authorised Representative (hereinafter referred to as "**AR**") of the Noticees appeared on the scheduled date and reiterated the submissions made earlier in reply dated February 12, 2024. The AR undertook to make further submissions in the matter.

6. Noticee 2, vide email dated March 26, 2024 made, inter alia, the following submissions:

- *I was working as the compliance officer of the company for the purpose of filing necessary documents as required under SEBI LODR, 2015. I have never informed SE or any person or claimed that I am a qualified Company Secretary to act as a compliance Officer under any statute.*

- *Note that the company during the relevant time was a loss-making Company and no qualified personnel interested to join the company and also the company was not in a position to pay the salary to a qualified company secretary.*

- *In good intention to comply with the applicable provisions of the SEBI LODR, 2015 I have filed the returns and took the position of the Compliance officer for the dissemination of information on a timely manner with the SE and for the benefits of the public at large. Hence because of my acts there were timely filing. I should not be punished for the good act and only for the literary interpretation of the statue.*

7. Noticee 2 further submitted letter of BSE dated August 14, 2019 imposing a fine of Rs. 51920/- on Noticee 1 for late appointment of Compliance Officer for the quarter ended June 2019.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the instant matter are:

   (a) Whether Noticee 1 has violated regulations 13(3), 33(3), 40(9), 47(1)(a) and 47(1)(b) of LODR Regulations on multiple counts during the years 2015-16 to 2021-22 and the Noticees have violated regulation 6(1) of LODR Regulations;

(b) Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15A(b) of SEBI Act on Noticee 1 and under section 15HB of SEBI Act on Noticees?; 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?

9. The relevant provisions are mentioned hereunder:

<u>Regulation 13(3)</u>

<u>Grievance Redressal Mechanism</u>

(3)The listed entity shall file with the recognized 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.

<u>Regulation 33(3)</u>

<u>Financial results</u>

(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity shall also submit quarterly/year-to-date consolidated financial results.

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and [Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and [Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)
Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.
(e) The listed entity shall also submit the audited or limited reviewed financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.
(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.
(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.
(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.
(i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.
(j) The listed entity shall, subsequent to the listing, submit its financial results for the quarter or the financial year immediately succeeding the period for which the financial statements have been disclosed in the offer document for the initial public offer, in accordance with the timeline specified in clause (a) or clause (d) of this sub-regulation, as the case may be, or within 21 days from the date of its listing, whichever is later.

Regulation 40(9)

Transfer or transmission or transposition of securities.

(9) The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within thirty days from the end of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.

Regulation 47(1)(a) and 47(1)(b)

Advertisements in Newspapers.

(1) The listed entity shall publish the following information in the newspaper:

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

(b) financial results, as specified in regulation 33, along-with the modified opinion(s) or reservation(s), if any, expressed by the auditor:
Provided that if the listed entity has submitted both standalone and consolidated financial results, the listed entity shall publish consolidated financial results along-with (1) Turnover, (2) Profit before tax and (3) Profit after tax, on a stand-alone basis, as a foot note; and a reference to the places, such as the website of listed entity and stock exchange(s), where the standalone results of the listed entity are available.

Regulation 6

Compliance Officer and his /her Obligations.
(1) A listed entity shall appoint a qualified company secretary as the compliance officer.

FINDINGS

10. I have gone through the submissions made by the Noticees and the other material on record and I now proceed to deal with the same. Before going into the merits, I would like to first deal with the preliminary objection raised by the Noticees with regard to delay in issuance of SCN. It is observed that the Noticees have submitted that the case of non-compliance referred to 2016 – 2022 which is 7 years old. While perusing the documents available on record, it is noted that while dealing with the open offer made by certain acquirers in the scrip of Noticee 1, the merchant banker had prepared a document dated January 18, 2023 regarding the compliance of LODR Regulations by Noticee 1 and submitted the same to SEBI. On analysis of the document, SEBI sought comments from Bombay Stock Exchange (hereinafter referred to as "**BSE**") and conducted an examination. From the documents available on record, I find that the examination in the matter was completed on December 19, 2023. After completion of examination, the undersigned was appointed as the AO vide order dated January 2, 2024 and the SCN in the matter was issued on January 5, 2024. Therefore, I find that there is no delay in the issuance of the SCN. Now I proceed to deal with the case on merits.

ISSUE I. Whether Noticee1 have violated regulations 13(3), 33(3), 40(9), 47(1)(a) and 47(1)(b) of LODR Regulations on multiple counts during the years 2015-16 to 2021-22 and the Noticees have violated regulation 6(1) of LODR Regulations?

11. From the documents available on record, I find that the Noticee have not denied

the charges of non-compliance of LODR Regulations. Its main contention was that BSE should have given it proper notice to rectify the non-compliance. It further contended that LODR Regulations and Standard Operating Procedure for suspension and revocation of trading of specified securities, which includes imposition of fines, is completely silent about imposition of any mode of proceedings.

12. I have perused the submission of the Noticees, LODR Regulations, SEBI circular SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 including the Standard Operating Procedure ("SOP") for suspension and revocation of suspension of trading of specified securities. I find that clause 7 of the circular states that "*The above provisions are without prejudice to the power of SEBI to take action under the securities laws*." Therefore, I find that the circular itself which is referred by the Noticees specifically gives the power to SEBI to initiate any action in respect of any entity who is non-compliant of the provisions of LODR Regulations regardless of whether any action is taken by the stock exchange.

13. Further, the SCN alleges non-compliance of regulations 13(3), 33(3), 40(9), 47(1)(a) and 47(1)(b) of LODR Regulations. On perusal of the circular dated January 22, 2020, it is observed that no action to be taken by stock exchanges for violation of regulations 40(9), 47(1)(a) and 47(1)(b) of LODR Regulations has been prescribed in the said circular. Further, it is also observed that the power to impose fine for violation of regulation 13(3) of LODR Regulations was given to BSE vide circular SEBI/HO/CFD/CMD/CIR/P/2018/77 dated May 3, 2018. Therefore, during the period of violation of regulation 13(3) of LODR Regulations by Noticee 1, i.e., for quarter ended March 2016, BSE did not even have the power to levy fine. Hence, it is clear that all non-compliances by the listed entities are not covered under the said circular. Thus, only SEBI can take action for any non-compliance of 13(3), 40(9), 47(1)(a) and 47(1)(b) of LODR Regulations.

14. From the documents available on record, I find that Noticee 1 has violated the regulations 13(3), 33(3), 40(9), 47(1)(b) and 47(1)(b) of LODR Regulations on multiple occasions. Noticee 1 did not provide any reason for the said delay in

compliance or non-compliance of the aforesaid provisions. The LODR Regulations were brought to establish the rules for fair disclosures and effective corporate governance for listed entities in India. The listed entities are required to make the relevant disclosures to address information disparity and increase transparency. Noticee 1, by not complying with regulations 13(3), 33(3) 40(9), 47(1)(b) and 47(1)(b) of LODR Regulations have failed to inform the investing public of its position to enable them to take informed decision. In view of the above, I find that the allegation of violation of regulations 13(3), 33(3), 40(9), 47(1)(b) and 47(1)(b) of LODR Regulations by Noticee 1 stands established.

15. Further, it is observed that during FY 2015-16 to FY 2017-18, Noticee 2 was appointed as the Compliance Officer of Noticee 1 although he was not a member of ICSI. On reading the provision of regulation 6(1) of LODR Regulations, I find that Noticee 1 was supposed to appoint a qualified company secretary as the Compliance Officer. Noticee 1 submitted that considering his past secretarial experience, Noticee 2 was appointed as the Compliance Officer. I find that the regulation is very clear on the qualification of the Compliance Officer and there is no scope of interpreting it otherwise. Hence, the submission of Noticee 1 does not have any merit. However, it is observed that Noticee 1 has appointed qualified Company Secretary on September 29, 2018 and thereafter on May 15, 2019. Further Noticee 2 had submitted a copy of a letter of BSE dated August 14, 2019 imposing fine of Rs. 51920/- on Noticee 1 for late appointment of Compliance Officer with the requisite qualification for the quarter ended June 2019. However, I find that in the present case, it is alleged Noticee 1 has appointed Noticee 2 as Compliance Officer who is not a qualified company secretary for the FY 2015-16 to FY 2017-18 which is a separate period than the one for which BSE has levied fine. As Noticee 1 knowingly violated regulation 6(1) of LODR regulations for the FY 2015-16 to FY 2017-18, I hold that the allegation of violation of regulation 6(1) of LODR regulations by Noticee 1 stands established.

16. I find that the obligation of the appointment of a company secretary is on the listed entity as per regulation 6(1) of LODR Regulations. In the extant provision, there is no obligation that is bestowed on the person who is appointed as the Compliance

Officer. In view of the above, I find that the allegation of violation of regulation 6(1) of LODR Regulations by Noticee 2 does not stand established.

ISSUE II. Do the violations, if any, on the part of Noticee 1 attract monetary penalty under sections 15A(b) and 15HB of SEBI Act on Noticee 1;

17. In view of the violation as established above, I refer to the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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…".*

18. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticees under the provisions of sections 15A(b) and 15HB of the SEBI Act, which reads as under:

<u>SEBI Act</u>

15A. Penalty for failure to furnish information, return, etc.

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

Issue III: If so, what would be the quantum of monetary penalty that can be imposed on Noticee 1 after taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

> ***Factors to be taken into account while adjudging quantum of penalty.***
>
> *15J.While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default.*

I note that the available records do not quantify the amount of profits made by the Noticees or losses suffered by the investors due to violations by the Noticees in the instant case nor it has been alleged by SEBI. Making timely and adequate disclosure to stakeholders is one of the basic tenets of good corporate governance. When disclosures are delayed or inadequate, there is information asymmetry and there are chances of market abuse and thus cannot be taken leniently. While there have been violations by Noticee 1, I observe that the violations mostly pertain to the period of more than 7 years ago. The same is taken into consideration while imposing penalty.

<u>ORDER</u>

20. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees, time period of the violations and also 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 AO Rules, I hereby impose the following penalty on Noticee 1:

Penalty under	Amount	
Section 15A(b) of SEBI Act	Rs.1,00,000/-	Rupees One Lakh only
Section 15HB of SEBI Act	Rs.2,00,000/-	Rupees Two Lakh only
TOTAL	**Rs.3,00,000/-**	**Rupees Three Lakh only**

I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee 1.

21. Noticee 1 shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:
    ENFORCEMENT → Orders → Orders of AO → PAY NOW

22. 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.

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

Date: March 27, 2024 | **BARNALI MUKHERJEE**

Place: Mumbai | **ADJUDICATING OFFICER**