BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NH/YK/2024-25/30392]

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:

Noticee	PAN	Registration Number
Aryaman Financial Services Limited	AABCA1376P	INM000011344

In the matter of Aryaman Financial Services Limited

FACTS OF THE CASE

1. Aryaman Financial Services Limited (hereinafter referred to as "**Noticee/Aryaman**") has been registered with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a merchant banker since September 15, 2016. The registration number of Noticee is INM000011344. SEBI had undertaken inspection of the Noticee on February 14, 2024 and February 15, 2024 for the period April 01, 2022 to December 31, 2023 (hereinafter referred to as "**Inspection period/IP**").

2. Post the culmination of the aforesaid inspection, an inspection report (hereinafter referred to as '**IR'**) was prepared. The findings of the said inspection were communicated to the Noticee vide letter dated February 26, 2024. In response to the findings in the inspection report, Noticee submitted a reply vide e-mail dated March 04, 2024. After the receipt of the Noticee's reply to the Inspection Report, a Post Inspection Analysis report (hereinafter referred to as '**PIA'**) was prepared.

3. Based on the findings of Inspection conducted by SEBI and the response of the Noticee dated March 04, 2024 submitted to SEBI, certain non-compliances of Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

(hereinafter referred to as "**MB Regulations**") and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") were alleged. The extracts of the violations alleged to have been committed by the Noticee and corresponding provision of the securities law are given in the table below:

Table 1

Sr. No.	**Alleged Violations**	**Regulatory Provisions**
1.	The Noticee failed to exercise independent due diligence in the matter of the takeover of XYZ Ltd.[1]	Regulations 9A(1)(e) and 13 read with Clauses 4 and 21 of Schedule III of the MB Regulations.
2.	The Noticee failed to update its Code of Conduct adopted under Schedule B and Schedule C of the PIT Regulations in line with the subsequent amendments made in the PIT Regulations.	Regulation 9(1) read with Schedule B and C of the PIT Regulations and Regulations 9A(1)(e) and 13 read with Clause 21 of Schedule III of the MB Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI had appointed the undersigned as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated April 24, 2024 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**), to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act for the aforementioned violations of the provisions of law alleged to have been committed by the Noticee.

[1] *Name of the Company has been excised for the sake of confidentiality.*

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref no. SEBI/EAD-2/NH/YK/15375/2024 dated April 26, 2024 (hereinafter referred to as **'SCN/Notice'**) was served upon the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, not be imposed on it in terms of the provisions of the Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee.

6. The SCN dated April 26, 2024, *inter alia*, alleged the following:

"

6.1. Failure to exercise independent due diligence

- *It was observed from IR that one of the inspection themes pertained to due diligence exercised by the Noticee in the matter of takeover related activities handled by the Noticee as a merchant banker.*

- *In the matter of takeover of XYZ Ltd.[2], it was observed that the Noticee has not obtained the Certified True Copy **(CTC)** of the certificates of the educational qualifications of Mr. A[2] and Mrs. B[2] (acquirers of XYZ Ltd.[2]) disclosed in the Letter of Offer **(LOF)**. In the LOF, it was disclosed that Mr. A[2] is a commerce graduate and holds a diploma in export management, and Mrs. B[2] is a commerce graduate.*

- *It was observed that the aforesaid finding was communicated to the Noticee by SEBI vide letter dated February 26, 2024. The Noticee vide e-mail dated March 04, 2024 had, inter alia, stated as under in respect of the aforesaid finding in the IR:*

  "Please note that the Target Company got listed on BSE vis Public Issue in 2013 and the Merchant Banker at the time of the Public issue was Intonsive Fiscal Services Private Limited. One of renowned Merchant Banker.

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[2] Names of the Company and the acquirers of the Company have been excised for the sake of confidentiality.

Further to note that in this case there is no change in management since the Public Issue and the Acquirers are already on the Board of the Target Company and are defined as the Promoters of the Target Company.

We confirm that, as our policy, we obtained the copies of educational qualification, whenever some new management come into the Target Company. Since in this case, there is no change in management and the existing shareholders of the Target Company are well aware of the management of the Target Company. Hence, we had relied on the disclosure made in the Prospectus for the educational qualification as our Independent professional judgement."

- *In this regard, it is alleged in the PIA that the Noticee has only relied on the work of another merchant banker with respect to disclosures made in the LOF regarding the educational qualifications of acquirers without exercising independent due diligence and has not provided any supporting documents to substantiate the adequacy of disclosures.*

- *It was further observed that the Noticee has provided a declaration to the inspection team on February 15, 2024 which, inter alia, states as under:*
  "We did not maintain copies of education proof for the educational qualification of Mr. A[3] and Mrs. B[3] mentioned in the LOF of XYZ Ltd.[3]"

- *In view of the above, it is alleged that the Noticee had failed to conduct independent due diligence with respect to disclosures made in the LOF regarding the educational qualifications of acquirers. Therefore, it is alleged that the Noticee has violated the provisions of Regulations 9A(1)(e) and 13 read with Clauses 4 and 21 of Schedule III of the MB Regulations.*

[3] *Names of the Company and the acquirers of the Company have been excised for the sake of confidentiality.*

6.2. Failure to update the Code of Conduct adopted under Schedule B and Schedule C of the PIT Regulations

- *It was observed from IR that during the course of inspection, the Code of Conduct adopted by the Noticee under PIT Regulations along with the CTC of the Board Resolution passed for the adoption of the Code of Conduct was sought. The Noticee submitted the Code of Conduct adopted under Schedule B of the PIT Regulations as a listed entity and the Code of Conduct adopted under Schedule C of the PIT Regulations as a registered intermediary.*

- *In this regard, it was observed that the Code of Conduct submitted by the Noticee was adopted in the year 2019 and since then, the Code of Conduct has not been updated in line with the subsequent amendments made in the PIT Regulations after the Code of Conduct was adopted by the Noticee.*

- *It was observed that the aforesaid finding was communicated to the Noticee by SEBI vide letter dated February 26, 2024. The Noticee vide e-mail dated March 04, 2024 had, inter alia, stated as under in respect of the aforesaid finding in the IR:*

  "We wish to explain that we had adopted the Code of Conduct under Schedule B and Schedule C of the SEBI (prohibition of Insider Trading), 2015. However, during the discussion with the inspection team, we realized that some updates were not incorporated under the same.

  We now have rectified the Code of Conduct under Schedule B and Schedule C of the SEBI (Prohibition of Insider Trading), 2015, as per requirement."

- *It was further observed that Noticee has provided a declaration to the inspection team on February 14, 2024 which, inter alia, states as under:*

  "Code of Conduct adopted by us as Merchant Banker in Schedule C and as Listed Company in Schedule B of the PIT Regulations furnished to the Inspection team was adopted in the year 2019 and same is not updated in line with the amendments in PIT Regulations."

- *It was further observed from PIA that during earlier inspection (April 01, 2021 to March 31, 2022), an administrative warning letter was issued to the Noticee vide letter dated June 28, 2023 which, inter alia, states as under:*
  "Violation of Regulation 9 (1) read with Schedule C of SEBI (PIT) Regulations, 2015 for failure to ensure that the Code of Conduct (for intermediaries) to regulate, monitor and report trading by designated persons and immediate relatives of designated persons is in line with Schedule C of SEBI (PIT) Regulations, 2015."

- *In view of the above, it is alleged that the Noticee had repeatedly failed to update its Code of Conduct adopted under Schedule B and Schedule C of the PIT Regulations. Therefore, it is alleged that the Noticee is in violation of the provisions of Regulation 9(1) read with Schedule B and C of the PIT Regulations and Regulations 9A(1)(e) and 13 read with Clause 21 of Schedule III of the MB Regulations during the IP."*

7. The SCN along with annexures was served upon the Noticee in the following manner as mentioned below:

Table 2

Sr. No.	**Mode of Delivery of SCN**	**Addresses/ E-mail IDs**[4]	**Remarks**
1.	Digitally signed SCN delivered through E-mail	*m.....@afsl.co.in; b..........@afsl.co.in*	Digitally Signed SCN duly delivered on April 26, 2024.
2.	Delivered through Speed Post with Acknowledgment Due	*60………Mumbai – 400 001*	Delivered on April 30, 2024 as per the consignment tracking on India Post.

8. The Noticee vide e-mail dated May 13, 2024 requested for additional time till May 17, 2024 to submit its reply to SCN. In the interest of natural justice, request of the Noticee to grant additional time to submit its reply to the SCN was considered and vide e-mail

[4] *E-mail ID and address excised for the sake of confidentiality.*

dated May 13, 2024, the Noticee was advised to submit its reply to SCN, if any, latest by May 17, 2024 which was submitted by the Noticee vide e-mail dated May 16, 2024.

REPLY OF THE NOTICEE

6. Vide e-mail dated May 16, 2024, Noticee, *inter alia*, made the following submissions in its replies to the SCN which have been reproduced in *verbatim:*

"

6.1. *Alleged violation: Educational qualification proof of the Acquirer in the matter of the takeover of XYZ Ltd.*[5]

We wish to explain that the material / immaterial disclosure is different for the funds raising activities like IPO / Rights Issue, etc (in which the funds are raised from the Investors) and is different for the funds giving activities like Open Offer / Buy Back, etc (in which the Investors have to receive the funds).

In case of fund-raising activities like IPO, the interest of the Investor can be protected by providing adequate disclosures to the investors so as to enable them to make a balanced and informed decision regarding the Issuer Company, Objects, historical financial performance, Management including their education qualifications, litigations, etc.

In case of funds giving activities like Open Offer, the Investors is already associated with the Company & the management and is well aware of their education qualifications. In such case, the interest of the Investor can be protected by providing adequate disclosures, without making any misleading or exaggerated claims or any misrepresentation with respect to the open offer price, networth of the Acquirers, financial arrangements, details of Escrow arrangements, timely payment to the Investors, etc. because if they wish to tender their shares then they will be concern with the above-mentioned points. The inspection team had found all the above in line and no discrepancies have been pointed out in any of such supporting documents.

[5] *Name of the Company has been excised for the sake of confidentiality.*

Further, in this case, we wish to highlight that there is no change in management since the Public Issue and the Acquirers are already on the Board of the Target Company and are defined as the Promoters of the Target Company. The qualification of the both the Acquirers namely Mr. A[6] *and Mrs. B*[6] *are available in the Prospectus of the Company (extract of which is attached as Annexure 1A) as well as in the Annual Reports of the Company (extract of which is attached as Annexure 1B). Both the above documents are in public domain and the investors are well aware of their qualifications.*

The SEBI inspection period covered 5 Open Offers and in all other cases we had provided full supporting documents to the Inspection team. We confirm that we obtained the copies of educational qualification, whenever some new management come into the Target Company. Since this case related to consolidation of holding from the same management & thereby no change in management i.e. no new entity coming into scenario, we had relied on important publicly available documents. In other cases, we have provided the copies of educational qualification to the inspection team members. Secondly, in this case, both the Acquirers were Commerce graduate and we also took on record that this is not a material fact which one may incorrectly state to us. This further affirmed us of the immaterial nature of this matter w.r.t insisting on education proof from such Acquirers for their qualifications.

Whether any supporting documents is material or immaterial is depending upon case to case basic. As a professional, we believe that if there was any change in management then the supporting documents for educational qualification is material in nature however if no new individual coming into management, then such document in immaterial in nature and that can be relied on other important publicly available documents. We had maintained on record self-certified declaration to this effect from such Acquirers and had showed to the Inspection team also. Accordingly, we had exercised our due diligence, independent professional judgement and ensured to

[6] *Names of the acquirers of the Company have been excised for the sake of confidentiality.*

have proper back-up for all the material disclosure and relied on important publicly available documents for the immaterial part.

Further after the inspection, we have asked the Acquirers to provide the exact qualification proof and they have provided us the same, which is attached as Annexure 1C, to support our professional judgement and bona fide intentions.

As can be seen, the education details of the Acquirers are at the end of the day correct and hence no "error" or "misleading" statement has gone to the investor community and this fact may please be noted for reaffirming our stance that the matter is nothing but a procedural issue and not a material in any nature.

6.2. Alleged violation: Failed to update its Code of Conduct under Schedule B and Schedule C of the SEBI PIT Regulations in line with the subsequent amendments made in the PIT Regulations

We request you to kindly note the chronological order and the allegation made in the earlier inspection for the period covering April 2021 to March 2022:

Please note that as per the observation letter of SEBI Inspection team of February 2023, the allegation was that we had not formulated the Code of Conduct and not that the Code is not in line with the Schedule C. Please find attached SEBI observation letter as Annexure 2A for your ready reference. Please refer the highlighted portions on page 5 point no 5.

The SEBI warning letter of June 2023 have the wording of "failure to ensure that the Code of Conduct (for intermediaries) to regulate, monitor and report trading by designated persons and immediate relatives of designated persons is in line with the Schedule C of SEBI (PIT) Regulations, 2015". The same is attached as Annexure 2B for your ready reference. Please refer the highlighted portions on page 2 point no (e).

Since the allegation that we had not formulated the Code of Conduct, the above wording of "failure to ensure …. in line with the Schedule C…" should be interpretated accordingly and it should not be interpretated otherwise. Based on the above, we are

had replied to SEBI in August 2023 that we had the Code of Conduct and requested SEBI to remove the allegation. Copy of our letter is attached as Annexure 2C for your ready reference. Please refer the highlighted portions on page 3 point no 5.
Further the inspection report of SEBI had also mentioned the allegation of not formulated the Code of Conduct and not that it is not in line with the Schedule C. Extract of the inspection report is attached as Annexure 2D for your ready reference. Please refer the highlighted portions on page 3. We had received the same in August 2023 i.e. after submission of our reply.

We wish to highlight the fact that we had never accepted the said allegation (i.e. not formulated code of conduct) and had inform SEBI about the same in the past.

Secondly, we also state that the current inspection team has alleged that we have adopted code of conduct in 2019 but we have not updated it thereafter. Hence, that makes it very clear that the earlier inspection team's allegation (which was conducted in 2022 i.e after 2019) was incorrect as was being replied by us to them. The said fact has been brought out by point no 6.2.2 of the SCN, that the Code of Conduct was adopted in the year 2019.

To summarize, we once again re-iterate that this mistake of not updating code of conduct with the updates issued by SEBI is not a "REPITIVE" error.

Hence, we request you to kindly take the above in record & remove the allegation of repeatedly nature under point no 6.2.6 of the SCN.

However, we acknowledge that at the time of inspection in February 2024, we had our Code of Conduct under Schedule B & C, which were adopted on May 29, 2019 and not updated for certain changes which were issued by SEBI later.

We request you to note the changes in the Schedule B and Schedule C (Code of Conduct) after May 2019, which is highlighted in Annexure 2E & Annexure 2F. The summary of the same are given below for your ready reference:

Change for Schedule B

66 (Renumbering), 68 (substituted the word), 69 & 70 (certain relaxation from earlier code), 76 (Remittance to Investor Protection Funds), 80 (informing to Stock Exchange instead of SEBI) and 82 & 83 (clarification in nature).

Change for Schedule C

87 & 90 (yet to notified the dates), 88 (Remittance to Investor Protection Funds), 89 (informing to Stock Exchange instead of SEBI), 91 to 94 (specification / clarification in nature)

Please note that none of the above changes has any material effect to regulate, monitor and report trading of designated persons and immediate relatives, and thereby to update the code of conducts.

Having said the above, during the inspection and in discussion with the SEBI team, we realized to updated the same in line with SEBI (PIT) Regulations, 2015 and had updated our Code of Conducts and submitted the same to the inspection team (post inspection).”

HEARING

7. In consonance with the Adjudication Rules, an opportunity of hearing was granted to the Noticee on May 27, 2024 vide hearing notice dated May 17, 2024. The Noticee vide e-mails dated May 24, 2024 and May 27, 2024 requested to postpone the hearing scheduled on May 27, 2024. In the interest of natural justice, request of the Noticee to postpone the hearing scheduled on May 27, 2024 was considered and the hearing was rescheduled to May 30, 2024. On the rescheduled date of personal hearing, the Noticee appeared through its Authorized Representatives (ARs) who reiterated the submissions made by the Noticee vide e-mail dated May 16, 2024. During the hearing, ARs also requested for additional time to make further submissions in the matter which was acceded to and the Noticee was advised to file its additional submissions, if any, latest by May 31, 2024 which was submitted by the Noticee vide e-mail dated May 31, 2024. Vide e-mail dated May 31, 2024,

Noticee, *inter alia*, made the following additional submissions in its replies to the SCN which have been reproduced in *verbatim:*

"In continuation to earlier correspondences in this matter and subsequent to our discussions and representations during the hearing on May 30, 2024, we hereby would like to submit further some more points and documents for inclusion in our representation:

1) Copy of the signed CV obtained from Mr. A[7] and Mrs. B[7] which is one of the base documents of due diligence which we had shown to the inspection team for their education proof. We want you to note that in many cases where education proofs are not able to be found by the concerned person, it's an industry practice to accept signed CV for the due diligence. Further we have already reiterated that since this case, there was no change in management and already these education details were mentioned in the earlier IPO document as well as in the Annual Reports of the Company, we used our independent professional judgement and concluded our due diligence based on these publicly available documents as well as signed CV in this case.

It is important to note that in all other open cases we have submitted the education proof. Only in this case, since the education proof was not traceable at the relevant time and there was no change in management, we decided that obtaining a signed CV and reverifying facts from public domain earlier due diligence done documents would suffice in this case.

Hence, we request you to please take this additional submission of signed CV as "Annexure – A1" on record and oblige. Please refer to the highlighted portions on both the pages.

2) Please find attached extract of our letter dated March 06, 2023, wherein we have submitted our earlier code of conduct to the earlier inspection team after getting an initial finding from them that we have "not adopted" code of conduct. Please find

[7] *Names of the acquirers of the Company have been excised for the sake of confidentiality.*

attached the same as "Annexure – A2" Please refer to the highlighted portions on page 2 point no 5.

Still, they continued to allege the same via their letter dated June 28, 2023 (Warning Letter) and we continued to deny the same via our letter dated August 21, 2023. Copies of these two letters were already submitted to your good office via our letter dated May 16, 2024 (please refer Annexure 2B & 2C for the same).

However, this inspection team has misunderstood that warning as earlier code being incorrect, which is not the fact and hence made a misunderstanding that it is a repetitive offense.

We request you to take this additional submission on record and oblige.

3) The copies of code of conduct under Schedule B and Schedule C of the SEBI (Prohibition of Insider Trading), 2015, are attached herewith as "Annexure – A3" and "Annexure – A4". Copies of these code of conduct are already submitted to the inspection team (post inspection) as a corrective measure via our letter dated March 04, 2024, extract of which is attached as "Annexure – A5".

Further also find the attached copy of Board Resolution as "Annexure – A6" for your ready reference. Please take this on record as a bonafide form of corrective measure and request you to please not consider this as 'non updation of code of conduct '' as a material violation."

8. It is noted that the SCN along with the annexures and the Hearing Notice were duly served on the Noticee. The Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearing.

CONSIDERATION OF ISSUES

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

I. Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:

a. Failure to exercise independent due diligence in the matter of the takeover of XYZ Ltd.[8]

b. Failure to update its Code of Conduct adopted under Schedule B and Schedule C of the PIT Regulations in line with the subsequent amendments made in the PIT Regulations.

II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of SEBI Act?

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

10. Before proceeding further, it is pertinent to refer the relevant provisions of law, allegedly violated by the Noticee. The same are reproduced hereunder:

"MB Regulations

Conditions of registration.

***9A.** (1) Registration granted under regulation 8 shall be subject to the following conditions, namely:*

(e) it shall abide by the regulations made under the Act in respect of the activities carried on by it as merchant banker.

[8] *Name of the Company has been excised for the sake of confidentiality.*

Code of conduct.

13. *Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.*

SCHEDULE III

CODE OF CONDUCT FOR MERCHANT BANKERS

4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

21. A merchant banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

PIT Regulations

Code of Conduct.

9. (1) The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

Schedule B and Schedule C of the PIT Regulations

https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-november-24-2022_65864.html

Issue I. Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:

11. **Failure to exercise independent due diligence in the matter of the takeover of XYZ Ltd.[9]**

11.1. It was alleged in the SCN that in the matter of the takeover of XYZ Ltd.[9] handled by the Noticee as a merchant banker, Noticee has not obtained the CTC of the certificates of the educational qualifications of Mr. A[9] and Mrs. B[9] (acquirers of XYZ Ltd.[9]) disclosed in the LOF. In the LOF, it was disclosed that Mr. A[9] is a commerce graduate and holds a diploma in export management, and Mrs. B[9] is a commerce graduate. Therefore, it was alleged in the SCN that the Noticee had failed to conduct independent due diligence with respect to disclosures made in the LOF regarding the educational qualifications of acquirers.

11.2. In response to the above allegations, the Noticee in its replies dated May 16, 2024 and May 31, 2024 have, *inter alia*, stated:

"*In case of funds giving activities like Open Offer, the Investors is already associated with the Company & the management and is well aware of their education qualifications.*

Further, in this case, we wish to highlight that there is no change in management since the Public Issue and the Acquirers are already on the Board of the Target Company and are defined as the Promoters of the Target Company. The qualification of the both the Acquirers namely Mr. A[10] and Mrs. B[10] are available in the Prospectus

[9] *Names of the Company and the acquirers of the Company have been excised for the sake of confidentiality.*

[10] *Names of the acquirers of the Company have been excised for the sake of confidentiality.*

of the Company (extract of which is attached as Annexure 1A) as well as in the Annual Reports of the Company (extract of which is attached as Annexure 1B). Both the above documents are in public domain and the investors are well aware of their qualifications.

We confirm that we obtained the copies of educational qualification, whenever some new management come into the Target Company. Since this case related to consolidation of holding from the same management & thereby no change in management i.e. no new entity coming into scenario, we had relied on important publicly available documents.

Whether any supporting documents is material or immaterial is depending upon case to case basic. As a professional, we believe that if there was any change in management then the supporting documents for educational qualification is material in nature however if no new individual coming into management, then such document in immaterial in nature and that can be relied on other important publicly available documents. We had maintained on record self-certified declaration to this effect from such Acquirers and had showed to the Inspection team also. Accordingly, we had exercised our due diligence, independent professional judgement and ensured to have proper back-up for all the material disclosure and relied on important publicly available documents for the immaterial part.

Copy of the signed CV obtained from Mr. A[10] *and Mrs. B*[10] *which is one of the base documents of due diligence which we had shown to the inspection team for their education proof. We want you to note that in many cases where education proofs are not able to be found by the concerned person, it's an industry practice to accept signed CV for the due diligence. Further we have already reiterated that since this case, there was no change in management and already these education details were mentioned in the earlier IPO document as well as in the Annual Reports of the Company, we used our independent professional judgement and concluded our due diligence based on these publicly available documents as well as signed CV in this case."*

11.3. In this regard, I note that the fact that the Noticee has not obtained the CTC of the certificates of the educational qualifications of Mr. A[11] and Mrs. B[11] (acquirers of XYZ Ltd.[11]) disclosed in the LOF is not in dispute. Noticee in its replies submitted that since there is no change in management, it had relied on signed CV obtained from Mr. A[11] and Mrs. B[11] and the educational details of Mr. A[11] and Mrs. B[11] mentioned in the earlier IPO document as well as in the Annual Reports of the XYZ Ltd.[11]

11.4. In this context, I note that under Regulation 13 of the MB Regulations, a merchant banker is required to abide by the Code of Conduct as specified in Schedule III thereof. It places duty on the merchant banker to ensure that the disclosures made in the LOF are true and fair. Further, Clause 4 of Schedule III of the MB Regulations requires the merchant banker to exercise due diligence, ensure proper care and exercise independent professional judgment. Therefore, merchant banker is expected to obtain the supporting documents to verify the veracity of disclosures made in the LOF. Noticee cannot absolve its liability by stating that the information about educational qualification of the acquirers are already available in public domain and the investors were aware of their educational qualifications. Noticee being a merchant banker, a professional body, has to exercise his duty on his part. Sole dependence by the Noticee on the information available in public domain or the information available in the documents provided by the acquirers and failure to exercise independent due-diligence by obtaining supporting documents in respect of educational qualification, denotes failure of the duties cast on the Noticee as a merchant banker. Accordingly, reply of the Noticee in this regard cannot be accepted.

11.5. In view of the above, I conclude that the Noticee has violated the provisions of Regulations 9A(1)(e) and 13 read with Clauses 4 and 21 of Schedule III of the MB Regulations.

[11] *Names of the Company and the acquirers of the Company have been excised for the sake of confidentiality.*

12. **<u>Failure to update its Code of Conduct adopted under Schedule B and Schedule C of the PIT Regulations in line with the subsequent amendments made in the PIT Regulations.</u>**

12.1. It was alleged in the SCN that the Code of Conduct submitted by the Noticee during the course of inspection was adopted in the year 2019. Since then, the Code of Conduct has not been updated in line with the subsequent amendments made in the PIT Regulations after the Code of Conduct was adopted by the Noticee.

12.2. It was further noted in the SCN that Noticee has not complied with the regulatory requirements regarding Code of Conduct during earlier inspection also (April 01, 2021 to March 31, 2022) and an administrative warning letter dated June 28, 2023 was issued to the Noticee. In this regard, Noticee in its replies dated May 16, 2024 and May 31, 2024 have, *inter alia*, stated:

"We request you to kindly note the chronological order and the allegation made in the earlier inspection for the period covering April 2021 to March 2022:

Please note that as per the observation letter of SEBI Inspection team of February 2023, the allegation was that we had not formulated the Code of Conduct and not that the Code is not in line with the Schedule C. Please find attached SEBI observation letter as Annexure 2A for your ready reference. Please refer the highlighted portions on page 5 point no 5.

The SEBI warning letter of June 2023 have the wording of "failure to ensure that the Code of Conduct (for intermediaries) to regulate, monitor and report trading by designated persons and immediate relatives of designated persons is in line with the Schedule C of SEBI (PIT) Regulations, 2015". The same is attached as Annexure 2B for your ready reference. Please refer the highlighted portions on page 2 point no (e).

Since the allegation that we had not formulated the Code of Conduct, the above wording of "failure to ensure …. in line with the Schedule C…" should be interpretated accordingly and it should not be interpretated otherwise. Based on the above, we are *had replied to SEBI in August 2023 that we had the Code of Conduct and requested SEBI to remove the allegation. Copy of our letter is attached as Annexure 2C for your ready reference. Please refer the highlighted portions on page 3 point no 5.*

Further the inspection report of SEBI had also mentioned the allegation of not formulated the Code of Conduct and not that it is not in line with the Schedule C. Extract of the inspection report is attached as Annexure 2D for your ready reference. Please refer the highlighted portions on page 3. We had received the same in August 2023 i.e. after submission of our reply.

We wish to highlight the fact that we had never accepted the said allegation (i.e. not formulated code of conduct) and had inform SEBI about the same in the past.

Please find attached extract of our letter dated March 06, 2023, wherein we have submitted our earlier code of conduct to the earlier inspection team after getting an initial finding from them that we have "not adopted" code of conduct. Please find attached the same as "Annexure – A2" Please refer to the highlighted portions on page 2 point no 5.

Still, they continued to allege the same via their letter dated June 28, 2023 (Warning Letter) and we continued to deny the same via our letter dated August 21, 2023. Copies of these two letters were already submitted to your good office via our letter dated May 16, 2024 (please refer Annexure 2B & 2C for the same).

Secondly, we also state that the current inspection team has alleged that we have adopted code of conduct in 2019 but we have not updated it thereafter. Hence, that makes it very clear that the earlier inspection team's allegation (which was conducted in 2022 i.e after 2019) was incorrect as was being replied by us to them. The said fact has been brought out by point no 6.2.2 of the SCN, that the Code of Conduct was adopted in the year 2019.

To summarize, we once again re-iterate that this mistake of not updating code of conduct with the updates issued by SEBI is not a "REPITIVE" error.

Hence, we request you to kindly take the above in record & remove the allegation of repeatedly nature under point no 6.2.6 of the SCN."

12.3. In this regard, from the material available on record, I have noted that the SEBI observation letter dated February 17, 2023 (Inspection period: April 01, 2021 to March 31, 2022), *inter alia*, alleged violation of Regulation 9(1) read with Clause 5 of Schedule C of PIT Regulations for alleged failure to formulate the Code of Conduct for intermediaries. The Noticee submitted that in response to the said letter, Noticee vide e-mail dated March 06, 2023, submitted the Code of Conduct to SEBI. Thereafter, an administrative warning letter was issued to the Noticee vide letter dated June 28, 2023 which, *inter alia,* states as under:

"Violation of Regulation 9 (1) read with Schedule C of SEBI (PIT) Regulations, 2015 for failure to ensure that the Code of Conduct (for intermediaries) to regulate, monitor and report trading by designated persons and immediate relatives of designated persons is in line with Schedule C of SEBI (PIT) Regulations, 2015."

12.4. In this context, from the material available on record, I have noted that the Code of Conduct was adopted by the Noticee vide board resolution dated May 29, 2019. Though amendments were made to the PIT Regulations, the Code of Conduct was not amended by the Noticee reflecting the amendments made to the PIT Regulations, till March 03, 2024. This fact has not been disputed by the Noticee. The Code of Conduct was updated only vide board resolution dated March 04, 2024, after it was pointed out by SEBI inspection team conducting inspection for the period April, 2022 to December, 2023. It is noted that during the period from May 29, 2019 (date on which Code of Conduct was adopted) and March 31, 2022 (previous inspection period) also, there were amendments in Schedule B and Schedule C of the PIT Regulations. Therefore, the Code of Conduct was not in line with the subsequent amendments in the PIT Regulations during the earlier inspection period also i.e. April 01, 2021 to March 31, 2022.

12.5. In response to the allegations that Code of Conduct was not updated in line with the subsequent amendments in the PIT Regulations during the IP, the Noticee in its replies dated May 16, 2024 and May 31, 2024 have, *inter alia*, stated:

"*However, we acknowledge that at the time of inspection in February 2024, we had our Code of Conduct under Schedule B & C, which were adopted on May 29, 2019 and not updated for certain changes which were issued by SEBI later.*

We request you to note the changes in the Schedule B and Schedule C (Code of Conduct) after May 2019, which is highlighted in Annexure 2E & Annexure 2F. The summary of the same are given below for your ready reference:

Change for Schedule B
66 (Renumbering), 68 (substituted the word), 69 & 70 (certain relaxation from earlier code), 76 (Remittance to Investor Protection Funds), 80 (informing to Stock Exchange instead of SEBI) and 82 & 83 (clarification in nature).

Change for Schedule C
87 & 90 (yet to notified the dates), 88 (Remittance to Investor Protection Funds), 89 (informing to Stock Exchange instead of SEBI), 91 to 94 (specification / clarification in nature)

Please note that none of the above changes has any material effect to regulate, monitor and report trading of designated persons and immediate relatives, and thereby to update the code of conducts.

Having said the above, during the inspection and in discussion with the SEBI team, we realized to updated the same in line with SEBI (PIT) Regulations, 2015 and had updated our Code of Conducts and submitted the same to the inspection team (post inspection)."

12.6. In this regard, I note that the Noticee has not disputed the findings of the inspection that the Noticee has not updated its Code of Conduct adopted in the Year 2019 in line with the subsequent amendments made in the PIT Regulations. It is noted from the reply of the Noticee that it has taken corrective measures in this regard subsequently, by updating its Code of Conduct. However, it is a fact that Code of Conduct was not updated during the IP. Being a registered intermediary, Noticee is required to maintain a high standard of professionalism and to take the statutory compliances very seriously.

12.7. In this context, I would like to further refer to the judgment of Hon'ble SAT in the case of *Premchand Shah & ors. Vs. SEBI, (Appeal No. 192 of 2010)*, wherein it was, *inter alia*, held that:
"When law prescribes a manner in which a thing is to done, it must be done only in that matter or not at all."

12.8. In view of the above, I conclude that the Noticee has violated the provisions of Regulation 9(1) read with Schedule B and C of the PIT Regulations and Regulations 9A(1)(e) and 13 read with Clause 21 of Schedule III of the MB Regulations during the IP.

Issue II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?

13. As it has been established that the Noticee has violated the provisions of law as alleged in the SCN, the Noticee is liable for payment of a monetary penalty in terms of Section 15HB of the SEBI Act.

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

15. The text of the above said Section 15HB of the SEBI Act is reproduced below:

"Penalty for contravention where no separate penalty has been provided.

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

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

16. While determining the quantum of penalty under section 15HB, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

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

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

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

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

(c) the repetitive nature of the default."

Factors Considered While Imposing Penalty

17. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticee. As regard to the repetitive nature of the default, I take note of the fact that SEBI had previously imposed penalties on the Noticee for alleged violation of securities law in its capacity as a merchant banker.

18. It is a fact that the Noticee has not exercised its duty as a merchant banker as alleged in the SCN. The Noticee has also not disputed the following allegations as established in preceding paragraphs:

18.1. In the matter of the takeover of XYZ Ltd.[12] handled by the Noticee as a merchant banker, Noticee has not obtained the CTC of the certificates of the educational qualifications of Mr. A[12] and Mrs. B[12] (acquirers of XYZ Ltd.[12]) disclosed in the LOF.

18.2. The Noticee failed to update its Code of Conduct adopted under Schedule B and Schedule C of the PIT Regulations in line with the subsequent amendments made in the PIT Regulations.

19. Hon'ble Supreme Court in the case of ***Chander Kanta Bansal Vs. Rajender Singh Anand*** reported in 2008 (5) SCC 117 has, *inter alia*, held that, *"Due Diligence" means reasonable diligence, it means such diligence as a prudent man would exercise in the conduct of his own affairs….".*

20. A prudent man would have obtained the copies of the certificates to verify the veracity of educational qualification. The non-adherence on the part of the Noticee to the extant Regulations as brought out in the preceding paragraphs clearly shows that Noticee has failed to act with skill, care and diligence in the conduct of its business as a merchant banker. As a registered intermediary, Noticee is required to maintain a high standard of professionalism and to take the statutory compliances very seriously.

21. It is noted from the replies of the Noticee that vide board resolution dated March 04, 2024, it had subsequently updated the Code of Conduct and also obtained copies of educational certificates of Mr. A[12] and Mrs. B[12] (acquires of XYZ Ltd.[12]). Thus, it is noted that corrective measures have been taken by the Noticee.

22. The aforementioned factors have been taken into consideration while adjudging the penalty.

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[12] *Names of the Company and the acquirers of the Company have been excised for the sake of confidentiality.*

ORDER

23. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty on the Noticee as given in the table below**:**

Table 3

Penal Provision	Penalty Amount
Section 15HB of SEBI Act	Rs. 2,00,000/- (Rs. Two Lakhs only)

24. I am of the view that the said penalty is commensurate with the lapses/omissions on part of the Noticee.

25. 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.

26. 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.

Date: May 31, 2024 **N HARIHARAN**

Place: Mumbai **CHIEF GENERAL MANAGER**

AND ADJUDICATING OFFICER