BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/AA/NS/2022-23/18623-18629

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

Noticee No.	Name of Noticee	Noticee No.	Name of Noticee
1	**Carnation Industries Limited** (AABCC0379E)	**2**	**Ravindra PrakashSehgal** (MD & member of Audit Committee) (AMHPS4822M)
3	**Suvobrata Saha** (Jt.MD) (BFEPS2879K)	**4**	**Arun Kumar Bose** (Executive Director) (ACZPB6399L)
5	**Sephali Roy** (Chairman of the Audit Committee) (AFJPR9617J)	**6**	**Biplab Ganguly** (erstwhile CFO) (AJWPG8882D)
7	**Somnath Pradhan** (CFO) (AUPPP6109E)		

In the matter of M/s Carnation Industries Limited.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as 'SEBI'*) conducted an investigation into the irregularities in the financial statements of Carnation Industries Limited (hereinafter referred to as '**Noticee 1/CIL/Company/by Name'**) and observed certain accounting related issues pertaining to accounting of interest therein. The period of investigation was financial years ending March 31, 2018, & March 31, 2019 and quarter ending

on June 30, 2019 & quarter ending September 30, 2019(hereinafter referred as "Investigation period/IP").

2. Investigation by SEBI revealed that subsequent to CIL accounts being declared as NPA by banks during FY 2017-18, it reversed the interest expense on loan provided in FY 2017-18 and stopped providing for interest expenses in the ensuing financial statements. The instant accounting treatment of reversal and non-provisioning of interest was not found to be in accordance with the applicable and notified Accounting Standards and consequently, the published financial statements of the company did not present a true and fair view of the company's affairs. SEBI observed that Noticees 2 to 5 were directors of the company during the investigation period. Further, Noticee 6 was the Chief Financial Officer (herein after referred to as 'CFO') of the company in the financial year (herein after referred to as 'FY') 2017-18 and Noticee 7 is the current CFO of the company. In view of the above allegations/findings, it was alleged that:-

   2.1 Noticee 1 has violated the Sections 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) read with regulations 3(b), (c) & (d), 4(1), 4(2)(f) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred as **PFUTP Regulations**) & Regulations 4(1)(a), 4(1)(b), 33(1), 34(3), 48 of **LODR Regulations 2015.**

   2.2 Noticee 2 has violated the Sections 12A(a), (b), (c) of the SEBI Act read with regulations 3(b), (c) & (d), 4(1), 4(2)(f) of the PFUTP Regulations & Regulations 4(2)(f), 17(8), 33(2)(a), of the LODR Regulations and regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the LODR Regulations 2015.

   2.3 Noticee 3 has violated the Sections 12A(a), (b), (c) of the SEBI Act read with regulations 3(b), (c) & (d), 4(1), 4(2)(f) of the PFUTP Regulations & regulations 4(2)(f), 17(8), 33(2)(a) of the LODR Regulations.

   2.4 Noticee 4 has violated the Sections 12A(a), (b), (c) of the SEBI Act read with regulations 3(b), (c) & (d), 4(1), 4(2)(f) of the PFUTP Regulations & regulation 4(2)(f) of the LODR Regulations.

2.5 Noticee 5 has violated the Sections 12A(a), (b), (c) of the SEBI Act read with regulations 3(b), (c) & (d), 4(1), 4(2)(f) of the PFUTP Regulations & regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the LODR Regulations.

2.6 Noticee 6 has violated the Sections 12A(a), (b), (c) of the SEBI Act read with regulations 3(b), (c) & (d), 4(1), 4(2)(f) of the PFUTP Regulations & regulations 17(8), 33(2)(a) of the LODR Regulations (for the financial year 2017-18).

2.7 Noticee 7 has violated the Sections 12A(a), (b), (c) of the SEBI Act read with regulations 3(b), (c) & (d), 4(1), 4(2)(f) of the PFUTP Regulations & regulations 17(8), 33(2)(a) of the LODR Regulations (for the financial year 2018-19, quarter ended on June 30 & September 30, 2019,)(collectively referred as "**Noticees"**)

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated March 06, 2020 under Section 19 of SEBI Act read with subsection (1) of section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as *"***SEBI Adjudication Rules")** *&* Section 29A read with Section 23-I of Securities Contract (Regulation) Act, 1956 (hereinafter referred to as '**SCR Act**') and Rule 4 of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**SCRA AO Rules**') to inquire into and adjudicate for the alleged violation by the Noticees no. 1-7, under Sections 15HA & 15HB of SEBI Act and Section 23E & 23H SCR Act. Pursuant to the transfer of undersigned, the present proceedings were transferred to Mr. Suresh Menon *vide* order dated November 03, 2020. Pursuant to superannuation of Mr Suresh Menon, the Competent Authority *vide* order dated June 06, 2022 transferred the adjudication proceedings in the instant matter to the undersigned.

SHOW CAUSE NOTICE, REPLY & PERSONAL HEARING

4. A show cause notice bearing reference no. SEBI/EAD/AA/MKG/0012080/2020 dated July 22, 2020(hereinafter referred to as **"SCN"**) was issued to the Noticees under rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty should not be imposed on them. The allegations made against the Noticees in the SCN are summarised below:

   4.1 *The credit facilities extended to the company by its lenders viz. State Bank of India (herein after referred to as '**SBI**') and Punjab National Bank (herein after referred to as '**PNB**'), (collectively referred as banks) were classified as Non-Performing Assets (herein after referred to as '**NPA**') during FY 2017-18, by SBI. The banks had recalled the credit facilities and had served notice under section 13(2) of the SARFAESI Act, 2002 to the Noticee 1. Thereafter, the company was not accounting for interest expense payable to SBI & PNB. Further, in FY 2017-18, the Noticee 1 had reversed certain amount of money, which was earlier provided as payment of interest.*

   4.2 *The statutory auditors of the company M/s. Jain Saraogi & Co., Chartered Accountants, had qualified their audit reports for FY 2017-18 & FY 2018-19 and limited review reports for the quarters ended June 30, 2019 & September 30, 2019.*

   4.3 *Company vide letter dated December 06,2018 stated that the company is having credit facilities from two banks viz. State Bank of Hyderabad now State Bank of India and Punjab National Bank. The State Bank of India classified the accounts of the company as a Non-Performing Asset (NPA) on 21/03/2018 and did not gave us the interest amount charged by them since the account was classified as NPA. In absence of relevant information from the Bank we could not assess the interest and penal interest amount* *which would be levied by State Bank of India in our credit facility. Hence the same could not be provided for in the books of accounts…"*

4.4 In this regard it is alleged that the interest amount is pre-determined at the time of availing loan and is communicated by the bank in its schedule of re-payment. The Noticee 1 was well aware of the rate of interest at which the loan was availed and hence, the quantum of interest was determinable. It is seen that the Company did not charge interest even in the subsequent financial results for the quarter ending September 30, 2019 and the auditor had qualified his limited review report for the said quarter. The company's submissions regarding the opinion of statutory auditors on accounting of interest, appear to be contradictory to the qualified opinion given by the statutory auditor in his audit report for FY 2017-18, FY 2018-19 and limited review report for quarters ended June 30, 2019 and September 30, 2019.

*4.5 In terms of Regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the LODR Regulations, the Noticee 1 was required to comply with all the applicable and notified Indian Accounting Standards (herein after referred to as '**IND AS'**). Further, in terms of section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, the Ministry of Corporate Affairs has notified the IND AS, which has been made applicable to all listed entities since April 1, 2017. The new accounting standards i.e. IND AS was applicable to the Noticee 1 during the Investigation Period.*

4.6 It is observed that the reclassification of the loan granted to the Company as NPA by lenders / banks does not absolve the company's contractual obligation of interest payment against the loans taken. The interest on loans taken, which is a borrowing cost for the borrower, is required to be recognized as an expense under IND AS 32 and IND AS 24. The second leg of the transaction would appear on the balance sheet liability side under interest payable, in case the interest was not paid by the company. As per the definition of 'Financial Liability' under IND AS 32, the loans taken and the interest payable to banks would qualify as a financial liability of the *company. In view of the above, it is alleged that the accounting treatment of interest was not in accordance with the applicable and notified Accounting Standards.*

4.7 *Therefore, as seen from the above, by failing to recognize interest expense on loans in the books of accounts, the Noticee 1 had reduced the quantum of loss appearing in its profit and loss account. Thus, it is alleged that the published financial statements / results of the Noticee 1 did not give a true and fair view of the financial performance and position of the Noticee 1.*

4.8 *Further, A company acts through its board of directors. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls.*

4.9 *The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are expected to exercise the powers in a* bona fide *manner and in the interest of all stakeholders of the company. In view of the above, it appears that the Noticees 2, 3 & 4 being directors of the Company are responsible for wrong financial reporting.*

4.10 *The Audit Committee is expected to play a vital role as far as ensuring compliance with existing accounting standards, applicable laws and regulations are concerned, in any listed company. The members of the Audit Committee during the IP were Noticee 2, Noticee 5 & Manoj Bose. The role of the Audit Committee is defined under the LODR Regulations, wherein, the Audit Committee is required to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial* *information to ensure that the financial statement is correct, sufficient and credible. In the instant matter, it appears that the Audit Committee has failed to ensure that the published financial statements were in accordance with the applicable accounting standards and presented a true and fair view of the company's affairs, during the Investigation period.*

4.11 *In the instant matter, it appears that despite the statutory auditor raising the issue of non-compliance with Accounting Standard by way of a qualified opinion in its audit report and limited review report during the IP, the Audit Committee failed to ensure compliance with the Accounting Standards and publishing of true and fair financial statements*

4.12 *In terms of regulation 17(8) of LODR Regulations, the Chief Executive Officer (herein after referred to as '**CEO**') and the Chief Financial Officer (herein after referred to as '**CFO**') shall provide the compliance certificate to the board of directors. In addition to that, in terms of regulation 33(2)(a) of LODR Regulations, it is the duty of the CEO and CFO of the listed entity to **certify** that the published financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading while publishing the financial results.*

4.13 *In the instant matter, it was observed that there was no person designated as CEO during the IP. In the absence of any designated CEO, the principal roles and responsibilities lie with the Managing Director and the Joint Managing Director. The Managing Director, the Joint Managing Director and the CFO of Carnation Industries Ltd have signed the compliance certificate Considering that the accounting treatment of interest is not in accordance with the applicable and notified Accounting Standards and the published financial statements of the company do not present a true and fair view of the company's affairs, it appears that the Managing Director and Joint Managing Director and CFO of Carnation Industries Ltd. have submitted an **untrue compliance certificate** in terms of regulations 17(8)* *and 33(2)(a) of LODR Regulations, to the board of directors in the FY 2017-18 and 2018-19.*

4.14 It is observed that the Noticee 6 was the CFO of the company till August 7, 2018 and had signed the compliance certificate for the financial year ended March 31, 2018. The Noticee 7 was appointed as the CFO on February 1, 2019 and has signed the compliance certificate for the financial year ended March 31, 2019, quarter ended June 30, 2019 and quarter ended September 30, 2019. It appears that the Noticees 6 & 7 have submitted a ***false compliance certificate*** *in terms of regulations 17(8) and 33(2)(a) of LODR Regulations, to the board of directors in the FY 2017-18 and FY 2018-19, quarter ended June 30, 2019 & quarter ended September 30, 2019, respectively.*

5. The Noticees *vide* their letter dated September 14,2020, October 15,2020 & October 21,2020 submitted the following in their replies to the SCN.

5.1 *The company did not reverse anything in its books of account. In fact, it considered the balance in the Bank account as at 31st March 2018 and debited whatever interest debited by the bank to its account. The company took the net balance of the interest charged and provided the same in its books of account. While it did not reverse anything in its books of account.*

5.2 The uncalculated portion of the Packing Credit interest was not charged by the Bank nor was the amount advised to us. The Company thought it would be fair not to assume any wrong notional figure as additional interest. Calculation of the notional interest charges which the Bank would have charged is very difficult to calculate because we have an interchangeable limit facility for export by the way of floating packing credit which gets converted into bill limit after the shipment of the cargo against the purchase order, (which was the basis of the grant of the packing credit). 100% of our turnover is based on Exports and we are an MSME Unit. The funding received from the Bank is not on a fixed interest rate for the whole year, it is of floating interest rate based on RBI guidelines and subject to *refund of interest subvention by the Government of India. This whole process makes the calculation of notional interest complicated and frivolous exercise.*

5.3 In August/September 2019, the Head Office of State Bank of India in Mumbai gave approval for Rs. 27 crores as the Final settlement amount. Accordingly, in November, 2019, the Uluberia property of the Company was sold and the sale proceeds along with the ECGC claim were utilized to clear the total outstanding of the Banks i.e. SBI & PNB. The banks were paid 100 percent of the Principal amount and a small part of the interest amount. In December the two Banks gave their NOC and returned all the other property papers that they were holding.

5.4 It is submitted that this has been the normal industry trend not to provide for interest once the account of the company has been declared Non Performing Asset. The Annual Accounts of the Company have been regularly filed with the Ministry of Corporate Affairs but at no point of time the Ministry of Corporate Affairs have raised any issue with respect to non-provision of interest after the account of the company has become a non performing asset.

5.5 Regulation 48 of SEBI (LODR) Regulations provides that the listed entity shall comply with all the applicable and notified Accounting Standards from time to time. Section 129(1) of the Companies Act, 2013 states that the financial statements shall, inter alia, comply with the accounting standards notified under Section 133 of the said Act. Sub Section (5) of Section 129 provides that where the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the deviation from the accounting standards, the reasons for such deviation and the financial effect, if any, arising out of such deviation. Section 134(5)(a) of the Companies Act cast obligation on the Directors to disclose in their Directors' Responsibility Statement the fact of preparation of annual accounts following the applicable accounting standards along with proper explanation relating to material departures. Thus, it is explicit from the above that the Companies Act, 2013 contains elaborate provisions *relating to applicability of accounting standards and consequences arising out of any material departure therefrom. The company has duly complied with the provisions of the Companies Act, 2013 and disclosed in its financial statements and the Boards' Report the reasons for deviation from the accounting standards and the financial effect of such deviation. The Board of Directors' in their report have also provided explanation to the qualification given by the Auditors' in their Report.*

5.6 lt is humbly submitted that with regards to compliance of Accounting Standards, it is the provisions of Companies Act, 1956 which ought to be followed and any deviation there from has to be dealt with in the manner provided in the Companies Act, 2013. Securities and Exchange Board of lndia cannot impose penalties by invoking provisions of Listing regulation for an alleged violation of the provisions of Companies Act,2013 or in respect of a matter for which there are elaborate provisions in the Companies Act, 2013.

5.7 ln case of Export Finance, the interest amount is not pre-determined at the time of availing the loan. The Lead Bank, SBI's sanction letter dated 31.03.2017 clearly states that the rate is floating. This shows that in case of the Limits sanctioned the rates of interest would vary from time to time based on the Banks lending rates and the Rating of the Company. Further as there is interchangeability between the Packing Credit loan and Bill Purchase Loan - the exact date of receipt of funds in the Nostro Account of the Bank from the overseas customers of the Bank would determine the quantum of interest. This information is confidential in nature and therefore, not available to us. Hence, our inability to calculate interest. Further, once the Account becomes NPA there is no renewal of bank limits, no ascertainment of our rating and no fixation of any interest rates on the outstanding against export financing. Further, the quantum of interest was not determinable. Even after the Banks agreed, to a Rs.27 crores settlement, the exact bifurcation of Principal and interest, was not stated because they had not reconciled the receipt of funds on several occasions and the overseas funds were still coming in. The actual figures of F.Y.2019-

2020 which is reflected in our quarterly results of December, 2019 show the correct amount of interest debited.

5.8 We submit that as per our understanding the term Provision has been defined in IND AS-37 and recognition thereof has been reproduced hereunder:

Recognition

14 A provision shall be recognised when:

(a) on entity has a present obligation (legal or constructive) as a result of a past event;

(b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and

(c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision shall be recognised.

5.9 Therefore, as the Company was not privy to any information pertaining to the exact principal amount on which the interest had to be charged, to the rate of interest (which was subject to review on renewal of credit facility) nor was able to assess reasonably the penal interest and/or charges incidental thereto the company thought that it would be better if the liability as and when crystalized and settled would be accounted for.

5.10 It is submitted that the provisions of the Companies Act, 2013 require companies to disclose the deviation and the financial effect of such deviation from the accounting standards. The company had complied with the said provision by disclosing the non-provision of interest in its books of account being departure from applicable accounting standards and also the financial impact of such deviation. Thus, the financial statements read with the Notes presented a true and fair view of the accounts and were not misleading in any manner.

5.11 It is submitted that the Management had no intention to conceal any information from the Shareholders. The Company had clearly stated the position of the Bank lnterest matter in its notes of the Annual Report as can be seen from the Annual Report as follows:

a. Financial Year 2OL7 -2078 Annual Report - Page No.101, Note 20.3" The company has availed credit facility from State Bank of lndia and Punjab

National Bank under consortium Finance arrangement. State Bank of lndia vide its letter dated 21st March, 2018 has classified the credit facility as NPA and has not applied/ charged interest for the month of March, 2018. Bank has also reversed the unrecovered applied interest amounting to Rs. 16.85 Lacs. ln the absence of advice/ information, finance cost for the month of March, 2018 could not be ascertained and accounted for. However, interest as reversed by bank has been accounted for in the books of accounts". And Note 20.4: "Punjab National Bank has also not charged interest from January; 20L8 onwards. ln the absence of advice/ information, finance cost for the ' period from January, 2018 to March, 2018 could not be ascertained and accounted for".

b. Financial Year 2018-2019 Annual Report - Page No.79, Note No. 19.3:"The company has availed credit facility from State Bank of India and Punjab National Bank under consortium Finance arrangement. State Bank of India (Lead Banker) vide its letter dated 21st March, 2018 has classified the credit facility as Non-Performing Asset (NPA) and recalled the advances through its letter dated 03.04.2018.

6. Vide email dated December 07,2020, the Noticees were granted personal hearing on December 23,2020. However, they requested for adjournment of the said hearing which was acceded to. The Noticees through their Authorised Representative (hereinafter referred as AR) vide email dated December 18,2020 made a request to grant inspection of all the records and documents in possession of SEBI which resulted in issuance of the present SCN issued against them. Vide letter dated June 11, 2021, the Noticees were informed to carry out inspection of documents. I note that the AR carried out inspection of documents on June 17,2021.

7. The Noticees *vide* their letter dated July 22,2021 submitted the following as additional submission to the SCN.

7.1 Breach of Principles of Natural justice- After taking inspection the AR requested SEBI to provide copies of the following documents to enable them to file detailed reply on behalf of the Noticees

a) Investigation report

b) Copy of email dated December 12,2018 sent by SEBI to the company

c) Copy of letter dated July 30,2019 sent by SEBI to the Ministry of Corporate Affairs

They submitted that by not providing a copy of Investigation Report and relying on IR, principles of Natural Justice have been breached.

7.2 Noticees placed reliance upon the judgment dated April 23,2019 passed by Mr Santosh Shukla, Adjudicating officer, SEBI in the matter of Radha Madhav Corporation Limited & Ors(RMCL).

8. *Vide* email dated July 05, 2022, Noticees were granted personal hearing on July 26,2022. However, Noticees requested adjournment of the said hearing which was acceded to. Subsequently, *vide* email dated July 13,2022 the Noticees were granted personal hearing on August 02,2022. On the scheduled date of hearing, the Authorized Representatives of the Noticees appeared before me through video conference and reiterated the contents of written submission made by the Noticees.

CONSIDERATION OF ISSUES

9. I have taken into consideration the facts and material available on record. I observe that the allegations levelled against the Noticees is that the company reversed the interest expense on loan provided in FY 2017-18 and stopped providing for interest expenses in the ensuing financial statements. The instant accounting treatment of reversal and non-provisioning of interest was not found to be in accordance with the applicable and notified Accounting Standards and consequently, the published financial statements of the company did not present

a true and fair view of the company's affairs. After perusal of the material available on record, I note the following issues for consideration, viz.,

a. *Whether the Noticees have violated the provisions of Securities Law mentioned above in paragraph 2.1 to 2.7?*
b. *Does the violation, if any, attract monetary penalty under Sections 15HA & 15HB of SEBI Act and Section 23E & 23H SCR Act?*
c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

10. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI Act 1992, PFUTP regulations 2003 & LODR Regulations 2015:

<u>Relevant provisions of PFUTP Regulation:</u>

3. Prohibition of certain dealings in securities No person shall directly or indirectly—

(a) ……

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

Relevant provisions of LODR Regulation:

CHAPTER II
PRINCIPLES GOVERNING DISCLOSURES AND OBLIGATIONS OF LISTED ENTITY

Principles governing disclosures and obligations.

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

4.(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(f) **Responsibilities of the board of directors:** The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:
(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) Key functions of the board of directors-

(1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.

(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.

(3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.

(4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.

(5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(8) Overseeing the process of disclosure and communications.

(9) Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities:

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

(4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

(5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

(7) The board of directors shall exercise objective independent judgement on corporate affairs.

(8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.

(9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.

(10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.

(11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.

(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

(13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.

(14)The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

Board of Directors.

17. (8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

Audit Committee.

18. (3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

Financial results.

33. (1) While preparing financial results, the listed entity shall comply with the following:

(a) The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

(b) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.

(c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:

Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

(e) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

(e) The listed entity shall make the disclosures specified in Part A of Schedule IV.

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a) The quarterly financial results submitted shall be approved by the board of directors:

Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

Annual Report.

34.(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

Accounting Standards.

48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

SCHEDULE II: CORPORATE GOVERNANCE
PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE [See **Regulation 18(3)]**

A. The role of the audit committee shall include the following:

(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

(a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;

(b) changes, if any, in accounting policies and practices and reasons for the same;

(c) major accounting entries involving estimates based on the exercise of judgment by management;

(d) significant adjustments made in the financial statements arising out of audit findings;

(e) compliance with listing and other legal requirements relating to financial statements;

(f) disclosure of any related party transactions;

(g) modified opinion(s) in the draft audit report;

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;

<u>Relevant provisions of SEBI Act:</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made there under;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under;

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

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

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

11. I note that the Noticees requested inspection of documents, which was provided to them on June 17,2021. However, the Noticees contended that inspection is incomplete and the principles of natural justice is not followed. I note that all the documents which were relevant in the present proceedings were already provided to the Noticees as annexures to SCN. Additionally, the Noticees requested for the investigation report. In view of the same, vide email dated July 05,2022 & July 13,2022; Noticees were provided with Investigation Report and all other annexures requested by Noticees. Therefore, the contention of Noticees that denial of the copies of documents as requested is in gross violation of the basic principles of natural justice doesn’t hold any merit.

Issue (a): Whether the Noticees have violated the provisions of Securities Law mentioned above in paragraph 2.1 to 2.7?

12. It is alleged that Noticees have underestimated the losses in the financial statements by not providing for interest expense and hide the true and fair picture of financial statements. It is also alleged that Noticees reversed the interest expense in the FY 2017-18 and thereby violated the provisions of Securities Law.

13. In this regard, the Noticees contended that company did not reverse anything, they have debited the same interest as debited by the banks in their books of account as on March 31,2018. Noticees further contended that it was not possible for them to calculate interest on the amount pending due to technicality involved with the nature of loan and floating rate of interest. In this regard, I note that as per Reserve Bank of India Income Recognition & Asset Classification Norms, all Banks are required to classify income on Non Performing Accounts (hereinafter referred as NPA) differently from that of Standard Accounts. In FY 2017-18, the credit facilities extended by Banks to the company were declared as NPA.

14. I note from the record that on March 21,2018, SBI declared companies account as NPA & reversed Rs 16.85 lacs and transferred it to unrealised interest. As per the Banking Accounting Policy, Banks do not directly debit the loan account in case of NPA accounts because of the uncertainty about the income associated with NPA accounts. I note that in case of NPA accounts banks in general calculate the interest periodically and transfer it to accrued interest. I note that SBI reversed interest in FY2017-18 as per the IRAC norms, however this did not absolve the liability of the Noticees to pay the interest on outstanding loan amount.

15. Further, as per the accounting principles, the Noticees were required to transfer the interest amount due to the Bank and which is not paid, to the interest payable head under the liability side of Balance Sheet. However, it is noted that Noticee

1 did not provide for the same on the liability side of Balance Sheet. In this regard, the Noticees argued their inability to calculate interest liability due to the floating rate of interest. I note that ‘floating rate of interest’ means only that interest is pegged at benchmark external to Banks, but that doesn’t mean that it is changing very frequently. Even if I accept the contention of Noticees that they were unable to calculate interest liability, the Noticees ought to have approached the Bank where the information about interest charged was readily available. I note that the Noticees submitted that it is an industry practice, where interest expense is not provided for NPA accounts. In this regard, I note that there are accounting standards, which clearly defined the treatment of interest expense and liability in the financial statements. In view of this, the contention of the Noticees in this regard cannot be accepted.

16. The Noticees placed reliance upon Section 129(1) & Section 129(5) of the Companies Act, 2013 and stated that they have provided for the deviation through the Notes and Directors Report. I note that Section 129(5) provides that *without prejudice to sub-section 129(1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.* In this regard, I note that the condition for the deviation is as under:

When an entity departs from a requirement of an Ind AS, it shall disclose the following:
(a) that management has concluded that the financial statements present a true and fair view of the entity’s financial position, financial performance and cash flows;
(b) that it has complied with applicable Ind ASs, except that it has departed from a particular requirement to present a true and fair view;
(c) the title of the Ind AS from which the entity has departed, the nature of the departure, including the treatment that the Ind AS would require, the reason why

that treatment would be so misleading in the circumstances that it would conflict with the objective of financial statements set out in the Framework, and the treatment adopted; and

(d) for each period presented, the financial effect of the departure on each item in the financial statements that would have been reported in complying with the requirement.

However, the Noticees did not provide clear reasoning to depart from the accounting standards. Noticees stated that…*In the absence of advice/information, finance cost for the month of March, 2018 could not be ascertained and accounted for.*

The rationale provided by the Noticees is not acceptable.Had the Noticees approached the Banks, they would have obtained the interest liability on their outstanding amount. Further, the Noticees did not provide for financial effect of its deviation from accounting standard for the quarter ended June & September.

17. I note that the information related to interest charged was readily available with relevant banks, as banks aggregated the interest amount and principal amount at the time of approval of resolution plan. Further, I note that as per the loan agreement signed between Noticee 1 & SBI (erstwhile State Bank of Hyderabad), dated March 31,2017, the loan covenant for irregular drawings is stipulated where SBI has clearly mentioned that if the account is irregular for more than 60 days, the penal interest of 2% on the entire outstanding would be charged. Therefore, the contention of the Noticee 1 that Bank did not charge the interest is incorrect and unacceptable.

18. Noticees in their reply have also contended that…. *Securities and Exchange Board of India cannot impose penalties by invoking provisions of Listing regulation for an alleged violation of the provisions of Companies Act,2013…* In the present proceedings, there is a violation of LODR regulations. SEBI has the full authority to invoke the adjudication proceedings and take appropriate actions. The same act/omission may result in violation of different statutes. I further note that in the instant matter, the Noticees did not provide true and fair picture of the

financial statements. Financial Statement is the basis for the investors to make decision regarding investments in the company. It helps investors to analyse the financial strength of the company. Therefore, I am of the view that the contention raised by the in this regard is not valid.

19. Noticees contended that they did not have *a reliable estimate of the amount of the obligation.* In this regard, I note that the information was readily available with the banks as they periodically calculate the interest on the outstanding loan. Further, I note that as per IND AS 109, the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. In the instant case, the company had acknowledged in its letter dated January 7, 2019 that the financial resolution was being discussed and planned with the banks. Therefore, the financial liability of the company for the interest component was not extinguished at the time of publishing of financial statements during the IP. This is also corroborated by the fact that the settlement of loans was done on December 4, 2019 by SBI and November 13, 2019 by PNB. Further, I note that the banks had not waived off the interest liability of the company at the time of publishing of financial statements during IP, the financial liability of the company cannot be considered to be extinguished and the same had to be accounted for in the books of accounts and disclosed in the financial statements by the company. Therefore, in this regard, the contention raised by Noticees doesn't hold any merit.

20. The Noticees placed reliance on the order dated April 23,2019 issued by the Adjudicating officer, SEBI in the matter of Radha Madhav Corporation Limited & Ors (hereinafter referred as RMCL). I note that in the matter of RMCL one of the evidence was opinion of the Expert Advisory Committee (hereinafter referred as EAC) of the ICAI. I also note that in the matter of RMCL, erstwhile AO was of the opinion that *ICAI has regulatory jurisdiction over its members in general and also the advisory role with regard to policy making on accounting and auditing standards. In this regard, the MCA, vide letter dated February 15, 2019 to the ICAI has reaffirmed this position. From the website of ICAI, it is also seen that*

the mission of ICAI is that – "To reply the queries on Accounting, Auditing and allied matters, received from the members of the Institute as per the rules framed for this purpose by the Council and to publish every year a priced publication, namely, Compendium of Opinions, containing opinions given by the Committee during the year." Further, from the Advisory Service Rules of the EAC which is applicable with effect from July 01, 2017, it is seen that only queries received from the members of the ICAI will be answered by the EAC and matters before an appropriate department of the government or the Income-tax authorities may not be answered by EAC on appropriate consideration of the facts. *Further, an opinion given or a view expressed by EAC would represent nothing more than the opinion or view of the members of the EAC and not the official opinion of the ICAI. Thus, such MCA's directives, admitted mission of ICAI read with Advisory Service Rules would entail that EAC of ICAI had no authority to provide advice or opinion to SEBI in this case.* However, I note that in the instant proceedings the opinion is also taken from Ministry of Corporates Affairs (MCA). However, I have taken into consideration the fact that the Ministry of Corporate Affairs (MCA) is the authority that notifies accounting standards for companies, and SEBI sought concurrence of MCA on the aforesaid opinion of ICAI. I note that vide letter dated October 14, 2019 MCA, the final authority, had stated that "it is in agreement with the views expressed by ICAI which is comprehensive and self-contained".

Therefore, the financial liability of the company continues and it cannot be reversed and hence, the Noticees have not made appropriate disclosure as required under the law. The same has been explained in above paragraphs. Therefore, the reference and reliance by Noticee on RMCL is clearly misplaced.

21. I would like to place my reliance on the judgment of ***Hon'ble High Court of Allahabad in the matter of Girish Chandra Tiwari vs UCO Bank vide writ C No. 67132 of 2013 decided on 09.09.2014*** where Hon'ble High Court in paragraph 5 stated that. *The liability to make payment of interest by the borrower to bank arises strictly in accordance with the loan agreement. The liability to pay interest continues to subsist so long as the dues are not cleared by the borrower. The mere fact that a loan account has been declared as NPA would not absolve*

the borrower from its liability of payment of interest to the bank, unless the law forbids it.

22. Further, Hon'ble High Court in paragraph 7 of its judgment above stated that *charging of interest on an asset declared as NPA does not cease rather, for the convenience of the bank and particularly for the accounting purposes the amount of interest due in the loan account declared NPA, is not shown in the loan account and details thereof are to be maintained in a separate account. Since the interest accrued to the bank is treated as income for the bank, therefore, after the loan is declared as NPA, the recovery of interest is not likely to take place, as such the amount of interest due is not reflected in the loan account. The interest in the loan account nevertheless remains payable under the loan agreement and the circulars of the Reserve Bank of India, and the bank would be clearly entitled to realise the interest from the borrower once the loan account is regularised*.

23. I note that as per regulations 4(1)(a), 4(1)(b),33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company is required to comply with all the applicable and notified Accounting Standards. The Ministry of Corporate Affairs has notified the Indian Accounting Standards ('IND AS'), under section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, which have been made applicable to listed entities since April 1, 2017.

24. In order to understand whether the reversal and non-provisioning of interest was in compliance with the applicable and notified accounting standards, relevant extracts of the IND AS with respect to recognition of interest and financial liability are reproduced below:

    (i) The relevant extract of definition of 'Financial Liability', as defined under 'IND AS 32 - Financial Instruments: Presentation', is reproduced as under:
    "A financial liability is any liability that is:
    (a) a contractual obligation :
    (i) to deliver cash or another financial asset to another entity;…"

(ii) Relevant extract of clause 35 of 'IND AS 32 – Financial Instruments: Presentation' is reproduced as under:
"*Interest, dividends, losses and gains relating to a financial instrument or a component that is a financial liability shall be recognised as income or expense in profit or loss."*

(iii) Relevant extract of clause 8 of 'IND AS 24 – Borrowing Costs' is reproduced as under:
"*An entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them."*

(iv) Relevant extract of clause 3.3.1 of 'IND AS 109 – Financial Instruments' is reproduced as under:
"An entity shall remove a financial liability (or a part of a financial liability) from its balance sheet when, and only when, it is extinguished — i.e. when the obligation specified in the contract is discharged or cancelled or expires."

25. I note that both banks (SBI & PNB) classified account of company as NPA in 2018. I am of the view that classification of the company as NPA by lenders / banks does not absolve the company's contractual obligation of interest payment against the loans taken. The interest on loans taken, which is a borrowing cost for the borrower, is required to be recognised as an expense under IND AS 32 and IND AS 24. However, if the interest is not paid by the company then it should appear on the balance sheet liability side under interest payable head. As per the definition of 'Financial Liability' under IND AS 32, the loans taken and the interest payable to banks would qualify as a financial liability of the company.

26. Further, I note that Accounting Conservatism is *a principle that requires company accounts to be prepared with caution and high degrees of verification*. All probable losses are recorded when they are discovered, while gains can only be registered when they are fully realized. In the instant proceedings, the interest liabilities were probable losses for the company. Noticees failed to consider the concept of conservatism while preparing the financial statements of the company.

27. I note that as per IND AS 109, the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. In the instant case, the company had acknowledged in its letter dated January 7, 2019 that the financial resolution was being discussed and planned with the banks. Therefore, the financial liability of the company for the interest component was not extinguished at the time of publishing of financial statements during the IP. This is also corroborated from the fact that the settlement of loans was done on December 4, 2019 by SBI and November 13, 2019 by PNB. As the banks had not waived off the interest liability of the company at the time of publishing of financial statements during IP, the financial liability of the company cannot be considered to be extinguished and the same had to be accounted for in the books of accounts and disclosed in the financial statements by the company.

28. In view of the above, I note that the accounting treatment of interest was not in accordance with the applicable and notified Accounting Standards. Therefore, the Noticee 1 had violated regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of SEBI (LODR) Regulations, 2015.

29. Further, it was alleged in the SCN that by failing to recognize interest expense on loans in the books of accounts, the Noticee 1 had reduced the quantum of loss appearing in its profit and loss account. Had the interest expense been recognised, the loss would have been higher. In this regard, I note that Noticee 1 had reduced the quantum of loss by not considering the interest expense and the departure from the IND AS is not in line with IND AS1. However, it is pertinent to note that Noticee 1 has disclosed the partial information through Notes & Directors Report.

30. The SCN also alleges that the above acts of the Noticees is in violation of PFUTP Regulations. In the instant case, the Noticees through Notes declared the fact that the financial statement is not accounted for interest expense due to unavailability of information in this regard. I am of the view that the lapse on the

part of Noticees was more procedural in nature. Noticees submitted that it is a normal industry trend, not to provide for interest once the account of the company has been declared Non Performing Asset. However, I am of the view that even if one were to claim this as an industry practice it cannot be a reason for deviation from any Ind AS. Therefore, in view of the above facts I note that the alleged violation of regulations 3(b), (c) & (d) and 4(1) 4(2)(f) of **PFUTP Regulations** & Sections 12A(a), (b), (c) of **SEBI Act 1992'** could not be established in respect of Noticees 1 to 7.

31. A company acts through its board of directors. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are expected to exercise the powers in a bona fide manner and in the interest of all stakeholders of the company.

32. Further, Section 27(2) of SEBI Act, 1992 Stipulates that -
"Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly".

33. It is already established in the preceeding paragraphs that Noticee 1 by not providing for interest expenses have made the selective disclosure in the financial statements. Thus, the executive directors of Noticee 1(i.e Noticee 2,3 & 4), being in-charge of operations and decision making process, are held

responsible for the violations committed by the company. Therefore, the Noticees 2,3 & 4 being directors of the company had the responsibility for the financial affairs of the company and by providing selective disclosure of information, the Noticees 2,3 & 4 have violated regulations 4(2)(f) of the LODR Regulations, 2015.

34. I note that in any listed company, the Audit Committee is expected to play a vital role as far as ensuring compliance with existing accounting standards, applicable laws and regulations are concerned. The idea of Audit Committee is to make sure that the affairs of company should be true and fair. It is the responsibility of Audit Committee to ensure that all the stakeholders of the company are aware of the financials of the company. The Audit Committee plays vital role to promote corporate governance of the company. The members of the audit committee during the IP were Noticees 2,5 & Late Mr. Manoj Bose [Late Mr. Manoj Bose was issued with a show cause notice to reply why an inquiry should not be initiated against him however due to the demise of Late Mr. Manoj Bose on February 13,2020, the adjudication proceedings were abated and the abatement order in respect of Late Mr Manoj Bose was issued vide order no. AA/JR/20-21/9136]. The role of the Audit Committee is defined under SEBI (LODR) Regulations, 2015, wherein, the Audit Committee is required to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

35. It is established in the preceding paragraphs that the financials of Noticee 1 were not in accordance with the accounting standards. It was the responsibility of the Audit Committee to comply with the underlying accounting standards in the matter of dealing with interest expense. I note that despite the statutory auditor raising the issue of non-compliance with Accounting Standard by way of a qualified opinion in its audit report and limited review report during the IP, the Audit Committee has failed to ensure that the published financial statements were in accordance with the applicable accounting standards and presented a true and fair view of the company's affairs, during the IP. Therefore, in view of

the above, I note that the Noticees 2 & 5 have failed to discharge their duties and thereby violated the provisions of Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015.

36. I note that as per provisions of Regulations of 17(8) of SEBI (LODR) Regulations, 2015, the Chief Financial Officer ('CFO') shall provide the compliance certificate to the board of directors. Further, under regulation 33(2)(a) of SEBI (LODR) Regulations, 2015, it is the duty of the CFO of the listed entity to certify that the published financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading while placing the financial results. The Managing Director, Joint Managing director & CFO have signed the compliance certificate and certified that the financial statement of the company is as per accounting standards and true to their knowledge. I note that the chief financial Officer is a person of knowledge, who understands the concept of conservatism and why it is considered as one of the basic principle while preparing accounts. It is well known concept in the finance to ***recognizing expenses and liabilities as soon as possible when there is uncertainty about the outcome, but to only recognize revenues and assets when they are assured of being received***. I note that statutory auditor raised the concern of not considering interest expense and also provide the qualification for the same, However, the CFO chose not to follow the underlying accounting standards and signed the compliance certificate and certified that the financial statement of the company is as per accounting standards and true to his knowledge. It shows the lackadaisical attitude of the CFO and unprofessionalism on the part of CFO. In this regard, I further note that Noticee 6 was the CFO of the company till August 7, 2018 and had signed the compliance certificates for the financial year ended March 31, 2018 & Noticee 7 was appointed as the CFO on February 1, 2019 and has signed the compliance certificate for the financial year ended March 31, 2019, quarter ended June 30, 2019 and quarter ended September 30, 2019. I also note that the Noticees 2 and 5, were the MD and the joint MD of the company respectively and have signed the compliance certificates during the IP. In view

of the same, I note that the Noticees 2,4,6 & 7 have violated the provisions of regulations 17(8), 33(2)(a) of the LODR Regulations.

Issue (b): Does the violation, if any, attract monetary penalty under under Sections 23E & 23H of SCRA Act 1956 & 15HB of SEBI Act 1992?

37. It has been established in the foregoing paragraphs that Noticees have violated the provisions of LODR Regulations, and therefore, the aforesaid violations committed by the Noticees attract monetary penalty under section 23E & 23H of SCRA Act 1956 & 15HB of SEBI Act 1992.

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

39. In view of the above, I conclude that the Noticees are liable for monetary penalty under the provision of section 23E & 23H of SCRA Act 1956 and 15HB of SEBI Act 1992 which reads as under during the relevant period:

<u>Relevant provisions of SCR Act & SEBI Act:</u>

SCR Act 1956

PENALTIES AND PROCEDURE
Penalties.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund], fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.*

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.*

SEBI Act 1992

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 may extend to one crore rupees.

Issue (c): If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

40. In this regard, the Hon'ble SAT in the matter of ***Suzlon Energy Ltd. and Anr. vs. SEBI*** (Appeal No. 201 of 2018) dated May 03, 2021 has held the following: *"Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when*

Page 42 of 46 it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E....." (emphasis supplied)

41. I note that a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 17 and 18 of the aforesaid order and an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order vide civil appeal no. 4741 of 2021. I note that the aforesaid stay application and the appeal is pending. I note that vide orders in the matter of M/s NDTV vs. SEBI (Appeal no. 358 of 2015) dated August 07, 2019, and Oasis Securities Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of these proceedings qua Noticee 1 is to determine if Noticee 1 has violated provisions of LODR Regulations and if so, determine whether penalty should be imposed and assess the quantum of such penalty. However, the enforcement of this order qua Noticee 1, shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court of India.

42. While determining the quantum of penalty under section 23H & 23E SCRA 1956, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. *While adjudging quantum of penalty under section 15-I, 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.*

43. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of the Noticees or the consequent loss caused to investors as a result of the aforesaid default. With respect to the repetitive nature of the default, I find that there is nothing on record to indicate any past violations committed by the Noticees. However, while deciding on penalty amount, I have considered the Noticee's submission mentioned in paragraph no. 5.11 above.

ORDER

44. After taking into consideration the facts and circumstances of the case, material/facts on record, case laws submitted by the Noticees and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1995, hereby impose the following penalties on the Noticees under section 23E & 23H of SCRA Act 1956 and 15HB of SEBI Act 1992, for the failure on their part to comply with the provisions of LODR Regulations. I am of the view that the said penalties are commensurate with the lapse/omission on the part of the Noticees.

S.no	Name of the Noticee	Penalty Section	Penalty Amount (Rs.)
1	Carnation Industries Limited	Section 23E of SCRA, 1956 & Section 15HB of SEBI Act 1992	Rs 5,00,000/-
2	Ravindra Prakash Sehgal	Section 23H of SCRA, 1956 & Section 15HB of SEBI Act 1992	Rs 1,00,000/- each
3	Suvobrata Saha	Section 23H of SCRA, 1956 & Section 15HB of SEBI Act 1992	
4	Arun Kumar Bose	Section 23H of SCRA, 1956 & Section 15HB of SEBI Act 1992	
5	Sephali Roy	Section 23H of SCRA, 1956 & Section 15HB of SEBI Act 1992	
6	Biplab Ganguly	Section 23H of SCRA, 1956 & Section 15HB of SEBI Act 1992	

S.no	Name of the Noticee	Penalty Section	Penalty Amount (Rs.)
7	Somnath Pradhan	Section 23H of SCRA, 1956 & Section 15HB of SEBI Act 1992	

As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the* ***Suzlon Energy* *(supra) matter, the monetary penalty imposed on the Company under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.*

45. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the 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. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

46. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid to the Division Chief, Enforcement Department-I, DRA-5, SEBI. The Noticees shall provide the following details while forwarding DD/payment information:

    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

47. In terms of the provision of rule 6 of the Adjudication Rules, 1995, copies of this order are being sent to the Noticees and also to SEBI.

Place: Mumbai	**Dr. Anitha Anoop**
Date: August 26, 2022	**Adjudicating officer**