BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/GD/2022-23/16121)

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

In respect of

Panyam Cement and Mineral Industries Limited

(CIN: L26940AP1955PLC000546)

In the matter of Panyam Cement and Mineral Industries Limited

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BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) received various references from IDBI Trusteeship Limited, a SEBI registered Debenture Trustee (hereinafter referred to as **DT**) pertaining to Non-Convertible Debentures (hereinafter referred to as **NCDs**) issued by Panyam Cement and Mineral Industries Limited (hereinafter referred to as **PCMIL/Noticee**). The Noticee has issued NCDs and it is listed on Bombay stock Exchange (**BSE**). SEBI conducted examination to ascertain compliance status of PCMIL with relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **LODR Regulations, 2015**) for the period 2017-18. During examination, SEBI observed that the Noticee did not comply with the provisions of regulations 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations, 2015. Accordingly SEBI initiated Adjudication Proceedings against the Noticee for the aforesaid violation of the provisions of LODR Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned has been appointed as the Adjudicating Officer, under section 15-I of the Securities and Exchange Board of India, Act, 1992 (hereinafter referred to as the **SEBI Act, 1992**) r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (herein after referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under sections 15A(b) and 15HB of the SEBI Act, 1992, the alleged violation of regulations 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. A Show Cause Notice having reference no. SEBI/HO/EAD-8/PM/SM/10758/1-2/2021 dated May 24, 2021 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be initiated against the Noticee and why penalty, if any, should not be imposed on the Noticee under sections 15A(b) and 15HB of the SEBI Act, 1992, for the aforesaid alleged violations of LODR Regulations, 2015. The said SCN delivered to the Noticee. The allegations against the Noticee are as follows:
   (a) *Pursuant to the SEBI Circular no. SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/72 dated June 30, 2017, Debenture Trustees made submissions to SEBI with regard to the para 5 of the said Circular which inter-alia states that "If no information regarding payment by Issuer Company is received by the DTs by due date or such information is not disclosed by the Issuer Company on the stock exchange website, then, the DTs shall make references to SEBI accordingly and disclose the non-availability of such information on their website". In terms of this Circular, SEBI received various references dated April 02, 2018, May 02, 2018, June 01, 2018, July 02, 2018, November 01, 2018, March 01, 2019, April 03, 2019 and May 02, 2019 from IDBI Trusteeship Services Limited (IDBI) regarding default or delay or non-submission of information related to fulfilment of payment obligations by the Noticee. Copies of the references received from IDBI are placed at Annexure-2. Accordingly, BSE was asked to provide the compliance status of the relevant provisions of LODR Regulations, 2015 and BSE vide its e-mail dated January, 14, 2020, January 16, 2020, February 24, 2020, March 11, 2020 and April 22, 2020 provided the compliance status. Copy of the information received from BSE through e-mail is placed at Annexure-3. From the information submitted by BSE, the details of the NCDs issued by the Noticee are as under:*

Whether equity is listed or not	*Yes*

Privately placed/Public issue	*Privately Placed*
ISIN	*INE167E07018*
Date of Issuance (Allotment)	*April 12, 2016 (Date of Listing)*
Date of Maturity	*March 31, 2021*
Frequency of Interest Payment	*Monthly*
Amount of NCDs issued (Rs. in crore)	*97.80*
Amount of NCDs Outstanding	*97.80*
No. of Investors	*2*
Details of investors	*EW India Special Assets fund PTE Ltd. and Ecap Equities Ltd*

(b) SEBI vide e-mails dated November 11, 2019, November 19, 2019 and November 22, 2019 sought information from the Noticee regarding the compliance status of the LODR Regulations, 2015. In this regard, Noticee vide e-mail dated November 23, 2019 submitted that due to the deteriorated financial condition, it was unable to service its interest/principal on NCDs after September 2017 and hence failed to make the requisite compliance under the regulations of 51, 52, 54, 55, 57 and 60 of LODR Regulations, 2015 during the financial year 2017-18, 2018-19 and 2019-20 (as on June 30, 2019). Copy of the e-mail dated November 23, 2019 alongwith the information forwarded by the Noticee placed at Annexure-4. BSE informed that it sought information from the Noticee, however it has not received any response from the Noticee. Further, IDBI was asked to provide the compliance status of the relevant provisions of LODR Regulations, 2015. Reply of IDBI was received on December 23, 2019 and the same is placed at Anneure-5. The status of compliance of the relevant provisions of LODR regulations as alleged by SEBI are tabulated below:

Sr. No.	***Provisions of LODR Regulations, 2015***	***Alleged non-compliance as observed by SEBI***
1	*Regulation 7(3)* *Submission of compliance certificate to stock exchange signed by the Compliance Officer and representative of the share transfer agent within one month of end of each half of financial year regarding maintenance of all activities in relation to both physical and electronic share transfer facility either in house or by Registrar to an issue and share transfer agent registered with the Board*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated the aforesaid regulation of LODR Regulations, 2015*

Sr. No.	Provisions of LODR Regulations, 2015	Alleged non-compliance as observed by SEBI
2	Regulation 9 Listed entity should have a policy for preservation of documents, approved by its board of directors,	Noticee stated that it failed to comply and hence Noticee violated aforesaid regulation of LODR Regulations, 2015
3	Regulation 50(1) Prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable	BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015
4	Regulation 50(3) A listed entity intimate to the stock exchange(s), at least two working days in advance, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non- convertible debt securities or any other matter affecting the rights or interests of holders of non- convertible debt securities or non-convertible redeemable preference shares is proposed to be considered.	BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.
5	Regulation 52(4) Disclosure of line items prescribed under Regulation 52(4) along with the half yearly I annual financial results	BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015
6	Regulation 52(5) Submission of a Certificate signed by the Debenture Trustee taking note of the contents prescribed under regulation 52(4).	BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.
7	Regulations 54(1) & (2) Listed entity shall maintain hundred percent asset cover to discharge the principal amount at all times for NCDs and disclosure to the stock exchange in quarterly, half yearly, year-to-date and annual financial statements, as applicable,	BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.

Sr. No.	*Provisions of LODR Regulations, 2015*	*Alleged non-compliance as observed by SEBI*
	the extent and nature of security created and maintained with respect to its secured listed NCDs.	
8	*Regulation 55* *Review of credit rating at least once a year*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.*
9	*Regulation 56* *Listed entity has to submit certain document such as annual report, certification on utilization of funds, change in credit rating, half yearly assets cover certificate, copy of notices, resolutions etc. to debenture trustee promptly*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.*
10	*Regulation 57(1)* *Disclosure of information related to payment obligations, undertaking of submission of all documents and intimations to Debenture Trustees within the timeline stipulated under this Regulation*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.*
11	*Regulation 57(2)* *The listed entity has to provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and SEBI (ILDS) Regulations, 2008 have been complied with.*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.*
12	*Regulation 58* *Listed entity to provide hard copies of Annual Reports to holders of NCDs, who requested for the same, notices of meetings etc.*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.*

Sr. No.	Provisions of LODR Regulations, 2015	Alleged non-compliance as observed by SEBI
13	*Regulation 60(1)* *The listed entity shall fix a record date for purpose of payment of interest, dividend and payment of redemption or repayment amount of for such other purpose as specified by the stock exchange*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.*
14	*Regulation 60(2)* *Submission of the notice of record date in advance of at least seven working days for the purpose of payment of interest or redemption amount*	*BSE informed that the Noticee has not submitted the information under the said provision of Regulation and hence Noticee violated aforesaid regulation of LODR Regulations, 2015.*

(c) In view of the above, it is alleged that, Noticee violated the provisions of regulations 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations, 2015.

4. Vide e-mail dated June 19, 2021, Bhrugesh Amin (IBBI Registration no. IBBI/IPA-002/IP-N00353/2017-18/11003), the Resolution Professional in the matter of Corporate Insolvency Resolution Process (CIRP) of Panyam Cements and Mineral Industries Limited replied to the SCN on behalf of the Noticee forwarding a reply letter dated June 16, 2021. The Resolution Professional vide letter dated June 16, 2021 submitted reply to SCN and informed that the Noticee is under moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC Code). In the interest of natural justice, hearing notice was sent through digitally signed e-mail dated March 29, 2022 and Noticee was granted an opportunity of hearing on April 05, 2022. However, the Noticee did not avail the hearing scheduled on April 05, 2022. Another opportunity of hearing was granted to the Noticee on April 13, 2022. Vide e-mail dated April 11, 2022, Bhrugesh Amin submitted another reply dated April 08, 2022 along with Hon'ble NCLT approval orders dated 25th June 2021 and 10th July 2021 for approval of the Resolution Plan with regard to CIRP of PCMIL. The Authorised representatives attended the hearing on the scheduled date i.e. on April 13, 2021 and reiterated the submissions made vide letter dated April 08, 2022.

5. Replies of the Resolution Professional vide letters dated June 16, 2021 and April 08, 2022 are as follows:

Reply dated June 16, 2021

(a) The National Company Law Tribunal, Amaravati Bench by its order dated May 14, 2020 ("Admission Order"), has ordered the commencement of CIRP in respect of the Company under the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code"). Pursuant to the Admission Order and in accordance with section 16 of the Code, I was appointed as the interim resolution professional, and my appointment as resolution professional ("RP") was subsequently approved by the Committee of Creditors of the Company on June 26, 2020.

(b) Pursuant to the Admission Order a moratorium is imposed in terms of Section 14 of the Code, prohibiting the following:

i. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority.
ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.
iii. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).
iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of corporate debtor.

(c) In the case of Ms. Anju Agarwal Resolution Professional For Shree Bhawani Paper Mills Ltd. v. Bombay Stock Exchange & Ors., the NCLAT in its order dated April 23, 2019 while holding that the BSE and SEBI are barred from initiating any proceedings against the corporate debtors while a moratorium under Section 14 of the Code has been imposed held that:

"As per Section 14 (1) (a) of the 'I&B Code', the institution of suits or continuation of pending suits or proceedings against the 'Corporate Debtor' including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority is prohibited."

(d) Further, in the case of Mr. Bohar Singh Dhillon v. Mr. Rohit Sehgal (Interim Resolution Professional) & Ors, the National Company Law Appellate Tribunal ("NCLAT"), vide its order dated May 9, 2019 has held that:

“till the period of ‘Moratorium’ continues, the ‘Securities and Exchange Board of India’ cannot recover any amount nor can sell the assets of the ‘Corporate Debtor’ during the ‘Moratorium’ period.”

(e) *Additionally, the Securities Appellate Tribunal, in its order dated October 9, 2020 in the matter of Dewan Housing Finance Corporation Ltd. v. Securities and Exchange Board of India, stated that the adjudicating officer does not have the power to proceed under the provisions of the SEBI Act, 1992 against a company when the a moratorium has come into effect under Section 14 of the Code.*

(f) *Further, as you will be aware in accordance with Section 17 of the Code, upon commencement of CIRP, the board of directors (“Board”) of the Company has been suspended and all the powers of the Board now vest with me, the RP of the Company. I am responsible for the management of the affairs of the Company during the CIRP period and to keep the Company running as a going concern.*

(g) *Additionally, as per Section 238 of the Code, the Code shall supercede any other law in force which is inconsistent with the provisions of the Code.*

(h) *A resolution applicant which had submitted a resolution plan has been approved by the Committee of Creditors of the Company in accordance with the Code and we are in the process of obtaining the approval of the NCLT in relation to the resolution plan submitted by such resolution applicant.*

(i) *In light of the above, and given the moratorium imposed pursuant to the Admission Order pursuant to Section 14 of the Code, please note that as per the provisions of the Code, there is a prohibition on initiation of any proceedings against the Company including any proceedings or actions in relation to adjudication proceedings by SEBI under Section 15(A)(b) and 15HB of the SEBI Act, 1992. Therefore, as per the applicable laws and the Code we would request you to halt all such proceedings against the Company.*

Reply letter dated April 08, 2022

(j) *Panyam Cements and Mineral Industries Limited ("Company/Corporate Debtor") has been admitted under the Corporate Insolvency Resolution Process by the Hon'ble National Company Law Tribunal, Amaravati Bench ("Hon'ble NCLT"), by its order dated May 14, 2020 ("Admission Order") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code"). Pursuant to the Admission Order and in accordance with section 16 of the IBC, Mr. Bhrugesh Amin was appointed as the interim resolution professional ("IRP"), and Mr. Bhrugesh Amin* *appointment as Resolution Professional ("RP") was subsequently approved by the Committee of Creditors ("COC") of the Company on June 26, 2020.*

(k) Thereafter, on March 29, 2021, the RV Consulting Services Pvt Ltd ('IRVCS") and Sagar Power Limited ("SPL") as joint bidders had submitted its resolution plan along with the Ernest Money Deposit, which was extensively deliberated upon and negotiated by the COC. Consequently, after the e-voting on June 5, 2021, the COC (with a majority of 97.634%) accorded its approval to the revised Resolution Plan dated May 19, 2021.

(l) The RP had filed an application before Hon'ble NCLT for approval of the resolution plan on June 09, 2021. It is pertinent to note that the Hon'ble NCLT has approved the revised resolution plan dated May 19, 2021, of RVCS and SPL as joint bidders on June 25, 2021, read with rectified order of the Hon'ble NCLT dated 10th July 2021 ("Approval Order"), copy of the same is attached for your ready reference.

(m)As per para 18 of the Approval order, it is mentioned under the Insolvency and Bankruptcy Code, 2016, all crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the Approval Order i.e., June 25,2021 shall stand extinguished on the approval of the Resolution Plan.

(n) As per para 20 of the Hon'ble NCLT order, it is mentioned that no creditors of the Corporate Debtor can claim anything other than the liabilities referred to in para 3(c) of the Approval Order.

(o) Further, as per para 17 of the Approval order, the approved resolution plan shall be binding on the corporate debtor, its employees, members, creditors, including the central government, any state government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantor and other stakeholders involved under the Resolution Plan.

(p) The Resolution Applicant has paid the amount to all the stakeholders in accordance with the approved resolution plan including the NCD holders within the stipulated time. The NCD holders have since released the charge to give a free and fair possession to the Resolution Applicant viz., RV Consulting Services Private Limited, and Sagar Power Limited.

(q) In this context, we seek waiver of all the penalties, irregularities and liabilities of Panyam Cements and Mineral Industries Limited prior to July 10, 2021 as per the regulations of IBC.

(r) We would like to highlight the position in law by judgement given by the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (CIVIL APPEAL NO. 8766-67 OF 2019) wherein the Hon'ble Apex Court has held that

> *"A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor"*

(s) In the view of factual matrix of present case the position in law is settled by Hon'ble Apex Court in the matter of Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (CIVIL APPEAL NO. 8766-67 OF 2019). Therefore, there is no room for doubt that no creditors can later make claims or demand any sum pertaining to a period prior to passing of resolution plan approval order.

(t) It is pertinent to note that Section 238 of the IBC Code, it is evident that the provisions of the Code shall have overridden effect. The non obstante clause in section 238 of the Code and the use of the expression "shall" in sub section (1) of section 31 makes it abundantly clear that a resolution plan approved by the committee of creditors and further approved (or sanctioned) by the adjudicating authority would be binding on all creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any laws for the time being in force, such as authorities to whom statutory dues are owed.

(u) We therefore request you to consider the provisions of the Code and the Approval Order of the Hon'ble NCLT and kindly close the inquiry.

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have considered the allegations levelled against the Noticee, submissions of the Resolution Professional on behalf of the Noticee and the issues that arise for consideration in the present case are:

   (a) Whether the Noticee has violated the provisions of regulation 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of the LODR Regulations, 2015?

(b) **Does the violations, if any, on the part of the Noticee would attract monetary penalty under section 15A(b) of the SEBI Act, 1992?**

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

7. Before moving forward, it is pertinent to refer to the relevant provisions of the LODR Regulations, 2011 which read as under:

LODR Regulations, 2015

Share Transfer Agent.

7(3) The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying compliance with the requirements of sub- regulation (2).

Preservation of documents

9. *The listed entity shall have a policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows-*

(a) documents whose preservation shall be permanent in nature ;

(b) documents with preservation period of not less than eight years after completion of the relevant transactions:

Provided that the listed entity may keep documents specified in clauses (a) and (b) in electronic mode.

Intimation to stock exchange(s).

50(1). *The listed entity shall give prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable.*

50(3). *The listed entity shall intimate to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non convertible debt securities or any other matter affecting the rights or interests of holders of non convertible debt securities or non convertible redeemable preference shares is proposed to be considered.*

Financial Results.

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

(a) credit rating and change in credit rating (if any);

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

(c) debt-equity ratio;

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

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

(f) debt service coverage ratio;

(g) interest service coverage ratio;

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

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

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

Provided further that the requirement of this sub- regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

52(5)*. While submitting the information required under sub- regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.*

Asset Cover.

54(1). *In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred per cent. asset cover sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.*

54(2) *The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.*

Credit Rating.

55. *Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered by the Board.*

Documents and Intimation to Debenture Trustees.

56. *(1) The listed entity shall forward the following to the debenture trustee promptly:*

(a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised:

Provided that in the case of debentures or preference shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.

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

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

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

(c) intimations regarding :

(i) any revision in the rating;

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

(iii) failure to create charge on the assets;

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

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

***56(2).** The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.*

***56(3).** The listed entity may, subject to the consent of the debenture trustee, send the information stipulated in sub-regulation (1), in electronic form/fax.*

Other submissions to stock exchange(s).

***57(1)** The listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non convertible debt securities.*

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

Documents and information to holders of non-convertible debt securities and non-convertible preference shares

58. *(1) The listed entity shall send the following documents:*

(a) Soft copies of full annual reports to all the holders of non-convertible preference shares who have registered their email address(es) for the purpose;

(b) Hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non convertible preference share who have not so registered;

(c) Hard copies of full annual reports to those holders of non convertible debt securities and non convertible preference share, who request for the same.

(d)Half yearly communication as specified in sub-regulation (4) and (5) of regulation 52, to holders of non convertible debt securities and non convertible preference shares;

(2)The listed entity shall send the notice of all meetings of holders of non convertible debt securities and holders of non-convertible redeemable preference shares specifically stating that the provisions for appointment of proxy as mentioned in Section 105 of the Companies Act, 2013, shall be applicable for such meeting.

(3)The listed entity shall send proxy forms to holders of non convertible debt securities and non-convertible redeemable preference shares which shall be worded in such a manner that holders of these securities may vote either for or against each resolution.

Record Date

60. *(1) The listed entity shall fix a record date for purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange.*

(2) The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

8. Now I deal with the issues on merit in the matter.

Issue (a): Whether the Noticee has violated the provisions of regulation 7(3), 9, 50(1), *50*(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of the LODR Regulations, 2015?

(a) Before moving forward, it will be appropriate to refer to various contentions of the Noticee regarding initiation and continuing of instant proceedings, given that pursuant to the NCLT order dated June 25, 2021, read with revised order dated

July 10, 2021, approving the Resolution plan under Indian Bankruptcy Code, 2016 (IBC). Noticee contended that it has been admitted under the Corporate Insolvency Resolution Process by the Hon'ble NCLT, by its order dated May 14, 2020 under the provisions of the IBC and the resolution plan of the Corporate Debtor has been approved by the Hon’ble NCLT on June 25, 2021, read with revised order dated July 10, 2021. Accordingly, all crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the Approval Order i.e., June 25, 2021 shall stand extinguished on the approval of the Resolution Plan and no creditors of the Corporate Debtor can claim anything other than the liabilities referred to in para 3(c) of the Approval Order of NCLT. Further, the approved resolution plan shall be binding on the corporate debtor, its employees, members, creditors, including the central government, any state government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantor and other stakeholders involved under the Resolution Plan. Noticee submitted that that Section 238 of the IBC Code, it is evident that the provisions of the Code shall have overridden effect. The non obstante clause in section 238 of the Code and the use of the expression "shall" in sub section (1) of section 31 makes it abundantly clear that a resolution plan approved by the committee of creditors and further approved (or sanctioned) by the adjudicating authority would be binding on all creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any laws for the time being in force, such as authorities to whom statutory dues are owed.

(b) I have noted the said contentions of Noticee regarding these proceedings and I note in various previous proceedings such contentions/point of law have been raised regarding initiation and continuing of the adjudication proceedings and penalty imposed in case of other IBC proceedings being underway/completed. I note that Orders passed by Hon’ble Securities appellate Tribunal (SAT) in the matter of Monnet Ispat &Energy Ltd. (Appeal No. 238 of 2020), Alok Industries Ltd. (appeal no. 300 of 2020) and Raj Oil Mills Ltd. (Appeal no. 54 of 2019) have been challenged by SEBI before the Hon’ble Supreme Court and the same are pending. The purpose of these proceedings is to determine if the Noticee has violated any of the provisions of the securities laws and if so, impose the penalty. However, the enforcement of this order shall be subject to the outcome of the aforesaid appeals before the Hon'ble Supreme Court. Having clarified regarding said contentions of the Noticee regarding instant proceedings, I shall now deal with the allegations levelled against Noticee, on merits of the case for the violations alleged in SCN and defended by the Noticee, in following paragraphs.

(c) It is alleged in SCN that Noticee has not submitted the information under the provision of regulation 7(3) of LODR Regulations, 2015. As per regulation 7(3) of LODR Regulations, 2015, Noticee is required to make submission of compliance certificate to stock exchange signed by the Compliance Officer and representative of the share transfer agent within one month of end of each half of financial year regarding maintenance of all activities in relation to both physical and electronic share transfer facility either in house or by Registrar to an issue and share transfer agent registered with the Board. It is noted from the reply from BSE that Noticee did not make the required submission under the regulations 7(3) of the LODR Regulations, 2015. As regards, the said allegations of violation of regulation 7(3) of said Regulations the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission within the prescribed time as specified in the aforesaid regulation, Noticee violated the provision of regulation 7(3) of LODR Regulations, 2015.

(d) Further, it is alleged in SCN that Noticee has not submitted the information under the provision of regulation 9 of LODR Regulations, 2015. As per regulation 9 of LODR Regulations, 2015, Noticee should have a policy for preservation of documents, approved by its board of directors. It is admitted by the Noticee that the Noticee failed to comply with regulation 9 of LODR Regulations, 2015. Therefore, by not having a policy for preservation of documents as specified in the aforesaid regulation, Noticee violated the provision of regulation 9 of LODR Regulations, 2015.

(e) Further, it is alleged in SCN that Noticee has not submitted the information under the provision of regulation 50(1) of LODR Regulations, 2015. As per regulation 50(1) of LODR Regulations, 2015, Noticee is required to give prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable. It is noted from the reply from BSE that Noticee did not make the required submission under the regulations 50(1) of the LODR Regulations, 2015. As regards, the said allegations of violation of regulation 50(1) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission within the prescribed time as specified in the aforesaid regulation, Noticee violated the provision of regulation 50(1) of LODR Regulations, 2015.

(f) Further, it is alleged in SCN that Noticee has not submitted the information under the provision of regulation 50(3) of LODR Regulations, 2015. As per regulation 50(3) of LODR Regulations, 2015, Noticee is required to intimate to the stock exchange(s), at least two working days in advance, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non-convertible debt securities or any other matter affecting the rights or interests of holders of non- convertible debt securities or non-convertible redeemable preference shares is proposed to be considered. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 50(3) of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 50(3) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission within the prescribed time as specified in the aforesaid regulation, Noticee violated the provision of regulation 50(3) of LODR Regulations, 2015.

(g) Further, it is alleged in SCN that Noticee has not submitted the information under the provision of regulation 52(4) of LODR Regulations, 2015. As per regulation 52(4) of LODR Regulations, 2015, Noticee is required to make disclosure of line items as prescribed under Regulation 52(4) along with the half yearly / annual financial results. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 52(4) of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 52(4) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission as specified in the aforesaid regulation, Noticee violated the provision of regulation 52(4) of LODR Regulations, 2015.

(h) Further, it is alleged in SCN that Noticee has not submitted the information under the provision of regulation 52(5) of LODR Regulations, 2015. As per regulation 52(5) of LODR Regulations, 2015, Noticee is required to make submission of a Certificate signed by the Debenture Trustee taking note of the contents as prescribed under regulation 52(4) of LODR Regulations, 2015. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 52(5) of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 52(5) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission as specified in the aforesaid regulation, Noticee violated the provision of regulation 52(5) of LODR Regulations, 2015.

(i) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 54(1) & 2 of LODR Regulations, 2015. As per regulation 54(1) & 2 of LODR Regulations, 2015, Noticee is required to maintain hundred percent asset cover to discharge the principal amount at all times for NCDs and disclosure to the stock exchange in quarterly, half yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed NCDs. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 54(1) & 2 of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 54(1) & 2 of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission as specified in the aforesaid regulation, Noticee violated the provision of regulation 54(1) & 2 of LODR Regulations, 2015.

(j) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 55 of LODR Regulations, 2015. As per regulation 55 of LODR Regulations, 2015, each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered by the Board. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 55 of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 55 of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission as specified in the aforesaid regulation, Noticee violated the provision of regulation 55 of LODR Regulations, 2015.

(k) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 56 of LODR Regulations, 2015. As per regulation 56 of LODR Regulations, 2015, listed entity has to submit certain document such as annual report, certification on utilization of funds, change in credit rating, half yearly assets cover certificate, copy of notices, resolutions etc. to debenture trustee promptly. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 56 of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 56 of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission within the prescribed time as specified in the aforesaid regulation, Noticee violated the provision of regulation 56 of LODR Regulations, 2015.

(l) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 57(1) of LODR Regulations, 2015. As per regulation 57(1) LODR Regulations, 2015, Noticee is required to make disclosure of information related to payment obligations, undertaking of submission of all documents and intimations to Debenture Trustees within the timeline stipulated under this Regulation. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 57(1) of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 57(1) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission within the prescribed time as specified in the aforesaid regulation, Noticee violated the provision of regulation 57(1) of LODR Regulations, 2015.

(m) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 57(2) of LODR Regulations, 2015. As per regulation 57(2) LODR Regulations, 2015, the listed entity has to provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and SEBI (ILDS) Regulations, 2008 have been complied with. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 57(2) of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 57(2) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission as specified in the aforesaid regulation, Noticee violated the provision of regulation 57(2) of LODR Regulations, 2015.

(n) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 58 of LODR Regulations, 2015. As per regulation 58 of LODR Regulations, 2015, Noticee is required to provide hard copies of Annual Reports to holders of NCDs, who requested for the same, notices of meetings etc. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 58 of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 58 of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission as specified in the aforesaid regulation, Noticee violated the provision of regulation 58 of LODR Regulations, 2015.

(o) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 60(1) of LODR Regulations, 2015. As per regulation 60(1) of LODR Regulations, 2015, the listed entity shall fix a record date for purpose of payment of interest, dividend and payment of redemption or repayment amount of for such other purpose as specified by the stock exchange. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 60(1) of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation 60(1) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission as specified in the aforesaid regulation, Noticee violated the provision of regulation 60(1) of LODR Regulations, 2015.

(p) Further, it is alleged in SCN that Noticee has not submitted the information under the provisions of regulation 60(2) of LODR Regulations, 2015. As per regulation 60(2) of LODR Regulations, 2015, Noticee is required to make submission of the notice of record date in advance of at least seven working days for the purpose of payment of interest or redemption amount. It is noted from the reply from BSE that Noticee did not make the required submission under the regulation 60(2) of the LODR Regulations, 2015. As regards, the said allegation of violation of regulation

60(2) of said Regulations, the Noticee has not provided any evidentiary proof of compliance, if any and also Noticee has not disputed the details provided in the SCN. Therefore, by not making the required submission within the prescribed time as specified in the aforesaid regulation, Noticee violated the provision of regulation 60(2) of LODR Regulations, 2015.

(q) In this context, it is also important to note that timely disclosure of the relevant information by companies is essential for maintaining transparency about the affairs of the company which helps in eliminating information asymmetry. Moreover, correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. In this context, I would like to rely on the observation of Hon'ble SAT in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014) wherein it was held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

(r) In view of the above, it is concluded that Noticee failed to submit the required information to the stock exchange and also some information within the prescribed time as specified in the provisions of regulation of LODR Regulations, 2015 as discussed in the above paras and therefore, Noticee violated the provisions of regulation 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations, 2015.

Issue (b): Does the violations, if any, on the part of the Noticee would attract monetary penalty under section 15A(b) of the SEBI Act, 1992?

(a) It has been established in the foregoing paragraphs that Noticee has violated the provision of regulation 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations, 2015 of LODR Regulations, 2015 and therefore, the aforesaid violation committed by the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992.

(b) 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…………...*"

(c) In view of the above, I conclude that the Noticee is liable for monetary penalty under the provision of section 15A(b) of the SEBI Act, 1992 which reads as under :

The SEBI Act, 1992
Penalty for failure to furnish information, return, etc.
15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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

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

Factors to be taken into account 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.*

(b) The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the non-compliance committed by the Noticee. Material on record does not show that failure is repetitive in nature. However, I note that the Noticee had failed to submit the information as alleged in SCN as prescribed under the provisions of regulation 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations, 2015of LODR Regulations, 2015.

ORDER

9. After taking into consideration the facts and circumstances of the case, material/facts on record 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 a penalty of Rs. 14,00,000/- (Rupees Fourteen Lakh only) on the Noticee under section 15A(b) of the SEBI Act, 1992, for the failure on its part to comply with the provision of regulation 7(3), 9, 50(1), 50(3), 52(4), 52(5), 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations, 2015 of LODR Regulations, 2015. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The said penalty shall stand payable by the Noticee as per the observation mentioned at para 8(b) of the instant order.

10. The Noticee 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 Noticee may contact the support at portalhelp@sebi.gov.in.

11. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI. The Noticee 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

12. In terms of the provisions of rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai	**PRASANTA MAHAPATRA**
Date: April 26, 2022	**ADJUDICATING OFFICER**