BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. EAD-7/BJD/NJMR/82/2018-19

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACT REGULATION (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

DLF Ltd.,
(PAN: AAACD3494N)
DLF Gateway Tower, "R" Block
DLF Cyber City, Phase III
Gurugram – 122002.

In the matter of DLF Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) conducted an investigation in the scrip of DLF Ltd., *(hereinafter referred to as **"DLF" / "Company")*** during the period June 11, 2007 and December 31, 2007 *(hereinafter to be referred to as* **"investigation period"**) to ascertain any possible violation of the provisions of SEBI Act, Securities Contracts (Regulation) Act, 1956 *(hereinafter referred to as **"SCRA")*** and various Rules and Regulations made thereunder. During the course of investigation, it was inter-alia observed by SEBI that DLF had made wrong disclosure to Stock Exchanges viz., BSE & NSE, where its shares were listed, regarding variations between actual utilization of funds vis-à-vis projected utilization of funds in respect of the Initial Public Offering (IPO) proceeds, under the head pre-payment of loans, for the quarter ended September 2007. It was observed that DLF had made a public issue of 17.50 crore equity shares between June 11 and 14, 2007 at a price of ₹ 525/- per equity share, for raising ₹ 9,187.50 crores. As per the prospectus of the issue of DLF dated June 18, 2007, one of the objects of the issue was prepayment of loans of the Company to the tune of ₹ 1,928.10 crores. In order to reduce the high interest cost burden, DLF had utilized ₹ 2,576.97 crores towards prepayment of loans, pursuant to

shareholders approval in terms of Section 61 of the Companies Act. The expenditure towards prepayment of loans was revised to ₹ 2576.97 crores as against ₹ 1,928.10 crores, which resulted into variation of projected utilization of funds vis-à-vis the actual utilization of funds. Accordingly, DLF was required to make disclosures on a quarterly basis to the Stock Exchanges indicating the variation between projected utilization of funds and the actual utilization of funds, under clause 43 of the Listing Agreement

2. It was observed that DLF in its quarterly filings for the period September 30, 2007 to NSE & BSE, submitted that it had utilized an amount of ₹ 3,143.56 crores towards prepayment of loans, up to September 30, 2007. However, as on December 14, 2007, as per the quarterly filing for the period December 2007 to NSE & BSE, DLF had shown the utilization of funds under the same head viz., prepayment of loans as ₹ 2,469.75 crores, which was decremental as compared to the previous quarter i.e, September 2007. It was alleged that DLF had made wrong disclosures to NSE and BSE with regard to utilization of funds in respect of prepayment of loans pertaining to the quarter ended September 30, 2007 and therefore violated the provisions of Clause 43 of the Listing Agreement read with Section 21 of SCRA

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed Shri Prasad Jagdale as the Adjudicating Officer vide Order dated June 30, 2016 under Section 23I of SCRA read with Rule 3 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (*hereinafter referred to as **"SCR Rules")*** to inquire into and adjudge the alleged violation of the provisions of Clause 43 of Listing Agreement read with Section 21 of SCRA, by the Noticee. Pursuant to internal restructuring, Shri S V Krishnamohan was appointed as the Adjudicating Officer vide Order dated December 14, 2016 and thereafter the undersigned has been appointed as the Adjudicating Officer vide Order dated May 18, 2017, to inquire into and adjudge the alleged violation committed by DLF, under Section 23H of SCRA.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as "**SCN**") bearing ref. no. EAD/BJD/NJMR/1823/2018 dated January 18, 2018 was issued to the Noticee, under Rule 4 of SCR Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the SCR Rules and penalty be not imposed under Section 23H of SCRA for the violation alleged to have been committed by it.

5. The SCN was delivered to the Noticee on January 23, 2018. The Noticee vide its letter dated February 6, 2018 sought extension of six weeks to furnish its reply to the SCN. Vide email dated February 9, 2018 the Noticee was informed of extension of time for three weeks only i.e., up to March 1, 2018 to submit its reply. However, no reply was filed by the Noticee to the charges alleged in the SCN. Vide email dated March 12, 2018, the Noticee was informed of personal hearing scheduled on March 20, 2018. I note that the Notice did not avail the personal hearing scheduled on March 20, 2018. The Noticee vide letter dated March 15, 2018 received on March 20, 2018 submitted its reply to the SCN. Vide email dated March 20, 2018 the Noticee was once again provided with another opportunity of personal hearing scheduled on April 2, 2018. In reply, the Noticee vide letter dated March 28, 2018 submitted that it had not received the earlier email dated March 12, 2018 requiring it to appear for personal hearing scheduled on March 20, 2018. Further, the Noticee requested for postponement of hearing to May, 2018. Vide email dated March 28, 2018, the Noticee once again requested for scheduling the personal hearing in May, 2018. The Noticee, vide email dated March 29, 2018 was once again informed of not acceding to its request for adjournment of personal hearing to May, 2018. The Noticee was informed to avail the personal hearing scheduled on April 9, 2018, which was subsequently rescheduled to April 12, 2018. In pursuance of a request made by DLF vide email dated April 9, 2018, the personal hearing was rescheduled to April 27, 2018. The Noticee vide letter dated April 27, 2018 authorized Ms. Shailashri Bhaskar, Practising Company Secretary {*hereinafter referred to as Authorised Representative (AR)}* to appear on its behalf, before me. The hearing was attended by the Officials of DLF viz., Mr. Subhash Setia,

Company Secretary and Mr. Rajiv Goel, Sr., Vice President (Finance & Investor Relations) along with the AR on April 27, 2018 and reiterated the submissions made by the Noticee vide its letter dated March 15, 2018.

6. The reply of the Noticee is summarized hereunder.

(a) *Denies all averments and insinuations of any impropriety and / or violation of the provisions of Clause 43 of the Listing Agreement read with Section 21 of SCRA, as alleged in the SCN.*

(b) *That the disclosure of prepayment of loans amounting to ₹ 3143.56 cores made in the notes to quarterly financial results to the BSE & NSE for September 30, 2007 whilst being correct, was an aggregation of the prepayment of loans of ₹ 2,469.75 cores by way of utilization of funds from the IPO proceeds and ₹ 673.81 crores by way of utilization of funds from non-IPO sources (own sources). Such aggregation was an inadvertent error.*

(c) *It is submitted that when the IPO Monitoring Agency, during the course of their audit, highlighted the aforesaid error, DLF subsequently rectified the statement of utilisation of proceeds for the period ending December 31, 2007 to ₹ 2,469.75 crores in its disclosures to the Stock Exchanges. It is submitted that the correction made by DLF in the subsequent disclosure for the quarter ended December 31, 2007 was completely voluntary and in the interest of fair and complete disclosure.*

(d) *It is most humbly submitted that the disclosure in the statement of utilisation for the quarter ended on September 30, 2007 was true in all material aspects, except for the fact that utilisation from two different sources were inadvertently clubbed together.*

(e) *In view of the above, it is respectfully submitted that it would not be justified to proceed against DLF for the alleged violation of Clause 43 of the Listing Agreement read with Section 21 of SCRA, which is stated to have occurred in the disclosure for the period up to September 30, 2007 and which was*

voluntarily rectified by DLF in the very next disclosure for the period up to December 14, 2007.

(f) *That SEBI ought not to take cognizance of such alleged infraction which occurred more than 10 years back to now foist the monetary penalty on DLF.*

(g) *No investors and/or the public at large were misled by the disclosures and the inadvertent error was only to the extent that another source of funds was unintentionally included in statement of utilisation of the IPO proceeds.*

(h) *No loss was caused to the investors and no gain made by DLF in relation to the said disclosure. No economic benefit, unfair advantage or disproportionate gain has been accrued to any person because of the said disclosure. Such disclosure was a singular inadvertent error and is not repetitive in nature.*

(i) *As on date of this reply, there are no pending investor grievances against DLF and DLF has not undergone any other enforcement action for the same violation. At the very highest, the alleged violation is venial, minor and technical in nature.*

(j) *DLF has, at all times, fully cooperated with SEBI during conduct of investigation including by providing timely and unambiguous responses to all queries raised by SEBI and provided relevant and necessary supporting documents. In fact, DLF vide its letter dated March 22, 2016 addressed to SEBI had itself pointed out the inadvertent error to SEBI's notice. Therefore, DLF has been fully forthcoming, transparent and open in its responses to SEBI.*

(k) *In view of the foregoing facts, it is abundantly clear that there was no positive intent / design on the part of DLF to commit the infraction of the Listing Agreement, as alleged. SEBI, in the past, in various matters not levied any monetary penalty on Noticees where the facts disclosed that the contravention on the part of the Noticees was inadvertent and sans any mens rea.*

(l) *In view of the aforesaid submissions and the mitigating factors delineated hereinabove, DLF most respectfully prays that SEBI ought to take a reasonable view of the matter and no monetary penalty ought to be imposed upon DLF for the unintentional, benign and venial error in the disclosure made in the aforementioned quarterly statement.*

7. During the personal hearing, the Noticee submitted that it had not made any explanatory statement to the quarterly disclosures made to the Stock Exchanges under Clause 43 of Listing Agreement for the quarter ended December 2007, regarding actual utilization of funds from IPO proceeds towards pre-payment of loan as compared to the quarter ended September 2007.

8. The Noticee undertake to furnish following additional information / documents by May 9, 2018.

    a) Statement of bank account wherein the IPO proceeds were deposited, for the period June 2007 till December 2009.

    b) Break up of details of prepayment of loans of ₹ 3143.56 crores *(as* per the quarterly statement for the quarter ended September 2007) along with the corresponding bank account statements;

    c) Copies of monitoring report by IDBI during the period June 2007 till December 2009;

    d) Legal provisions as regards utilization of funds (IPO proceeds) by an issuer company, more specifically transfer of IPO funds from escrow account;

    e) Details of the case laws being referred by the Noticee in its support for the instant Adjudication proceedings.

9. The Noticee vide email dated May 9, 2018 sought three weeks to submit the aforesaid information, in view of annual closure and Board Meeting for

publication of annual financial results. Vide email dated May 10, 2018 the Noticee was granted extension of time up to May 25, 2018 to furnish the information / documents called for, which were duly submitted by the Noticee vide its letter dated May 23, 2018.

10. The Noticee in its further submissions stated that since the process of deriving the amount utilized under the various heads was through physical MIS, there was an inadvertent discrepancy in providing the break-up of the utilization, while submitting the details to the Stock Exchanges as per Clause 43 of the Listing Agreement. The Noticee also submitted that due to inexperience and over enthusiasm, it had made an error in disclosing the details of deviation in utilization of IPO proceeds.

CONSIDERATION OF ISSUES

11. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee that it had filed wrong disclosures to BSE & NSE regarding variation in projected utilization of funds vis-à-vis actual utilization of funds and thereby violated the provisions of Clause 43 of Listing Agreement read with Section 21 of SCRA.

After perusal of the material available on record, I have the following issues for consideration, viz.,

a. *Whether the Noticee has violated the provisions of Clause 43 of Listing Agreement read with Section 21 of SCRA?*

b. *Does the violation, if any, attract monetary penalty under Section 23H of SCRA?*

c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?*

ISSUE-1: Whether the Noticee has violated the relevant provisions of Clause 43 of Listing Agreement read with Section 21 of SCRA.

12. Before moving forward, it is pertinent to refer to the relevant provisions of Clause 43 of Listing Agreement read with Section 21 of SCRA, alleged to have been violated by the Noticee, which reads as under:

Clause 43 of Listing Agreement

a) *The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilization of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.*

b) The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering *preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under clause 41.*

c) *If there are material variations between the projections and the actual utilization /profitability,* the company shall furnish an explanation therefore *in the advertisement and shall also provide the same in the Directors' Report.*

d) *The statement referred to in clause (a) shall also be given for warrants issued along with public or rights issue of specified securities.*

Section 21 of SCRA – Conditions for listing

"Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange".

13. DLF raised an amount of ₹ 9,187.50 cores from its IPO during the period June 11 and 14, 2007. The shares of DLF are listed in BSE & NSE. As per the prospectus of DLF dated June 18, 2007, the proposed utilization of funds from the IPO proceeds are as under:

Sl. No	Particulars	Amount (in ₹Crore)
1	Finance expenditure for acquisition of land & development rights	3500.00
2	Finance the development and construction costs for existing projects	3493.40
3	Repay certain loans of the company	1928.10
4	Meeting Issue Related Expenses	266.00
Total		**9187.50**

14. From the above table, one of the objects of the issue was prepayment of loans of the company to the tune of ₹ 1,928.10 crores. I note from the records that, in order to reduce the high interest cost burden, DLF had utilized an amount of ₹ 2,576.97 as against the proposed ₹ 1,928.10 cores as per the prospectus, towards prepayment of loans, pursuant to shareholders approval in terms of Section 61 of the Companies Act.

15. Accordingly, DLF was required to make disclosures on a quarterly basis to the Stock Exchanges indicating the variation between projected utilization of funds and the actual utilization of funds, under clause 43 of the Listing Agreement It was observed that DLF had been filing a statement every quarter from September 30, 2007 till December 14, 2009 giving variation from the projected utilization of funds and the actual utilization of funds in terms of Clause 43 of the Listing Agreement to BSE & NSE, the details of which are furnished hereunder.

(in ₹Crores)

Expenditure Incurred Up to	Sept 30, 2007	Dec 14, 2007	Mar 31, 2008	Jun 14, 2008	Sept 30, 2008
Acquisition of land & development rights	3210.08	5669.55	5669.55	5669.55	5669.55
Development & constructions cost for existing projects	458.22	636.25	636.25	636.25	636.25
Prepayment of Loans	**3143.56**	**2469.75**	2577.00	2576.97	2576.97
Expenses incurred towards the IPO	302.98	302.98	302.98	302.98	302.98
Total Utilization	**7114.84**	**9078.53**	**9185.78**	**9185.75**	**9185.75**

Expenditure Incurred Upto	Dec 14, 2008	Mar 31, 2009	Jun 14, 2009	Sept 14, 2009	Dec 14, 2009
Acquisition of land & development rights	5669.55	5669.55	5669.55	5669.55	5669.55
Development & constructions cost for existing projects	636.25	636.25	636.25	636.25	636.25
Prepayment of Loans	2577.95	2577.95	2577.95	2577.95	2578.02
Expenses incurred towards the IPO	302.98	302.98	302.98	302.98	302.98
Total Utilization	**9186.73**	**9186.73**	**9186.73**	**9186.73**	**9186.80**

16. It is observed from the above table that DLF submitted in its quarterly filing for the period September 30, 2007 to NSE & BSE, that it had utilized an amount of ₹ 3,143.56 crores towards prepayment of loans, up to September 30, 2007. However, as on December 14, 2007, as per the quarterly filing for the period December 2007 to NSE & BSE, DLF had shown the utilization of funds under the same head viz., prepayment of loans as ₹ 2,469.75 crores, which was decremental as compared to the previous quarter i.e, September 2007, which was ₹ 3,143.56 crores.

17. I note from the submissions made by the Noticee that it had clubbed ₹ 673.81 cores from non-IPO proceeds with ₹ 2,469.75 cores of IPO proceeds towards pre-payment of loans for the quarter end September, 2007. The Noticee admitted the inadvertent error, which was later rectified by it in the subsequent quarter filing i.e., December, 2007, wherein the figures were shown as ₹ 2,469.75 crores. I note from the records that error was rectified by the Noticee upon being pointed out by the Monitoring Agency viz., IDBI.

18. I note from the submissions of DLF that since the process of deriving the amount utilized under the various heads was through physical MIS, the utilisation of funds (IPO and Non IPO) were inadvertently clubbed. In order to deal with the same, I consider it relevant to examine whether such an error was avoidable and / or due to negligence or casual approach towards regulatory requirements by the Noticee.

19. Firstly, IPO is initial public offering by a company to raise funds for the purposes as stated in the Red Herring Prospectus (RHP). All disclosures made in the IPO documents would be the basis for investors to take an informed decision of investment. Therefore, it is primary responsibility of the Listed Company to ensure that IPO funds raised are accounted and reported to investors in case of any deviations from the proposed utilisation of IPO funds. Further, keeping in view the interest of investors, I note that SEBI had specifically mandated appointment of monitory agency to monitor the IPO proceeds in case the IPO is for more than ₹ 500 crores, and also provided for specific window for

disclosure to Stock Exchange, under clause 43 of the Listing Agreement, in case the projected utilization of funds and the actual utilization of funds differs. Thus, I note that monitoring agency was put in place as a control check and balance mechanism, in the interest of investors, to curb the possibility of misuse / siphoning off the IPO funds. Therefore, I note that regulatory framework in place clearly envisaged total transparency and continuous monitoring of the IPO funds through the above mechanism. I note from the facts on record that Monitoring Agency had detected the wrong disclosure and not by the Noticee.

20. I note that the Noticee had not taken serious approach towards Regulatory requirements of Clause 43 of listing agreement. Had it taken serious view of the same, it would have certainly been in a position to identify the accurate deviation as the requirement specifically deals only with IPO funds. Therefore, the question of considering and clubbing of non-IPO funds would not have arisen. Further, I am also of the view that the Noticee did not have proper control mechanism to monitor IPO funds in terms of either segregating IPO funds in a separate bank account or putting in place a flag / checks and balance in their consolidated accounting software system, which if done would have resulted in identification and monitoring of IPO funds and thus avoided wrong disclosure. In view of the above, I conclude that wrong disclosure cannot be merely brushed aside as being an inadvertent error as it was avoidable and due to flippant approach towards regulatory requirements by the Noticee.

21. Further, I note from the subsequent filing for the quarter ended December 2007, wherein the amount utilized towards prepayment of loans was rectified and shown as ₹ 2,469.75 crores, there was no explanatory statement furnished by the Noticee as to how the figures got decreased compared to the previous quarter. It is admitted by the Noticee during the personal hearing held on April 27, 2018 that it had not made any explanatory statement while furnishing the revised figures of prepayment of loans for the quarter ended December 2007.

22. DLF had rectified the error of clubbing the non-IPO proceeds with IPO proceeds, only upon finding out the error by the Monitoring Agency viz., IDBI. Had the error not been pointed out by the Monitoring Agency, the exact

utilization of IPO proceedings could not have been ascertained by DLF, which is evident from the fact of clubbing non-IPO proceeds by it. Such an act on the part of the Noticee would have hampered the interest of shareholders who had invested in the IPO of DLF and the investors in general, in making an informed decision in investing in the shares of DLF. Therefore, the contention of the Noticee that the revised disclosure for the quarter ended December 2007 was voluntary and in the interest of fair and complete disclosure does not find merit, as the Noticee cannot absolve its erroneous act, by merely publishing the revised figures in the subsequent quarter. Rather, it would have been in the interest of investors had the Noticee furnished an explanatory statement in its filings for the quarter ended December 2007, regarding the difference of utilization of IPO proceeds towards prepayment of loans as compared to the previous quarter.

23. DLF in its submissions stated that vide letter dated March 22, 2016 it had pointed out the inadvertent error to SEBI. I note from the records that during the course of investigation, the Investigation Authority had sought the details of IPO utilization disclosures from NSE vide email dated February 6, 2015, which were made available by NSE vide email dated February 11, 2015. Upon analysis of the quarterly statements on utilization of IPO proceeds submitted by DLF to NSE, the comments from the Noticee were sought by the Investigating Authority vide letter dated March 15, 2016. The Investigating Authority inter-alia sought explanation from DLF as to how amount once prepaid can subsequently be stated as reduced with respect to prepayment of loans. From the above, it is clear that upon investigation only, the Noticee had submitted the details of error in reporting utilization of IPO proceeds and not on its own to SEBI, as contended by the Noticee.

24. The Noticee submitted that SEBI ought not to take cognizance of such alleged infraction which occurred more than 10 years back to now foist the monetary penalty on DLF. In this connection, I deem it appropriate to mention the observations of Hon'ble SAT in the matter of Vaman Madhav Apte & Ors., Vs. SEBI vide Order dated March 4, 2016, which reads as under:

"Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

Thus, under the circumstances, if the Noticee is to be given benefit on the ground that there has been delay in initiating proceedings, and therefore the proceedings should be quashed, I am of the view that it would result in travesty of justice than upholding of justice. In view of the above, I find no merit in the arguments put forth by the Noticee.

25. The submission of the Noticee that the wrong disclosure was inadvertent error and that no investors and/or the public at large were misled by the disclosure and the inadvertent error was only to the extent that another source of funds was unintentionally included in statement of utilization of the IPO proceeds. In this regard, I would like to draw reference to the Hon'ble SAT's observation in the matter of Komal Nahata Vs. SEBI (Order dated January 27, 2014), which reads as under:

"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15-J of the SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure".

Any disclosure made to stock exchanges by listed company are meant for investors to take an informed decisions in respect of their investments. Therefore, it is essential for a listed company to make the disclosure which are

factually correct at all times and any wrong disclosure would result in misleading appearing of the facts which would ultimately impact the interest of investors. Therefore, in line with the aforesaid observations of Hon'ble SAT, I find no merit in the arguments put forth by the Noticee that the wrong disclosures had not mislead the investors and / or public at large.

26. The Noticee in its submissions requested to take a lenient view for the inadvertent error, which it termed as venial, minor and technical discrepancy, made as a result of human error. In this connection, I would like to rely on the observations of Hon'ble SAT in the case of Enterprise International Ltd., Vs. SEBI in the Appeal No. 344 of 2017(Order dated January 31, 2018), which reads as under:

> *"Admittedly, the particulars disclosed in the years in question were wrong. Fact that correct particulars were in the quarterly reports cannot be a ground for the appellant to escape penal liability for furnishing wrong information in the format prescribed under clause 35 of Listing Agreement. Very fact that mutually inconsistent particulars were furnished by the appellant clearly shows that the investors were mislead during the period in question. Fact that the company and its promoters have not been benefitted from the error committed and the fact that the investors have not suffered any financial loss cannot be a ground to escape liability for furnishing wrong information during the period from December 2010 to December 2013".*

27. It is established that the Noticee had made wrong disclosures for the quarter ended September 2007 to BSE & NSE regarding utilization of funds in respect of prepayment of loans due to its facetious approach. It was brought in the pre-paragraphs that there was no information available in the public domain also as to how the figures of prepayment of loans were revised, which was decremental, at the quarter ended December 2007 as compared to the previous quarter. Therefore, I find no merit in the contentions raised by the Noticee that the inadvertent error was minor, technical and venial.

28. The Noticee had placed reliance on the following cases laws in its support.

(a) Hon'ble SAT's judgement in the matters of Sundaram Finance Ltd., Vs. SEBI, J M Mutual Fund Vs. SEBI, Karvy Consultants Private Ltd., Vs. SEBI and Galaxy Broking Ltd., Vs. SEBI;

(b) Hon'ble Supreme Court's and Hon'ble SAT's judgements in the matter of Price Waterhouse Coopers (P) Ltd., Vs. Commissioner of Income Tax, Kolkata-1;

29. I have perused the respective judgements as referred to and relied upon by the Noticee in its support. From the facts of the instant case vis-à-vis the Orders passed by the Hon'ble Supreme Court and Hon'ble SAT, I note that the facts of the present case are different from what is being referred to by the Noticee and hence it does not require any consideration.

30. In view of the foregoing, I conclude that the Noticee by making wrong disclosures as regards variation in projected utilization of funds vis-à-vis actual utilization of funds for the quarter ended September 2007, had violated the provisions of Clause 43 of Listing Agreement read with Section 21 of SCRA.

ISSUE -2: Does the violation, if any, attract monetary penalty under Section 23H of SCRA?

31. The Noticee admitted that due to inadvertent error, the filings made for the quarter ended September 2007 resulted into wrong disclosures. The fact cannot be ignored that in the revised filings for the quarter ended December 2007, it had not made any explanatory statement as regards the reduction in utilization of funds towards prepayment of loan, as compared to the previous quarter. Therefore, there was no factual information available in the public domain at the relevant time as to how much amount was actually utilized towards prepayment of loan vis-à-vis the proposed utilization of funds.

32. The basic criterion on which the whole Listing Agreement based is Corporate Governance. By way of Listing Agreement inter-alia Stock Exchange ensures

on behalf of SEBI that the Listed Companies are following good Corporate Governance Practice. The investors need adequate disclosure at all times to take well informed investment decisions. Any wrong disclosures by the Listed Companies would hamper the interest of investors in taking an informed decision. Therefore, as the violation against the Noticee stands established, the Noticee is liable for monetary penalty under Section 23H of SCRA.

33. The Hon'ble Supreme Court of India in case of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter-alia 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".*

34. It is relevant to mention here that ratio of said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to income tax act. It was held by the Hon'ble Supreme Court *"that penalty under the provision is for breach of civil obligation and is mandatory and the mens-rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives".*

ISSUE -3: ***If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?***

35. While determining the quantum of monetary penalty under 23H of SCRA, I have considered the factors stipulated in Section 23J of SCRA, which reads as under:

Section 23J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 23-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.

36. The material made 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 Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default. It is the responsibility of the Listed Company to furnish correct disclosures to Stock Exchanges which is very vital for the investors / shareholders to enable them to take an informed decision and any such failure on its part is likely to impact the interest of investors / shareholders.

37. Therefore, any lapse on the part of the Listed Company has to be dealt by SEBI seriously in order to protect the interests of investors in securities market. Therefore, I consider it appropriate for imposition of penalty on the Noticee for violation of Clause 43 of Listing Agreement read with Section 21 of SCRA, under Section 23H of SCRA.

ORDER

38. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 23I of the SCRA read with Rule 5 of the SCR Rules, hereby impose a penalty ₹ 10,00,000/- (Rupees Ten Lakhs only) on the Noticee viz., DLF Ltd., under Section 23H of SCRA.

39. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

40. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

41. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department-1, DRA-IV, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

42. In terms of rule 6 of the SCR Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: 31 May 2018
Place: Mumbai

B J DILIP
Adjudicating Officer