

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/AS/DP/2024-25/31204]**

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

In respect of:

**AIRD Investment Commercial LLC**

**PAN: AAOCA8357P**

**In the matter of examination of compliance with respect to Investment in Debt  
Instruments by Foreign Portfolio Investor**

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**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), had carried out an inspection of the Custodian, Orbis Financial Corporation Limited (**OFCL**) for the Financial Year (FY) 2021-22 wherein it was observed that investments made by Foreign Portfolio Investor (hereinafter referred to as “**FPI**”) i.e. AIRD Investment Commercial LLC (hereinafter referred to as “**Noticee**”) is not in accordance with the permissible limits (related to residual maturity) for investment in Debt Securities applicable for FPIs as on March 31, 2022.
2. SEBI carried out an examination for the period from April 01, 2018 until November 30, 2023 to assess the compliance of the Noticee with respect to the provisions the SEBI (Foreign Portfolio Investors) Regulations, 2019 (hereinafter referred to as “**FPI Regulations**”), Master circular for FPIs and DDPs dated December 19, 2022 read with RBI Circular ref no. RBI/2017-18/199 dated June 15, 2018.
3. Based on the examination, SEBI observed certain non compliances and initiated adjudication proceedings against the Noticee under Section 15HB of the SEBI Act for the

alleged violation of Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. SEBI appointed Shri Biju S as Adjudicating Officer, vide communique dated March 01, 2024, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act read for the violations alleged to have been committed by the Noticee. Subsequent to his transfer, vide communique dated July 29, 2024, the undersigned has been appointed as Adjudicating Officer.

#### **SHOW CAUSE NOTICE, REPLY AND HEARING**

5. Show Cause Notice dated June 12, 2024 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15HB of the SEBI Act. The SCN, inter alia, alleged the following:

***Holding investment in short term debt securities exceeding the 30% prescribed limit.***

**A. Short term Investment by AIRD Investment Commercial LLC (Noticee)**

- 5.1 *It is alleged that the percentage of short-term investments vis a vis the total investments made by the FPI in G secs' has continuously exceeded the prescribed limit of 30% during three different continuous periods as showing in the below table.*

**Table: Summary of Investments in G SEC by the FPI (AIRD / Noticee)**

Start Date	End Date <sup>\$</sup>	Total Investments (Rs. in Lakhs)	Short Term Investments (Rs. in Lakhs)	% of Short Term	No of Days
19-Dec-2021	16-Oct-2022	6,000	3,000	50%	323
17-Oct-2022	<b>07-Nov-2022</b>	8,500	3,000	35%	
29-Nov-2022	04-Dec-2022	12,000	7,500	63%	83
05-Dec-2022	11-Dec-2022	12,500	7,500	60%	
12-Dec-2022	19-Dec-2022	13,000	7,500	58%	
20-Dec-2022	26-Dec-2022	10,000	4,500	45%	
27-Dec-2022	15-Jan-2023	11,000	4,500	41%	
16-Jan-2023	22-Jan-2023	11,500	4,500	39%	
23-Jan-2023	13-Feb-2023	12,500	4,500	36%	
14-Feb-2023	<b>20-Feb-2023</b>	14,500	4,500	31%	
27-Jun-2023	27-Sep-2023	21,000	11,000	52%	156
28-Sep-2023	03-Oct-2023	17,190	7,190	42%	
04-Oct-2023	31-Oct-2023	22,390	7,190	32%	
01-Nov-2023	<b>30-Nov-2023</b>	23,690	7,190	30.4%	

<sup>\$</sup>: No non-compliance was observed between Nov 7, 2022 to Nov 29, 2022 and between Feb 20, 2023 to Jun 27, 2023

**5.2 From the above table, the following were observed:**

**5.2.1** Firstly, on December 19, 2021 the % of short term investments upon total investments made by the FPI is 50%. Due to additional investment made on October 17, 2022 the % of short term investment was reduced to 35% which is still not within the prescribed limit of 30% and continued until November 07, 2022. From November 08, 2022 till November 29, 2022, the percentage of short term investments upon total investments made by the FPI was within the prescribed limit of 30%.

**5.2.2** On November 29, 2022, the investment in short term G Secs breached 30% limit and reached 63%, which decreased subsequently, but was still more than the prescribed limit of 30% until February 20, 2023. From February 20, 2023 till June 27, 2023, the percentage of short term investments upon total investments made by the FPI was within the prescribed limit of 30%.

**5.2.3** Subsequently, on June 27, 2023 the investment in short term G Secs breached 30% limit and reached 52%, which decreased subsequently but was still more than the

*prescribed limit of 30% until November 30, 2023. Therefore, it is alleged that Noticee was non-compliant for a total period of 562 days.*

5.3 *Aforesaid observations were communicated to Noticee vide email dated December 8, 2023 advising the Noticee to clarify as to how its debt investments are in compliance with the provisions of Regulation 20 of SEBI (FPI) Regulations, 2019, Clause 9 of Part C of the SEBI Master Circular read with RBI Circular dated June 15, 2018.*

5.4 *Noticee in its response vide email dated December 18, 2023 submitted that its investments are in breach of the limits provided in the RBI Circular due to oversight at its side.*

5.5 *In view of the above, it is observed that the Noticee, by holding investments in short term debt securities exceeding the prescribed limit of 30%, for 562 days. Hence, it was alleged that the Noticee has not-complied with Regulation 20(5) of SEBI (FPI) Regulations, 2019 and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018.*

6. The said SCN returned undelivered with the remark “incomplete address”. Subsequently, vide email dated September 02, 2024, the SCN was served on the Noticee through digitally signed email.
7. Vide letter dated September 11, 2024, acknowledged the receipt of SCN and forwarded names of its Authorised Representatives (ARs). Subsequently, vide letter dated September 18, 2024, Noticee through its AR sought inspection of documents which was granted. The AR of the Noticee inspected the documents on October 09, 2024.
8. Vide Notice of hearing dated November 04, 2024, Noticee was granted an opportunity of being heard on November 19, 2024 and was advised to file reply to the SCN.
9. Vide letter dated November 18, 2024, Noticee filed its reply to the SCN and *inter-alia* submitted the following:

***The Noticee did not violate any substantive provisions of law***

- 9.1 *In the present case, assuming without admitting, it is submitted that the alleged default was purely minor / technical and did not lead to any substantial violation of law. No harm, loss or prejudice was caused to the securities market. Admittedly, there is no investor or stakeholder grievance against the Noticee on the subject matter.*
- 9.2 *The SEBI has proceeded against the Noticee on the basis of an inspection carried by SEBI of the Custodian viz. Orbis Financial Corporation Limited. It is respectfully submitted that upon being made aware, the Noticee took proactive steps to corrected the inadvertence immediately.*
- 9.3 *It was the Noticee's understanding that the Custodian viz. Orbis Financial Corporation Limited was monitoring the limits in respect of the securities in its portfolio. Accordingly, the Noticee was not keeping a check as to whether there was any breach in limit on day-to-day basis.*
- 9.4 *As such, it is a settled position of law that the purpose of inspection could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity to rectify its errors. Thus, in our respectful submission to issue a show cause notice (under Adjudication Rules), merely on minor inadvertence observed during the inspection, is inherently excessive.*
- 9.5 *The AR relied upon the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Religare Securities Limited vs. SEBI** (Appeal No. 23 of 2011 order dated June 16, 2011) and **UPSE Securities Limited s. SEBI** (Appeal No. 109 of 2011 order dated July 25, 2011) in this regard.*
- 9.6 *It is respectfully submitted that the Noticee has neither derived any benefit nor any advantage from the alleged contravention in the SCN. Any finding by SEBI upholding the allegations made against the Noticee in the present instance would be inconsistent with the relevant provisions of law and peculiar facts and circumstances of the case.*
- 9.7 *For the days when the Noticee held the Government Securities beyond the permissible limits. The Noticee did not make any substantial profits or whooping gains.*

9.8 *It is respectfully submitted that the alleged violation has not resulted in any harm or loss caused to the securities market. No such allegation sits in the SCN as well.*

10. The AR of the Noticee appeared for the hearing on November 19, 2024 and reiterated the submissions made vide reply dated November 18, 2024 and submitted that :

10.1 *It was a venial breach by the Noticee in the year 2022 which has since been rectified.*

10.2 *The AR further submitted that for the same violation, the custodian has already settled the matter. Therefore, a lenient approach may be taken.*

### **CONSIDERATION OF ISSUES AND EVIDENCE**

11. I have carefully perused the allegations levelled against the Noticees in the SCN, their reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

- I. Whether Noticee has violated Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018?***
- II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?***
- III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?***

12. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

#### ***“FPI Regulations***

***20. Investment restrictions.***

***...***

***(5) In respect of investments in the debt securities, the foreign portfolio investors shall also comply with terms, conditions or directions, specified or issued by the Board***

*or Reserve Bank of India, from time to time, in addition to other conditions specified in these regulations.*

*Clause 9 of Part C of SEBI Master Circular for FPI and DDPs dated December 19, 2022*

9. FPIs investments in debt securities

- i. With respect to FPIs investments into government (Central and State) securities, exchange traded currency and interest rate derivatives, FPIs shall be guided by directions issued by RBI from time to time.*
- ii. In respect of investment conditions in the corporate debt securities, the FPI shall also comply with terms, conditions or directions, specified or issued by RBI, from time to time. No separate circular(s) shall be issued by SEBI. The intermediaries may take steps required to operationalize the RBI notifications.”*

***Issue No. 1. Whether Noticee has violated Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018?***

- 13. RBI vide its Circular RBI/2017-18/199 dated June 15, 2018 (updated up to February 26, 2021) has mandated that short terms investments shall not exceed 30% of total investment by an FPI in any category and therefore, were required to be closely monitored and limits adhered to.
- 14. As per the data in the SCN, it is observed that the percentage of short-term investment vis-a-vis the total investment made by Noticee in G secs' continuously exceeded the prescribed limit of 30% during three different continuous periods as shown below:

Start Date	End Date <sup>\$</sup>	Total Investments (Rs. in Lakhs)	Short Term Investments (Rs. in Lakhs)	% of Short Term	No of Days
19-Dec-2021	16-Oct-2022	6,000	3,000	50%	323
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29-Nov-2022	04-Dec-2022	12,000	7,500	63%	83
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12-Dec-2022	19-Dec-2022	13,000	7,500	58%	
20-Dec-2022	26-Dec-2022	10,000	4,500	45%	
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16-Jan-2023	22-Jan-2023	11,500	4,500	39%	
23-Jan-2023	13-Feb-2023	12,500	4,500	36%	
14-Feb-2023	<b>20-Feb-2023</b>	14,500	4,500	31%	
27-Jun-2023	27-Sep-2023	21,000	11,000	52%	156
28-Sep-2023	03-Oct-2023	17,190	7,190	42%	
04-Oct-2023	31-Oct-2023	22,390	7,190	32%	
01-Nov-2023	<b>30-Nov-2023</b>	23,690	7,190	30.4%	

*\$: No non-compliance was observed between Nov 7, 2022 to Nov 29, 2022 and between Feb 20, 2023 to Jun 27, 2023*

15. From the above table it is observed that,

15.1 On December 19, 2021 the percentage of short term investments upon total investment was 50%. Due to additional investment made on October 17, 2022 the percentage of short term investment was reduced to 35% which was still beyond the prescribed 30%.

15.2 On November 29, 2022, the investment in short term G Secs breached 30% limit and reached 63%, which decreased subsequently, but was still more than the prescribed limit of 30% until February 20, 2023.

15.3 On June 27, 2023 the investment in short term G Secs breached 30% limit and reached 52%, which decreased subsequently but was still more than the prescribed limit of 30% until November 30, 2023.

16. Thus, Noticee was holding investments in short term debt securities exceeding the prescribed limit of 30%, for 562 days which is for almost 2 years.



17. Noticee has contended that it was under the belief that these limits are to be monitored by the custodian. In this regard, I note that Regulation 20 of FPI Regulations clearly puts onus on the FPI to adhere with norms with respect to debt securities of other instrument as permitted by the RBI. The Noticee, being a registered intermediary was required to comply with the provisions of FPI Regulations.
18. Therefore, I am of the opinion that the violation of Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018 by the Noticee is established.
19. Noticee has submitted that it was a minor technical error on part of the Noticee which was immediately rectified. Noticee has relied upon the orders of Hon'ble SAT in this regard.
20. I have perused the orders of Hon'ble SAT in the matter of Religare Securities Ltd. and UPSE Securities Ltd., I find reliance on the said order by the Noticee is misplaced. In the said orders, the violations were minor and there were reasons that SEBI Regulations were not complied with. In the present case, the violation is due to oversight by the Noticee.

***Issue II: Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?***

21. It has been established in the aforesaid paragraphs that Noticee has violated the provisions of law as alleged in the SCN and therefore Noticee is liable for payment of monetary penalty in terms of Section 15HB of SEBI Act.
22. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} wherein Hon'ble Supreme Court of India held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of*

*the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.”*

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

***“Penalty for contravention where no separate penalty has been provided.***

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

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

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

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

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

***Explanation.—****For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G,*

*15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”*

25. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor as a result of the default of the Noticee. As regard the repetitive nature of the default, the default by the Noticee is repetitive in nature as the violations of not adhering to the permissible limit of investment went on for almost 2 years.
26. However, Noticee was under a statutory obligation to abide by the provisions of the FPI Regulations, which it has failed to do. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly show that it had failed in its regulatory compliances and need to be adequately penalized.

### **ORDER**

27. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticees as well as the factors mentioned in section 15J of SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose penalty of Rs. 20,00,000 (Rupees Twenty Lakh Only) on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by Noticee.
28. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

### **ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.**

29. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee under

Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

**Date : February 24, 2025**  
**Place : Mumbai**

**Asha Shetty**  
**Adjudicating Officer**