

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/DP/2024-25/31252]**

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:

Emami Realty Limited

PAN: AALCS5120P

In the matter of Emami Realty Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint on January 19, 2023) in the matter of Emami Realty Limited. (“**Noticee**”, “**Company**”) regarding unreasonably favorable terms offered by the Noticee to Promoter Group Companies for the issuance of Zero Coupon Unsecured Optionally Convertible Debentures (“OCDs”). The complaint was forwarded to NSE for examination during which NSE sought comments from the Noticee and subsequently provided comments to SEBI.
2. Based on the findings of examination by NSE, SEBI observed certain non-compliances, *inter-alia*, of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as “**ICDR Regulations**”) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) and initiated adjudication proceedings against Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri Shashikumar Valsakumar as Adjudicating Officer, vide communique dated April 12, 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 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

4. Show Cause Notice dated April 24, 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 them under Section 15 HB of the SEBI Act. The SCN, *inter alia*, alleged the following:
 - i. Noticee vide postal ballot notice dated January 12, 2023, sought approval of the shareholders for conversion of existing Unsecured Loan of Rs. 700,00,00,028/- (Rupees Seven Hundred Crores and Twenty Eight only) of the Lenders, being Promoter Group Companies namely Suraj Finvest Private Limited and Diwakar Finvest Private Limited, into 8,53,65,854 Nos. of Zero Coupon Unsecured Optionally Convertible Debentures ("OCD") of Rs. 82/- (Rupees Eighty Two only) each, convertible at the option of the Noticee/Company at a pre-agreed conversion ratio of 1 equity share of face value of Rs. 2 per OCD.
 - ii. Aforesaid OCDs were allotted on February 12, 2023 without obtaining in-principle approval from the Stock Exchange as required under Reg. 28(1) of the SEBI LODR Regulations and Reg. 160(f) of the SEBI ICDR Regulations. Further the issuance and allotment of OCDs was in violation of the provisions of the SEBI ICDR Regulation as enumerated in **Table 1** below:

Table 1

Sr. No.	Regulation	Description	Complied/Non-Complied
1	Reg 28(1) of the LODR Regulations	The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognized stock exchange(s)	Not Complied. The Exchange would levy SOP fine and issue a non-compliance letter to the Company.
2	Reg 160 (f) of the ICDR Regulations	The issuer shall make an application seeking in-principle approval to the stock exchange(s), where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution.	Not Complied. In addition in case a company is non-compliant with this regulation, SEBI Condonation/ Exemption may be needed to proceed with, which the company has not done.
3	Reg.162 of the ICDR Regulations	The tenure of convertible securities should not exceed 18 months from the date of allotment	Not Complied
4	Regulation 163 of the ICDR Regulations		
	(d)	Shareholding pattern of the issuer before and after the preferential issue	Not Complied
	(f)	Identity of natural persons who are beneficial owners of the shares proposed to be allotted and who ultimately control the proposed allottees	Not Complied
	(fa)	The percentage of post preferential issue capital that may be held by the allottee and change in control, if any, in the issuer consequent to the preferential issue.	Not Complied
	(j)	The current and proposed status of the allottee post the preferential issues.	Not Complied
5	Reg 163 (2) of the ICDR Regulations	PCS Certificate before the general meeting of shareholders.	Not Complied

Sr. No.	Regulation	Description	Complied/Non-Complied
6	Reg. 164 of the ICDR Regulations	Pricing of frequently traded shares	Not Complied. The company has not undertaken pricing calculation as per the regulation. The conversion price of the specified securities is not calculated.
7	Reg. 167 of the ICDR Regulations	Lock-in and Restrictions on Transferability	Not Complied

iii. With respect to the violation of Regulation 28(1) of the SEBI LODR Regulations, NSE had levied fine under SOP Circular dated January 22, 2020 as stated in Table-1, Sr. No. 1 above. BSE vide its email dated March 28, 2023, had inter-alia confirmed SOP fine & Non-compliance letter shall be issued separately to the Noticee in terms of the SOP Circular. Therefore, as actions have been taken from the end of Stock Exchanges, no further action is considered as warranted by SEBI for the violations of LODR Regulations.

iv. Further, for the reasons as enumerated in **Table 1** above, the issuance and allotment of OCDs by the issuer company Noticee was in violation of Regulation 160(f), 162 (1), 163, (1) (d), (f), (fa), (j), 163(2), 164, 167(1) of the SEBI ICDR Regulations.

5. Vide letter dated May 08, 2024, Noticee informed that it has applied for settlement, and thus requested to keep the proceeding in abeyance. Subsequently, vide email dated November 14, 2024, it was informed by the concerned Department of SEBI that the settlement application filed by the Noticee has been rejected.

6. Vide email dated November 27, 2024, Noticee replied to the SCN and *inter-alia* submitted the following:

6.1. *Our Company is in the Real Estate Business, and had substantial debt as per the then last audited balance sheet and a high cost of debt service. A substantial portion of debt was provided by Promoter entities. Keeping in the mind the long term financial viability of the Company and maintaining optimum capital structure, these Promoter Group entities agreed to convert a portion of their loans into Zero Coupon Optionally Convertible Debentures ("OCDs") which included inter alia giving the sole option to the Company to convert the OCDs into its equity shares.*

- 6.2. Accordingly, on the recommendations of the Audit Committee, the Board of Directors of the Company at its meeting held on January 12, 2023 has given consent, subject to approval of Members by way of Special Resolution, to convert Unsecured Loan of Rs. 700,00,00,028/- (Rupees Seven Hundred Crores and Twenty-Eight only) into 8,53,65,854 nos of unrated, unlisted, Zero Coupon Unsecured Optionally Convertible Debentures of Rs. 82/- (Rupees Eighty-Two only) each on such terms and conditions in line with the Draft Term Sheet annexed to the Postal Ballot Notice dated January 12, 2023.
- 6.3. Pursuant to the approval granted by the Shareholders of the Company by postal ballot on February 12, 2023, the Board of Directors of the Company had, on February 14, 2023 allotted 8,53,65,854 nos. of Zero Coupon Unsecured Optionally Convertible Debentures (OCDs) of face value Rs. 82/- each at par to Promoter Group Companies and convertible at the option of the Company into 8,53,65,854 equity shares. The transaction, being a Related Party Transaction, was approved by the minority shareholders with a vote of 92.3%, indicating the overwhelming support of minority shareholders.
- 6.4. The allotment of OCDs was proposed to be made in lieu of conversion of debt. The issue price of securities/ conversion price of OCDs were certified by M/s SKA Business Advisory Services Private Limited, Registered Valuer (Valuer Registration No. - IBBI/RV-E/02/2020/122) in adherence with the then existing Regulation 164 of the ICDR Regulations.
- 6.5. The issue of OCD was conceived on our understanding that the instant OCDs **wherein the option to convert was with the Company only, do not fall within the meaning of "Convertible Securities"** under the SEBI ICDR Regulations.

Convertible Security have been defined in Regulation 2(1)(k) of SEBI ICDR Regulations as under:

"convertible security" means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of such security and includes convertible debt instrument and convertible preference shares;

Further, Convertible Debt Instrument is defined under Regulation 2(1)(j) of SEBI ICDR Regulations as:

"convertible debt instrument" means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without

- the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not;
- 6.6. On analysis of the above definitions, the meaning of the term "with or without the option of the holder" refers to two alternates situations:
- a) Where there is an option with the holder to convert; and
 - b) Where there is no option, i.e., the instrument is compulsorily and automatically convertible into shares called Compulsory Convertible Instruments.
- 6.7. Such an interpretation can also be supported by the FAQs on secondary market by SEBI that defined convertible bonds as "A bond giving the **Investor the option to convert** the bond into equity at a fixed conversion price." (Emphasis supplied)
- 6.8. An option of conversion with the Issuer is not considered as an option, as such option, not being with the holder, has no value as far as the Investor is concerned. The Investor has no right in specified securities nor does the Investor have any right to acquire any specified securities in terms of the conversion options. The nomenclature of the instrument cannot define its nature.
- 6.9. Therefore, the choice of "conversion" of the OCDs into Equity Shares can only be exercised by the Company which again is neither compulsory, nor at the option of the investor. In view of the same, the OCDs in question do not get covered under the meaning of "convertible securities" in terms of ICDR Regulations, 2018.
- 6.10. Subsequent to allotment of OCDs, the Company has received certain observations from NSE regarding the requirement of compliance with Regulation 28 of the SEBI {Listing Obligations and Disclosure Requirements} Regulations, 2015 and Chapter V of the SEBI {Issue of Capital and Disclosure Requirements} Regulations, 2018.
- 6.11. At this stage, we consider it appropriate to reiterate the provisions of Reg 28(1) of SEBI {LODR} Regulations, 2015. Reg 28(1) of the SEBI (LODR) Regulations, 2015 read as follows:
- (1) The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognised stock exchange(s) in the following manner:
 - (a) **where the securities are listed** only on recognised stock exchange(s) having nationwide trading terminals, **from all such stock exchange(s);**

(b) **where the securities are not listed** on any recognised stock exchange having nationwide trading terminals, **from all the stock exchange(s) in which the securities of the issuer are proposed to be listed;**

(c) where the securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals:" (Emphasis Supplied)

- 6.12. The whole intent of the SEBI {LODR} Regulations in requiring prior In-principle approval from the Stock Exchanges is that the Company does not create any equity securities pursuant to the exercise of the option, as the same may result into creation of new securities ranking at par with existing listed securities. Further, it is imperative to mention that the Company has only one class of 3,78,43,889 nos. of equity shares having a face value of Rs. 2/- per share. The said equity shares are already listed on the Stock Exchanges. Apart from this, none of the securities of the Company are listed.
- 6.13. If there is an option with the Company, the exercise of such an option will be taken as a corporate action on the part of the Company and such corporate action, if opted by the Company, will require all such approvals as may be applicable for issue of equity shares and shall be obtained at the time of exercise of options. Hence, if the option of conversion is exercised by the Company at the relevant period, the Company shall ensure compliance with the applicable provisions of the Companies Act, 2013 as well as the SEBI {Issue of Capital and Disclosure Requirements} Regulations, 2018 and the SEBI {Listing Obligations and Disclosure Requirements} Regulations, 2015, including obtaining in-principle approval from the Stock Exchanges where the equity shares of the Company are listed, and other requisite approvals and intimations, as applicable.
- 6.14. Since NSE did not agree to our views exchanged in various correspondences over email / video conference call and in order to avoid any confrontation with the Regulator, the Company took immediate steps and decided to revoke the OCDs and convert the same to Non-Convertible Debentures in discussions with NSE.
- 6.15. Accordingly, the Board of Directors of the Company had on March 31, 2023 passed a resolution under section 42 and 71 of the Companies Act, 2013 authorising the issue of NCDs on private placement basis and approved Notice of postal ballot seeking approval of the shareholders for conversion of 8,53,65,854 Nos. of Zero Coupon Unsecured Optionally Convertible Debentures ('OCDs') of face value of Rs. 82/- each

aggregating to Rs. 700,00,00,028/- to 7.5% Unsecured Unlisted Non-Convertible Debentures ('NCDs').

6.16. The OCD Holders, being Promoter Group companies have given their consent and approval for change in terms of the OCDs.

6.17. Thee-voting period has commenced from Thursday, April 06, 2023 at 09.00 A.M. (IST) and ended on Friday, May 05, 2023 at 5.00 P.M. (IST).

6.18. The Results of the Postal Ballot/E-voting was declared on May 06, 2023 and was simultaneously submitted with the NSE, BSE and CSE where the equity shares of the Company are listed.

6.19. In terms of approval granted by the shareholders by way of Postal Ballot on May 05, 2023, the Finance Committee of the Board of Directors of the Company, at its meeting held on May 08, 2023, has approved allotment of 8,53,65,854 Nos. of 7.5% Unsecured Unlisted Nonconvertible Debentures of Rs. 82/- each, in lieu of existing 8,53,65,854 Nos. of Zero Coupon Unsecured Optionally Convertible Debentures of Rs. 82/- each, aggregating to Rs. 700,00,00,028/- for its remaining tenure.

6.20. Hence, since the OCDs allotted on 14th February, 2023 were ultimately cancelled and rendered infructuous, the violation, if any, does not exist.

6.21. We had already paid an amount of Rs. 59,000/- (including applicable GT @18%) to NSE for alleged violation of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('SEBI LODR Regulations').

6.22. It will be evident from above that the issue of the OCD was done in a bonafide manner and Keeping in the mind the long term financial viability of the Company and maintaining optimum capital structure and the best interest of the Company and all its stakeholders.

6.23. It will not be out of place to mention here that the Company has incurred loss of Rs. 122.86 Crores during the financial year 2023-24 on a consolidated basis and loss of Rs. 27.09 Crores during the six months ended 30 September, 2024. Hence, levy of any fine and/or penalty will be a burdensome on the cash flow of the Company and prejudicial to the interest of the Company and its stakeholders.

7. Subsequently, vide notice of hearing dated December 13, 2024, Noticee was granted an opportunity of personal hearing before the Adjudicating Officer on December 23, 2024. Vide email dated December 18, 2024, Noticee forwarded name of their Authorised Representatives (ARs).

8. On December 23, 2024, the ARs of the Noticee appeared for the hearing and reiterated the submissions made vide letter dated November 27, 2024. The ARs submitted that a lenient view may be taken as the Noticee has already undertaken the necessary steps to rectify the error. The AR further submitted that the Noticee has cancelled the issuance of OCDs and instead has issued NCDs.

CONSIDERATION OF ISSUES AND EVIDENCE

9. I have carefully perused the allegations levelled against the Noticee 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 Regulations 160(f), 162 (1), 163(1) (d), (f), (fa), (j), 163(2), 164, 167(1) of the ICDR Regulations?***
- 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?***

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

“Regulation 160(f): Conditions for preferential issue

160(f). the issuer has made an application seeking in-principle approval to the stock exchange(s), where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders’ approval by way of special resolution.

Regulation 162 (1): Tenure of convertible securities

162 (1) The tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.

Regulation 163 (1) (d), (f), (fa), (j) and 163 (2): PART III: DISCLOSURES TO SHAREHOLDERS

163. (1) *The issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing the special resolution:*

a)....

d) shareholding pattern of the issuer before and after the preferential issue;

e)...

f) identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees;

Provided that if there is any listed company, mutual fund, scheduled commercial bank, insurance company registered with the Insurance Regulatory and Development Authority of India in the chain of ownership of the proposed allottee, no further disclosure will be necessary.

Explanation: For the purpose of identification of the ultimate beneficial owners of the allottees, where the allottees are institutions/entities, the identification of such ultimate beneficial owners, shall be in accordance with the guidelines prescribed by the Board, if any.

(fa) the percentage of post preferential issue capital that may be held by the allottee(s) and change in control, if any, in the issuer consequent to the preferential issue

(j) the current and proposed status of the allottee(s) post the preferential issues namely, Promoter or non-promoter.

(2) The issuer shall place a copy of the certificate of a practicing company secretary before the general meeting of the shareholders considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.

[Explanation.— For the purposes of sub regulation (2), the issuer shall also host the certificate on its website and provide a link for the same in the notice for the general meeting of the shareholders considering the proposed preferential issue.

Regulation 164 : Pricing of frequently traded shares

164. (1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of the following:

- a. the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or*
- b. the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.*

(2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than the higher of the following:

- a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of compromise, arrangement and amalgamation under sections 391 to 394 of the Companies Act, 1956 or sections 230 to 234 the Companies Act, 2013, as applicable, pursuant to which the equity shares of the issuer were listed, as the case may be; or*
- b) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on the recognised stock exchange during the period the equity shares have been listed preceding the relevant date; or*

c) *the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.*

(3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

(4) A preferential issue of specified securities to qualified institutional buyers, not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(5) For the purpose of this Chapter, “frequently traded shares” means the shares of the issuer, in which the traded turnover on any recognised stock exchange during the twelve calendar months preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer:

Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares.

Explanation: For the purpose of this regulation, ‘stock exchange’ means any of the recognized stock exchange(s) in which the equity shares of the issuer are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding twenty six weeks prior to the relevant date.

Regulation 167 (1) :Lock-in

167. (1) The specified securities, allotted on a preferential basis to the promoters or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on a preferential basis to the promoters or the promoter group, shall be locked - in for a period of three years from the date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be:

Provided that not more than twenty per cent. of the total capital of the issuer shall be locked-in for three years from the date of trading approval:

Provided further that equity shares allotted in excess of the twenty per cent. shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.

Provided further that in case of convertible securities or warrants which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment.”

Issue No. 1. Whether Noticee has violated Regulations 160(f), 162 (1), 163 (1) (d), (f), (fa), (j), 163(2), 164, 167(1) of the ICDR Regulations?

11. Now I will proceed to deal with the above allegations on merits.

12. It was alleged in the SCN that the Noticee violated various provisions of ICDR Regulations with respect to issuance of 8,53,65,854 numbers of Zero Coupon unsecured Optionally Convertible Debentures.

13. In this regard, Noticee has submitted that Noticee had issued the said OCDs pursuant to the approval granted by the Shareholders of the company by postal ballot. Noticee has submitted that it was under the understanding that OCD does not fall within the meaning of “Convertible Security”. Noticee further submitted that the issue of OCD was conceived on the premise that in case of OCDs, the option to convert was with the Company only. Noticee has contended that as per the definition of convertible security, the option to convert into equity shares is with the investor and therefore, OCDs issued by the Noticee

do not fall within the meaning of “Convertible Securities”. Noticee has further submitted that NSE did not agree to the view of the Noticee and therefore, to avoid any confrontation, Noticee revoked the OCDs and converted the same to NCDs in discussion with NSE.

14. Noticee further contended that approval of Stock Exchange, if any, will be required only at the time of the exercise of options. Noticee further submitted that OCDs allotted were cancelled, therefore, violation if any is rendered infructuous.
15. I note that Noticee had issued OCDs convertible at the option of the company at a pre-agreed conversion ratio of 1 equity share. In this regard, I note that Regulation 2(1)(k) of ICDR Regulations defines convertible security as “*security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of such security and includes convertible debt instrument and convertible preference shares*”. Further, Regulation 2(1)(j) of the ICDR Regulations defines convertible debt security as an *instrument which creates or acknowledge indebtedness and is convertible into equity shares of the issuer at a later date, with or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not.*
16. In the instant matter, Noticee had issued and allotted OCDs convertible at the option of the Company as a pre-agreed conversion ratios of 1 equity share. As the nature of securities is such that it is convertible into equity shares at a pre-agreed conversion ratio at a later date, it is a convertible security as defined in the ICDR. The words “with or without the option of the holder” used in the definition is just to emphasize that any security which is convertible (with or without the option of the holder) into shares at a later date is a convertible security. Therefore, Noticee was required to comply with the provisions of ICDR Regulations for the issuance of OCDs.
17. I note that Noticee in its Board Meeting dated January 12, 2023 considered the proposal of the issuance of OCDs. On February 12, 2023, the approval was granted by the

shareholders of the company by the postal ballot. In terms of Regulation 160(f) of ICDR Regulations, the issuer has to make the application for in-principle approval on the same day, the notice is sent for EGM. The emphasis placed on the wording “same day” amply illustrates the importance of making the application for listing without any delay. It is an admitted fact that the Noticee did not make an application seeking in-principle approval for preferential issue to the stock exchange.

18. It is further, noted that the Noticee had kept the tenure of OCDs as 10 years as against the mandate of the Regulation 162(1), which prescribes that the tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.
19. Further, as already discussed in pre-para 16, the OCDs issued by the Noticee were in the nature of convertible securities, therefore, Noticee was required to comply with the provisions of ICDR Regulations with respect to pricing (Regulation 164) and lock in (Regulation 167) as well. The Noticee was also required to make the disclosures in terms of Regulation 163 of ICDR Regulations with respect to issuance of OCDs. All these provisions of ICDR Regulations have not been complied with, by the Noticee.
20. Here, I would like to also refer to the judgement of Hon'ble SAT in the matter of Premchand Shah and others vs. SEBI (Appeal No.192 of 2010 order dated February 21, 2011), wherein the Hon'ble SAT observed that *“When law prescribes a manner in which a thing is to be done, it must be done only in that manner.”*
21. I note that Noticee has not denied the aforesaid facts. In fact as per the Noticee, all the non-compliances of ICDR Regulations with respect to the issuance of OCDs occurred due to the mis-understanding of Noticee regarding the convertible securities. In view of the admission by the Noticee and events discussed above, I find that the violation of Regulation 160(f), 162 (1), 163, (1) (d), (f), (fa), (j), 163(2), 164, 167(1) of the ICDR Regulations by the Noticee stands established.
22. Noticee has contended that pursuant to the discussion with NSE, it cancelled the allotment of its OCDs and instead used NCDs. Therefore, the present matter stands

infructuous. In this regard, I note that law prescribes manner in which securities on preferential basis are to be issued. The Noticee at the time of issuance ought to have adhered to the legal requirements. Further, Noticee converted the OCDs into NCDs only when it was levied penalty by NSE. Therefore, Noticee cannot avoid its responsibility merely because it converted OCDs into NCDs. However, the same can be considered as mitigating factor while deciding the quantum of penalty.

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

23. 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.

24. 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 be made by the defaulter with guilty intention or not.”

25. 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?

26. 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 read 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.”

27. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance of the provisions of the SEBI Regulations is not available. With respect to the repetitive nature of the default, I do not find anything on record. In the present matter, Noticee was under a statutory obligation to abide by the provisions of ICDR Regulations, which it failed to do in relation to issue and allotment of securities. The said violations by the Noticee attracts monetary penalty. Therefore, I feel it appropriate to levy a penalty which is commensurate with the nature of violation, which acts as a deterrent factor for the Noticee and others in protecting the interest of investor in Securities market. However, as mentioned in pre-para 22, Noticee has converted the

OCDs in NCDs to comply with SEBI Regulations and the same is considered as mitigating factor while deciding the penalty.

ORDER

28. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticee 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 a penalty of Rs. 5,00,000 (Rupees Five Lakh only) on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

29. 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 on the following path, by clicking on the payment link:

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

30. 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.

31. 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 : March 06, 2025
Place : Mumbai

Asha Shetty
Adjudicating Officer