

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2024-25/31217]

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

In respect of
First Overseas Capital Limited
PAN AAACL4737A

In the matter of inspection of First Overseas Capital Limited

BACKGROUND

1. First Overseas Capital Limited (hereinafter referred to as '**Noticee**') has been registered with Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') as Merchant Banker (hereinafter referred to as '**MB**'). SEBI had conducted an inspection of the Noticee for the period from April 1, 2021 to March 31, 2022 (hereinafter referred to as '**inspection period**'/ '**IP**').
2. Post the culmination of the aforesaid inspection, an inspection report was prepared. The findings of the said inspection were communicated to the Noticee vide emails dated September 28, 2022 and November 04, 2022. In response to the findings in the inspection report, the Noticee submitted its reply vide letters dated October 21, 2022 and November 09, 2022.
3. Based on the findings of the inspection of the Noticee and after considering the replies of the Noticee to the findings of SEBI vide letters dated October 21, 2022 and November 09, 2022, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the following provisions:
 - Regulation 27 of SEBI (Merchant Banking) Regulations, 1992 (hereinafter referred to as '**MB Regulations**'/ '**MB Regulations, 1992**'),
 - Regulation 13 read with Clauses 4, 20 and 22 of Schedule III of the MB Regulations,
 - Regulation 14(1)(e) of the MB Regulations,

- Regulation 245(3) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as '**ICDR Regulations**') and
- SEBI Circular CIR/MIRSD/6/2012 dated May 14, 2012 and SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 2, 2017.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI had appointed Shri G Ramar (hereinafter referred to as '**erstwhile AO**') as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as '**Adjudication Rules**'), vide communique dated February 09, 2023 under Sections 15A(a) and 15HB of the SEBI Act for the alleged violations committed by Noticee as mentioned above. Subsequently, the undersigned was appointed as the AO vide communique dated July 31, 2023 to inquire into and adjudge the aforesaid alleged violations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter referred to as '**SCN**') bearing No. SEBI/HO/EAD/EAD4/P/OW/2023/0000017782/1 dated May 03, 2023, was issued to the Noticee by the erstwhile AO under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Sections 15A(a) and 15HB of the SEBI Act for the aforesaid alleged violations.
6. The SCN dated November 22, 2023, *inter alia*, alleged the following:
 - **Non-Submission of half yearly reports**
 - *With respect to the captioned allegation, it is observed from Inspection Report (IR) that all the reports filed by the Noticee to SEBI including Board minutes pertaining to review of these periodic reports during the IP were sought from it. In response, the Noticee apprised that no such filing was made to SEBI and the same was also verified from the email ID mb@sebi.gov.in wherein it was observed that Noticee failed in its duty of filing periodic reports. It is further*

observed from Post Inspection Analysis (PIA) that the said reports have not been filed by the Noticee since its registration January 1, 2015) till date.

- In addition to above, it is also observed from the material available on record that SEBI had repeatedly sent reminders to the MB to submit the half-yearly report for March 31, 2014, September 30, 2014, September 30, 2017-March 31, 2020. Despite these reminders, Noticee did not submit the report.
- In view of the aforesaid failure on the part of the Noticee, it is alleged that the Noticee has violated the provisions of SEBI circular CIR/MIRSD/6/2012 dated May 14, 2012 and SEBI circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 2, 2017.

- **Failure to undertake independent due diligence in 3 IPOs handled during IP w.r.t.:**

- a) Verification of background of directors and promoters as to whether any of them are willful defaulters, fugitive economic offenders or debarred by SEBI.
- b) Verification of physical existence of issuer company/ site.
- As regards captioned alleged violation, it is observed from the IR that in case of 3 IPOs handled by the Noticee, namely Nidan Laboratories and Healthcare Limited, BEW Engineering Limited and Veerkrupa Jewellers Limited during the IP, the inspecting team had sought details with respect to verification of background of directors and promoters from the Compliance Officer of the Noticee wherein it was apprised that the Noticee verifies the same from online sources, if available. Otherwise, information provided by the Issuer Company is plainly relied upon by the Noticee. It is further observed from IR that the Noticee failed to provide documents to substantiate any due diligence carried out by it on the same.
- Further, it is observed from IR that as a part of due diligence process, merchant bankers are required to carry out onsite inspection of the company (factories, land owned by the company, etc.) in order to verify the business operations. In this regard, it is observed that with respect to pre-IPO due diligence for the aforesaid IPOs handled by the Noticee, it claimed to have visited and verified the site of the Issuer, however, no site visit report was provided as a documentary evidence to the inspecting team during/after the inspection.

- Accordingly, in view of the aforementioned failures on part of the Noticee, it is alleged that the Noticee has violated the provisions of Clause 4 of Schedule III (Code of Conduct) r/w Regulation 13 of SEBI (Merchant Banking) Regulations, 1992, Regulation 245(3) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and Regulation 14(1)(e) of SEBI (Merchant Banking) Regulations, 1992.
- **Furnishing of false information**
 - It is further observed from the IR that the Noticee apprised the inspecting team that Ms. Mala Soneji was the Compliance officer of the Noticee during the IP. However, as per SEBI's record, Mr. Rushabh Shroff was the Compliance Officer during that period. This change in the position of compliance officer was not intimated to SEBI.
 - In view of the aforesaid, it can be construed that the Noticee had furnished false information by presenting the wrong individual as the Compliance Officer in its replies to PIQ and during the inspection and is accordingly alleged to have violated the Regulation 13 read with Clause 20 of Schedule III of (Merchant Bankers) Regulations, 1992.
- **Concealment of information in reply to PIO and during inspection.**
 - With regard to the captioned allegation, it is observed from IR that the Noticee in its reply to PIQ had submitted the following w.r.t. details of last 2 inspections carried out by SEBI (SEBI observations and corrective measures etc.):
 - a) SEBI had inspected the records maintained by the MB on 18th & 19th November, 2015 in the context with the issue of Powerhouse Gym and Reality Limited (now known as Human Fit Limited).
 - b) SEBI Adjudicating Officer (AO) passed Order No. Order/PM/NK/2019-20/6216 dated 24/12/2019 against the MB in the matter relates to SVC Resources Limited and imposed penalty of Rs. 5,00,000/-
 - (c) FOCL filed appeal against above mentioned impugned order dated 24/12/2019 bearing Appeal Lodgment No. 104/2020 which is still pending before the Securities Appellate Tribunal at Mumbai.
 - In this regard, it is observed that SEBI had issued Administrative Warning pursuant to inspection vide letter dated June 27, 2017 and that the Noticee neither mentioned about the same in its replies to PIQ nor it replied to SEBI

w.r.t. the said Administrative Warning as per available documents. Further, it is observed that no documents were available with the MB w.r.t. the said Administrative Warning during inspection.

- It is further observed that SAT vide order dated September 09, 2021 had dismissed the appeal of the Noticee vide appeal no. 583 of 2020. In view of the same, the MB has mis-represented the facts of the case and accordingly is alleged to have violated Regulation 13 read with Clause 20 and 22 of Schedule III of SEBI (Merchant Bankers) Regulations 1992.

- **Non-disclosure of an open offer handled during the IP**

- It is observed from IR that the Noticee in its reply to the PIQ had submitted that it did not handle any open offer during FY 2021-22 and the same was also verbally confirmed by the Compliance Officer during the inspection. However, IR mentions that it did handle one open offer of Elitecon International Limited in FY 2021-22.
- Accordingly, in view of the aforesaid, it is alleged that the Noticee has violated Regulation 13 read with Clause 20 of Schedule III of SEBI (Merchant Banking) Regulations 1992.

- **Non- Submission of Quarterly Reports**

- As regards captioned violation, it is observed from IR that the Noticee in its post inspection submissions had confirmed that it had submitted all post-issue reports to SEBI within 15 days. However, in this regard, it is observed that no quarterly report had been filed by it.
- Accordingly, in view of the aforesaid failure on part of the Noticee, it is alleged that the Noticee has violated Regulation 27 of SEBI (Merchant Banking) Regulations, 1992. ...”

7. The SCN along with annexures was duly served upon the Noticee through email and Speed Post with Acknowledgement Due.

8. In response, the Noticee, vide letter dated June 13, 2023, *inter alia*, submitted the following reply to the SCN as under:

“ ...

8.1. Non-submission of half yearly reports:

Please note that we have filed half yearly and yearly reports. Physical copies have been enclosed with our reply dated 21.10.2022. A copy of our said reply containing these reports is enclosed. There was no any intention to not to file the Half yearly reports. The delay, if any, in filing was inadvertent. In the course of inspection, this was explained and copies thereof were also provided to the Inspection team.

While on the subject, we may submit that half yearly report for March 31, 2014, September 30, 2014, September 30, 2017-March 31, 2020 were uploaded on SEBI website at the relevant time. In addition, under cover of our letter 21.10.2022, we have submitted in hard copies as well as soft copies the aforesaid half yearly reports. We do not admit having violated SEBI's circulars as referred to in para 8.

8.2. Failure to undertake independent due diligence in 3 IPOs handled during IP w.r.t.

We explained our process for verification of physical existence in the case of three IPOs handled by us to the Inspection team of SEBI. We confirm that we did verify physically existence of the three companies and verified background of directors and promoters. Further we have our standard questionnaire which is required to be filled in by the issuer company, copies of which were also handed over to the Inspection team. Please note that we did a detailed due diligence in multiple ways (through documents, inter-action, private enquiries with concerned parties / market circles). After satisfying ourselves about the genuineness of the company, its directors/promoters we handled their issues. These companies are working, in operation, and known in corporate circles. We have even today good relations and connect with these companies.

We also draw your attention to our detailed reply dated 21.10.2022-reply to Inspection-in the matter which inter alia covers the issues mentioned in the SCN. We specifically draw your attention to due diligence exercise we normally conduct as a part of our SOP. We request you to consider this reply.

8.3. Alleged Furnishing of false information:

Please note that Rushabh Shroff is the compliance officer since 2007 and continues to be so. This was informed to SEBI in the year 2007. Ms. Mala Soneji is the assistant to Mr. Rushabh Shroff. This was clarified in our reply to the Inspection Team. We have not violated any provision of law as alleged or otherwise.

8.4. Concealment of information in reply to PIQ and during inspection

We had no intention to misrepresent the facts relating to administrative warning of SEBI. This was within public domain and SEBI itself was aware. With regard to SAT appeal No. 583 of 2020, please note that 'we have submitted our clarification in our reply dated 21.10.2022.

8.5. Non-disclosure of Open Offer

Please note that open offer handled during the IP was within public domain and there was no question of not disclosing it to the inspection team. We therefore deny having violated Regulations as alleged or otherwise.

8.6. Non-submissions of Quarterly Reports

We have filed quarterly reports, copies of which have been enclosed with our reply dated 21.10.2022. Please note that we have not violated the provision as alleged or otherwise.

...”

9. Thereafter, the Noticee, vide email dated June 21, 2023 informed about the filing of a settlement application in the present matter.
10. I note from the material on record that the settlement application of the Noticee was rejected on November 13, 2023. In the interest of natural justice, an opportunity of hearing was granted to Noticee on November 22, 2023 vide Hearing Notice dated November 13, 2023. However, vide email dated November 17, 2023, Noticee had, *inter alia*, informed about the filing of an application to SEBI for restoration of its settlement application and requested an adjournment. Accordingly, the hearing scheduled on November 22, 2023 was adjourned.
11. Subsequently, it was noted that SEBI had rejected the said application of the Noticee dated November 17, 2023 on December 14, 2023. Thereafter, in consonance with the extant Rules, an opportunity of hearing was granted to Noticee on December 21, 2023 vide Hearing Notice dated December 15, 2023.
12. It is noted that the Noticee did not avail the opportunity of hearing granted on December 21, 2023. In the interest of natural justice, another opportunity of hearing was granted to Noticee in the captioned matter on December 27, 2023 vide email dated December 21, 2023. In this regard, vide email dated December 26, 2023,

Noticee, *inter alia*, requested to adjourn the matter. In light of Noticee's request, the hearing was rescheduled to January 10, 2024.

13. The hearing scheduled on January 10, 2024 was adjourned in light of the Order dated January 05, 2024 of the Hon'ble Bombay High Court. Thereafter, Hon'ble Bombay High Court vide its order dated March 19, 2024 had directed as follows:

"...We are thus inclined to set aside the impugned order passed by the Respondent and restore the proceedings of the Settlement Applications with the Respondent to be decided in accordance with law. ..."

14. It is noted that Noticee's settlement applications were rejected on October 30, 2024 by SEBI, subsequently.

15. Thereafter, in the interest of natural justice, another opportunity of hearing was granted to Noticee on November 14, 2024. However, taking note of Noticee's email dated November 13, 2024, the hearing was rescheduled to November 26, 2024. Again, the Noticee, vide email dated November 25, 2024, requested for adjournment. The request of the Noticee for adjournment of the hearing scheduled on November 26, 2024 was considered. It was noted from material on record that sufficient number of opportunities of hearing was given to the Noticee which was not availed by the Noticee and hence the request of adjournment of the Noticee was rejected and the Noticee was informed about the same vide reply email dated November 25, 2024. The hearing was held on November 26, 2024. But the Noticee or the authorized representative (hereinafter referred to as 'AR') of the Noticee were not present. Accordingly, the minutes of proceedings were prepared for hearing on November 26, 2024 and communicated to the Noticee. In the interest of natural justice, another opportunity of hearing was granted on December 04, 2024. Thereafter, Noticee again requested for adjournment which was allowed in light of Noticee's submission that the hearing scheduled before the Hon'ble Bombay High Court for the rejection of the settlement application on the same date. Accordingly, the hearing scheduled on December 04, 2024 was rescheduled to December 19, 2024.

16. The hearing was held on December 19, 2024. ARs of the Noticee, Ms. Rinku Smitesh Valanju and Ms. Hiral Shah, attended the hearing physically and reiterated the

submissions made by the Noticee in its letter dated June 13, 2023. Further, as requested by the Noticee, additional time was given to the Noticee to make further submissions.

17. The Noticee, vide email dated December 20, 2024, *inter alia*, submitted the following additional submission:

17.1. *At the outset, the Noticee states the inspection was for the period April 01, 2021 to March 31, 2022. SEBI vide its SCN has alleged that the Noticee had not submitted half-yearly report for March 31, 2014, September 30, 2014, September 30, 2017- March 31, 2020. The allegations framed in the SCN relate to the period 2014 and the SCN was issued on 3rd May 2023. Thus, the delay runs as late as 9 years. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of the Noticee to adequately respond to the SCN since the documents/ facts pertaining to the alleged non-submissions by Noticee are not readily available with them.*

17.2. *The Noticee draws the attention of the Hon'ble AO to the Hon'ble SAT's order in Rajeev Bhanot & Anr. versus SEBI (Order dated 09th July, 2021 in Appeal No. 396 of 2018) wherein the Hon'ble SAT observed as follows:*

"18. We are constrained to observe that in spite of specific orders being issued from time to time on the question of delay the WTM chooses to ignore those decisions as if they do not exist or is not binding upon them. In the instant case, we find that the WTM has trenchantly asserted that it is a settled position that there is no time limit for issuing notice and that an order cannot be set aside on the ground of delay. Such assertion being used time and again in the order passed by the AO or the WTM is patently erroneous. This Tribunal in a large number of appeals have set aside the orders only on the ground of delay. In one such case namely, Ashok Shivilal Rupani vs. SEBI appeal no.417 of 2018 decided on August 22, 2019. This Tribunal held:

"6. Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for alleged violations. Much water has flown since the alleged violations and at this belated stage the appellants cannot be

penalized. It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature.

7. In *Mr. Rakesh Kanthotai & Ors. Vs. SEBI* (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:

“23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in *Government of India vs, Citadel Fine Pharmaceuticals, Madras and Others*, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in *Bhavnagar University v. Palitana Sugar Mill* (2004) Vol. 12 SCC 670, *State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd* (2007) Vol.11 SCC 363 and *Joint Collector Ranga Reddy Dist . & Anr. vs. D. Narsing Rao & Ors.* (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of *Adjudicating Officer, SEBI vs. Bhavesh Pabari* (2019) SCC Online SC 294 held:

“There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case,

nature of the default/ statute, prejudice caused, whether the third - party rights had been created etc."

8. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice and for completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have been imposed for the alleged violations.

9. As a result, without going into the merits of the case, we are of the opinion that on account of inordinate delay the initiation of proceedings by issuance of the show cause notice which culminated -into a penalty order cannot be sustained. The show cause notice and the impugned orders passed by the AO are quashed. Both the appeals are allowed."

19. SEBI carried this matter to the Supreme Court in Civil Appeal no.8444-8445 of 2019 which was dismissed by judgment dated November 15, 2019. Thus, the order passed by this Tribunal became binding upon SEBI which they have chosen to ignore completely."

17.3. Consequently, the Noticee respectfully submits that the gross delay was entirely attributable to SEBI and the Noticee had no role to play in the same. Imposing a monetary penalty so belatedly serves no purpose for what appears to be a mere technical violation. In fact, the Noticee will be prejudiced, especially since the Noticee is not in a position to defend itself appropriately, the Noticee was not able to access the records uploaded on online portal, the Noticee inadvertently missed out informing about administrative warning issued by SEBI, the Noticee could not locate whether it had informed about the appointment of Ms. Mala Soneji as their compliance officer.

17.4. The Noticee reiterates the submissions made vide its reply dated 13th June 2023 to the Show Cause Notice in the present proceedings. The Noticee once again deals with the allegations point wise:

(a) Non-submission of half yearly report

17.5. The Noticee submits that the Noticee vide their earlier reply dated 13.06.2023, the Noticee has submitted that on 21.10.2022, the Noticee has submitted the hard copies as well as soft copies of the half yearly reports. The submissions

made on 21st October 2022 along with the attachments are already annexed to the earlier reply dated 13.06.2023. Further, even during the settlement proceedings the Noticee has complied with certain discrepancies regarding half yearly reports vide email dated 9th October 2024 in Part 1. Here to annexed and marked as Annexure "A" is a copy of the email dated 9th October 2024 along with the attachments.

17.6. *The Noticee therefore states that they have not violated any provisions of the SEBI Circulars as mentioned in the SCN and the delay if any was inadvertent.*

(b) Failure to undertake independent due diligence is 3 IPOs handled during IP w.r.t

17.7. *The Noticee repeats and reiterates what is stated in its reply dated 13.06.2023 in respect of the above allegation. The Noticee states that they have handle 28 issues since 2019. The Noticee once again confirms that they had done inter alia background check of promoters/ directors of the companies and satisfied themselves that they were genuine promoters, having business model and revenue stream for the company. Risk factors and outstanding Litigation were mentioned in the prospectus. A copy of which was supplied to the inspection team. The Noticee states that in case of SME IPOs, the Noticee was dependent on other parties such as statutory auditors, lawyers, R&TA for their specialized function. There is therefore subjective and objective assessment, appraisal and evaluation of the company and its promoters and thereafter the Noticee takes a holistic view of the company. There is therefore due diligence exercise on the part of the Noticee.*

17.8. *In addition to the above, the Noticee verified utilisation of funds like in case of the IPO in Nidan Laboratories, the Noticee had obtained loan related documents and the No Dues certificates from various banks- Bank of Maharashtra, Vasai Vikas Sahakari Bank Ltd., Thane Bharat Sahakari Bank Ltd.*

(c) Alleged furnishing of false information

17.9. *The Noticee repeats and reiterates that Mr. Rushabh Shroff was the Compliance officer at all times since 2007 and the Appointment of compliance officer Mr. Rushabh Shroff was communicated to SEBI by submitting data in the year 2007. The Noticee states that in their earlier reply the Noticee has*

stated that Ms. Mala Soneji was an assistant to Mr. Rushabh Shroff. The Noticee clarifies that she was an assistant to Mr. Rushabh Shroff from the year 2016 when she took the employment with the Noticee till the time Ms. Mala Soneji was appointed as compliance officer vide Board Resolution dated May 2, 2020, copy of the said resolution as well as the minutes of the meeting are attached herewith as Annexure "B (colly.)". The said board resolution was given to the inspection team at the relevant time. Ms. Mala Soneji stepped down as the compliance officer and Mr. Rushabh Shroff was re-appointed as the compliance officer. When inspection was carried out, Ms. Mala was the compliance officer. Mr. Rushabh Shroff has now resigned w.e.f 01.09.2024. The Noticee has appointed a new Compliance Officer who would be joining the office w.e.f 01.03.2025. The Noticee states that they have not given any false information. The Noticee inadvertently may not have intimated regarding the appointment of Ms. Mala Soneji. Thus, the Noticee cannot be said to have violated Regulations 13 of the Merchant Banker Regulations.

(d) Concealment of information in reply to PIQ and during inspection

- 17.10. The Noticee states that the information in reply to PIQ was given based on the Noticee's knowledge at the relevant time. The Noticee states that the matter before Hon'ble SAT was dismissed for want of prosecution. The Noticee was not aware of passing of the Hon'ble SAT's order at which time SEBI was present and hence the purported "non- disclosure" had a valid background / reason. Information which was not within the knowledge of Company officials could not be conveyed at the relevant time. However, the information was available within public domain and SEBI itself was aware about the same. Thus no adverse inference can be drawn in this regard.*
- 17.11. The Noticee states that with regard to the administrative warning issued by SEBI, it had skipped the attention of the Noticee due to passage of time and not passing of the information was unintentional and old data / record. Further since it was issued by SEBI itself, SEBI was aware about the same.*
- 17.12. The Noticee has now paid the penalty levied vide SEBI order dated 24th December 2019 along with interest.*
- 17.13. Hence the Noticee has not violated Regulation 13 of the Merchant Bankers Regulations.*

(e) Non-disclosure of Open Offer

17.14. The Noticee repeats and reiterates the submissions made in the earlier reply dated 13.06.2023. The Noticee states that it was an inadvertent error and a mere unintentional technical violation and it cannot be said that the Noticee had concealed the above fact and the Noticee could not have achieved any advantage from such non-disclosure at the relevant time. The Noticee further submits that the details of the open offer were available in the public domain. The Noticee states that the public announcement as required under Regulation 3(1) and Regulation 4 read with Regulation 13, 14 and 15(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 was given by the Noticee in its capacity as a Merchant Banker. Hereto annexed and marked as Annexure "D" is a copy of the public announcement.

(f) Non-submission of Quarterly Reports

- 17.15. The Noticee submits that vide their earlier reply dated 13.06.2023, the Noticee has submitted that on 21.10.2022 the Noticee had filed copies of the quarterly reports. Further, even during the settlement proceedings the Noticee has been compiled with the discrepancies vide email dated 9th October 2024 in Part 2. The said are annexed at Annexure A above.
- 17.16. The Noticee further states that there is no charge under Regulation 27 of SEBI Merchant Bankers Regulations, 1992 regarding underwriting or acquisition of shares in entire SCN.
- 17.17. The Noticee states that the discrepancies noted vide the SCN are technical in nature and the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. The Noticee further states that every minor discrepancy / irregularity found during the course of inspection is not culpable. The Noticee refers to and relies upon Hon'ble SAT's order in the matter of Religare Securities Limited Vs. SEBI.
- 17.18. The Noticee states that the notice should not be visited with any penalty at such a belated stage. The information like administrative warning issued, SAT proceedings, non-disclosure of open offer, etc. were merely technical in nature. The Noticee has not made any disproportionate gains and therefore the Noticee requests to take a lenient view in the matter. The Noticee relies on the

Hon'ble SAT's judgment in the matter of SRBC & Co. LLP wherein it is held that

“20. Therefore, imposition of penalty is clearly unsustainable. The contention urged on behalf of SEBI that once the violation is admitted, the AO had no choice but to impose penalty is illogical and liable to be rejected. If this argument were to be accepted it would result in absurd consequences and therefore the said contention is only noted to be rejected.

21. We trust and hope that while imposing the penalty, the SEBI authorities shall examine the facts in a holistic manner and exercise restraint in passing mechanical orders”

17.19. In the circumstances, since the Noticee's earlier reply and this additional submission have explained the case of the Noticee, it is humbly prayed the noticee has not violated any violations of the Merchant Bankers Regulations as contended by SEB and the proceedings be closed without levying of any penalty.”

18. It is noted that the SCN along with the annexures and the Hearing Notice were duly served on the Noticee. It is noted that eight opportunities of hearing were granted to the Noticee. Thus, the Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearing.

CONSIDERATION OF ISSUES AND FINDINGS

19. After careful perusal of the material on record, I note that the issues that arise for consideration in the present case are as follows:

- I. Whether the Noticee has failed to submit half yearly reports and thereby violated the provisions of SEBI Circular CIR/MIRSD/6/2012 dated May 14, 2012 and SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 2, 2017?
- II. Whether the Noticee has failed to undertake independent due diligence in three Initial Public Offerings (hereinafter referred to as 'IPOs') handled during IP regarding the verification of the background of directors and promoters as to

whether any of them are willful defaulters, fugitive economic offenders or debarred by SEBI and verification of the physical existence of issuer company/site and thereby violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of the MB Regulations, 1992, Regulation 245(3) of the ICDR Regulations, 2018 and Regulation 14(1)(e) of the MB Regulations, 1992?

- III. Whether the Noticee has presented the wrong individual as the compliance officer of the Noticee during the inspection and thereby violated Regulation 13 read with Clause 20 of the Schedule III of the MB Regulations, 1992?
- IV. Whether the Noticee provided incorrect details regarding the appeal status of its appeal (Appeal No. 583/2020) before the Hon'ble SAT and also omitted to mention the administrative warning issued to it during the inspection and thereby violated Regulation 13 read with Clauses 20 and 22 of Schedule III of the MB Regulations 1992?
- V. Whether the Noticee failed to disclose the handling of the open offer during FY 2021-22 by it during the IP and thereby violated Regulation 13 read with Clause 20 of Schedule III of the MB Regulations, 1992?
- VI. Whether the Noticee has failed to submit quarterly reports to SEBI and thereby violated the provisions of Regulation 27 of the MB Regulations, 1992?
- VII. Does the violation, if any, on the part of Noticee attract a monetary penalty under Sections 15A(a) and 15HB of the SEBI Act?
- VIII. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

20. The relevant extracts of the provisions of law¹, allegedly violated by the Noticee, are mentioned as under:

MB Regulations

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Code of conduct

¹SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIRIP/2017/38 dated May 02, 2017 and SEBI Circular CIRIMIRSD/6/2012 dated May 14, 2012 are available at SEBI website (www.sebi.gov.in) and have not been reproduced here for brevity.

13. Every merchant banker shall abide by the Code of Conduct as specified in Schedule III Maintenance of books of account, records etc.

14. (1) Every merchant banker shall keep and maintain the following books of account, records and documents namely:-

...

(e) Records and documents pertaining to due diligence exercised in pre-issue and post - issue activities of issue management and in case of takeover, buyback and delisting of securities. Information to the Board.

27. Every merchant banker shall submit to the Board complete particulars of any transaction for acquisition of securities of anybody corporate whose issue is being managed by that merchant banker within fifteen days from the date of entering into such transaction. Provided that complete particulars of any transaction for acquisition of securities made in pursuance of underwriting or market making obligations in accordance with Chapter XA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall be submitted to the Board on quarterly basis.

SCHEDULE III

CODE OF CONDUCT FOR MERCHANT BANKERS

...

4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

...

20. A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board.

...

22. A merchant banker shall ensure that the Board is promptly informed about any action, legal proceedings, etc., initiated against it in respect of material breach or noncompliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body.

SEBI Issue of Capital and Disclosure Requirements) Regulations. 2018

PART VI: DISCLOSURES IN AND FILING OF OFFER DOCUMENTS

Disclosures in the draft offer document and offer document

245. (3) *The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer document.*”

PRELIMINARY OBJECTION

21. The Noticee has made a preliminary objection vide its reply dated December 20, 2024 which has been considered below. The Noticee has, *inter alia*, contended that:

“At the outset, the Noticee states the inspection was for the period April 01, 2021 to March 31, 2022. SEBI vide its SCN has alleged that the Noticee had not submitted half-yearly report for March 31, 2014, September 30, 2014, September 30, 2017-March 31, 2020. The allegations framed in the SCN relate to the period 2014 and the SCN was issued on 3rd May 2023. Thus, the delay runs as late as 9 years. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of the Noticee to adequately respond to the SCN since the documents/ facts pertaining to the alleged non-submissions by Noticee are not readily available with them.

The Noticee draws the attention of the Hon'ble AO to the Hon'ble SAT's order in Rajeev Bhanot & Anr. versus SEBI (Order dated 09th July, 2021 in Appeal No. 396 of 2018)....”

22. I have perused the abovementioned Order relied on by the Noticee. I note that the said Order emanates from the alleged failure to make an open offer pursuant to the breach of the threshold specified under Regulation 11(1) of the SAST Regulations, 1997. In the said case, the information pertaining to the breach was in the public domain. The proceedings were initiated by SEBI after a period of 12 years. However, the present case pertains to the violation of the MB Regulations, ICDR and other ancillary laws. Further, the alleged violations of the Noticee in the present case came to the fore only after the culmination of the inspection by the SEBI. Therefore, I find the reliance of Noticee on the aforesaid judgments of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') is misplaced.

23. In this regard, I find it relevant to refer to the Order of the Hon'ble SAT in the matter of **Metex Marketing Pvt. Ltd. vs. SEBI**² wherein the Hon'ble SAT, *inter alia*, held that:

"...This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation..."

24. In this context, I take note of the decision of the Hon'ble Supreme Court in the matter of **SEBI v. Sunil Krishna Khaitan**³ wherein it was, *inter alia*, held as under:

"...81. This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in Bhavesh Pabari (supra) had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under:

"35. The appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc. The show- cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29- 11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere."

²Appeal No. 95 of 2016 decided on June 4, 2019.

³ [2022] 18 S.C.R. 987.

82. *The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. **What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors.***

25. In this regard, I note that it has been alleged in the SCN that the Noticee has not filed half yearly reports from its registration to the period of inspection, i.e., April 1, 2021 to March 31, 2022. I, further, note that the alleged failure of the Noticee to submit the half yearly reports had come to the knowledge of SEBI only after the culmination of the inspection conducted for the period from April 1, 2021 to March 31, 2022. Thereafter, the SCN was issued on May 03, 2023.

26. In this context, it is noted that there has not been any substantial delay by SEBI in initiating actions against the Noticee once the violations have come to the notice of SEBI.

CONSIDERATION

- I. **Whether the Noticee has failed to submit half yearly report and thereby violated the provisions of SEBI Circular CIR/MIRSD/6/2012 dated May 14, 2012 and SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 2, 2017?**

27. It is alleged in the SCN that Noticee has not filed half yearly reports since its registration despite reminders dated March 31, 2014, September 30, 2014, September 30, 2017 and March 31, 2020 being sent by SEBI to the Noticee.

28. I note that the Noticee has not disputed the allegation that it has not submitted the half yearly reports till the culmination of the inspection period.

29. In this regard, I note that the Noticee has stated that it has subsequently submitted the half yearly reports for March 2014, September 2014 and March 2017 to March 2022. on October 22, 2022. In support of its contention, the Noticee has adduced the relevant half yearly report from March 2017 to March 2022. Further, the Noticee has attributed the delay in filing to inadvertent omission.

30. In this context, I note that the key issue here is with respect to the non-submission of half yearly reports by Noticee since its registration. It is an undisputed fact that the Noticee has not submitted the relevant half yearly reports till the culmination of the inspection period. I note that the mere taking of corrective measures by Noticee cannot absolve Noticee from the violations it has committed.

31. Therefore, I find that the Noticee has violated the provisions of SEBI Circular CIR/MIRSD/6/2012 dated May 14, 2012 and SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 2, 2017.

II. Whether the Noticee has failed to undertake independent due diligence in three IPOs handled during IP regarding the verification of the background of directors and promoters as to whether any of them are willful defaulters, fugitive economic offenders or debarred by SEBI and verification of the physical existence of the issuer company/site and thereby violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of the MB Regulations, 1992, Regulation 245(3) of the ICDR Regulations, 2018 and Regulation 14(1)(e) of the MB Regulations, 1992?

32. In the SCN, it is alleged that for the three IPOs, namely Nidan Laboratories and Healthcare Limited, BEW Engineering Limited and Veerkrupa Jewellers Limited (hereinafter referred to as '**three companies**') handled by the Noticee during the IP, the Noticee has failed to produce any document to substantiate that the due diligence was carried out by it with respect to the verification of the background of directors and promoters. Further, it is alleged that the Noticee did not submit any site visit report as documentary evidence to the inspecting team during/after the inspection regarding the

onsite inspection of the said three companies (factories, land owned by the company, etc.) to verify their business operations.

Background verification

33. In this regard, I note that the Noticee has, *inter alia*, contended that:

“...The Noticee once again confirms that they had done inter alia background check of promoters/ directors of the companies and satisfied themselves that they were genuine promoters, having business model and revenue stream for the company. Risk factors and outstanding Litigation were mentioned in the prospectus. A copy of which was supplied to the inspection team. The Noticee states that in case of SME IPOs, the Noticee was dependent on other parties such as statutory auditors, lawyers, R&TA for their specialized function. There is therefore subjective and objective assessment, appraisal and evaluation of the company and its promoters and thereafter the Noticee takes a holistic view of the company....”

34. Here, I note that the core issue here pertains to the undertaking of due diligence specifically with respect to the background verification of directors and promoters. It is noted that the Noticee has submitted a ‘no dues certificate’ and an ‘annual statement’ of Nidan Laboratories and Healthcare Limited in support of its submission. I note that these documents, viz. ‘no dues certificate’ and ‘annual statement’ do not substantiate the fact that due diligence with respect to the verification of the background of directors and promoters was undertaken. In this regard, I note that though the Noticee has contended that it had undertaken necessary due diligence regarding the background of promoters/ directors, no material whatsoever has been adduced by the Noticee to substantiate its submission. In the absence of any document being adduced, no inference can be made in favor of the Noticee. Therefore, the contention of the Noticee cannot be accepted.

Verification of the physical existence of the issuer company/site

35. Further, I note that the Noticee has contended that it had undertaken the site visits of the said three companies. In this regard, I note that the Noticee has neither adduced any Site Visit Report nor any other document in support of its submission. Given the absence of any document to support its assertion, I cannot but conclude that the Noticee has not undertaken any site visit for the said three companies.

36. I have also taken note of the Order of the Hon'ble SAT in the matter of **Almondz Global Securities Ltd v. SEBI**⁴ cited by the Noticee wherein it was, *inter alia*, held as under: *"It is settled law that due diligence means reasonable diligence expected from a Merchant Banker."* In this regard, from the above discussions, I note that the Noticee does not seem to have undertaken any due diligence with regard to verification of the background of directors and promoters as to whether any of them are wilful defaulters, fugitive economic offenders or debarred by SEBI and verification of the physical existence of the issuer company/ site for the said three companies, based on the documents available on record. Therefore, I do not think that the Noticee can take shelter under the above Order of Hon'ble SAT.

37. In this context, I find that the Noticee has violated Clause 4 of Schedule III (Code of Conduct) read with Regulation 13 of the MB Regulations, 1992, Regulation 245(3) of the ICDR Regulations and Regulation 14(1)(e) of the MB Regulations, 1992.

III. Whether the Noticee has presented the wrong individual as the compliance officer of the Noticee during the inspection and thereby violated Regulation 13 read with Clause 20 of Schedule III of the MB Regulations?

38. It is alleged in the SCN that as per SEBI's record, Mr. Rushabh Shroff was the compliance officer during the IP. However, Noticee apprised the inspecting team that Ms. Mala Soneji was the compliance officer of the Noticee during the IP. In this regard, it is alleged in the SCN that Noticee has submitted false information as it has presented the wrong individual as the compliance officer during the inspection.

⁴ Appeal No. 275 of 2014 decided on May 13, 2016.

39. I note that Noticee, in its additional reply, has, *inter alia*, stated that:

“...The Noticee states that in their earlier reply the Noticee has stated that Ms. Mala Soneji was an assistant to Mr. Rushabh Shroff. The Noticee clarifies that she was an assistant to Mr. Rushabh Shroff from the year 2016 when she took the employment with the Noticee till the time Ms. Mala Soneji was appointed as compliance officer vide Board Resolution dated May 2, 2020, copy of the said resolution as well as the minutes of the meeting are attached herewith as Annexure "B (colly.)". The said board resolution was given to the inspection team at the relevant time. Ms. Mala Soneji stepped down as the compliance officer and Mr. Rushabh Shroff was re-appointed as the compliance officer. When inspection was carried out, Ms. Mala was the compliance officer. Mr. Rushabh Shroff has now resigned w.e.f 01.09.2024. ...”

40. In support of its submission, the Noticee has adduced the copy of the said Board Resolution dated May 2, 2020 and the minutes of the said Board meeting dated May 2, 2020.

41. I have perused the materials adduced by the Noticee. In this regard, it appears from the said materials adduced by Noticee that Ms. Mala Soneji was appointed as the compliance officer with effect from May 01, 2020.

42. Here, it is pertinent to note that the period of inspection in the present matter is from April 1, 2021 to March 31, 2022. From the submissions of the Noticee, it is noted that *“Ms. Mala Soneji stepped down as the compliance officer and Mr. Rushabh Shroff was re-appointed as the compliance officer.”*. In this regard, I note that the submission of the Noticee is conspicuously silent on the date of resignation of Ms. Mala Soneji or the subsequent date of appointment of Mr. Rushabh Shroff as it has been mentioned by the Noticee that Ms. Mala Soneji has resigned and Mr. Rushabh Shroff has been appointed as the compliance officer. In the absence of the date of resignation of Ms. Mala Soneji, it cannot be concluded whether Ms. Mala Soneji was indeed the compliance officer of the Noticee during the IP.

43. In this regard, I note that as per the Inspection Report, the compliance officer, during the IP, available on records of SEBI, was Mr. Rushabh Shroff. It is also a fact that Noticee had presented Ms. Mala Soneji as the compliance officer of Noticee during the inspection. Therefore, I find that the Noticee has submitted false information as it has presented the wrong individual as the compliance officer during the inspection.

44. Accordingly, I find that the Noticee has violated Regulation 13 read with Clause 20 of the Schedule III of the MB Regulations.

IV. Whether the Noticee has provided incorrect details regarding the appeal status of its Appeal (Appeal No. 583/2020) before the Hon'ble SAT and also omitted to mention the Administrative Warning during the inspection and thereby violated Regulation 13 read with Clauses 20 and 22 of Schedule III of the MB Regulations, 1992?

Submission of incorrect status of Appeal No. 583/2020 before the Hon'ble SAT

45. It is alleged in the SCN that the Noticee in its reply to Pre Inspection Questionnaire (hereinafter referred to as '**PIQ**') had submitted the following regarding details of the last two inspections carried out by SEBI (SEBI observations and corrective measures, etc.):

"... a) SEBI had inspected the records maintained by the MB on 18th & 19th November, 2015 in the context with the issue of Powerhouse Gym and Reality Limited (now known as Human Fit Limited).

b) SEBI Adjudicating Officer (AO) passed Order No. Order/PM/NK/2019-20/6216 dated 24/12/2019 against the MB in the matter relates to SVC Resources Limited and imposed penalty of Rs. 5,00,000/-

(c) FOCL filed appeal against above mentioned impugned order dated 24/12/2019 bearing Appeal Lodgment No. 104/2020 which is still pending before the Securities Appellate Tribunal at Mumbai. ..."

46. It is stated that the Hon'ble SAT, vide Order dated September 09, 2021, had dismissed the appeal of the Noticee bearing Appeal No. 583/2020 *"for the want for prosecution"* on September 08, 2021 while the Noticee had mentioned that the said appeal was

pending before the Hon'ble SAT to the inspection team of SEBI. In this context, Noticee is alleged to have misrepresented the facts of the said case.

47. I note that the Noticee has not disputed the fact that it had provided incorrect details regarding the said appeal status.

48. In this regard, Noticee has, *inter alia*, submitted that:

"...the information in reply to PIQ was given based on the Noticee's knowledge at the relevant time. The Noticee states that the matter before Hon'ble SAT was dismissed for want of prosecution. The Noticee was not aware of passing of the Hon'ble SAT's order at which time SEBI was present and hence the purported "non- disclosure" had a valid background / reason. Information which was not within the knowledge of Company officials could not be conveyed at the relevant time. However, the information was available within public domain and SEBI itself was aware about the same. Thus no adverse inference can be drawn in this regard. ..."

49. I note that it was incumbent on the Noticee not to make any untrue statement or suppress any material fact in the documents submitted to SEBI in terms of the MB Regulations. In the present case, it is an undisputed fact that the Noticee has furnished incorrect information regarding the status of the appeal before the Hon'ble SAT to SEBI. I note that the mere fact that the said information was available in the public domain cannot absolve the Noticee from its duty to furnish correct information to SEBI. Hence, it cannot be taken as a ground to seek the exoneration of the Noticee from the instant violation. I further note that the submission of incorrect information despite the correct information being available in the public domain shows callousness on the part of Noticee to the entire inspection process.

Omission to disclose administrative warning

50. In this regard, it is stated in the SCN that SEBI had issued an Administrative Warning pursuant to inspection vide letter dated June 27, 2017 to the Noticee. It is alleged that the Noticee neither mentioned the said Administrative Warning in its replies to PIQ nor in its replies to SEBI as per available documents. Further, it is alleged that no

documents were available with the Noticee with respect to the said Administrative Warning during the inspection.

51. Noticee has admitted the fact that it had omitted to mention the said Administrative Warning in its response to the PIQ.

52. In this regard, Noticee has, *inter alia*, stated that “...the administrative warning had skipped the attention of the Noticee due to passage of time and not passing of the information was unintentional and old data / record. Further since it was issued by SEBI itself, SEBI was aware about the same...”.

53. I note that Regulations 14(3) of the MB Regulations, *inter alia*, reads as under:

*“14. (3) Without prejudice to sub-regulation (1), every merchant banker shall, after the end of each accounting period furnish to the Board copies of the balance sheet, profit and loss account and **such other documents** for **any other preceding five accounting years when required by the Board.**”*

(Emphasis supplied)

54. I further note that Clause 20 of Schedule III of the MB Regulations, *inter alia*, provides that:

“A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board”

55. In this context, it is reiterated that the Noticee was under a statutory obligation to provide true and complete information to SEBI in terms of MB Regulations. In the present case, the PIQ was sent to the Noticee for its response on July 07, 2022. As noted above, it is not disputed that the Administrative Warning was issued to the Noticee vide letter dated June 27, 2017. In this context, I note that information pertaining to the issuance of the Administrative Warning was well within the ambit of the preceding five accounting years in terms of Regulation 14(3) of the MB Regulations. Therefore, I find that the contention of the Noticee that the Administrative Warning was an old data/record or the omission was unintentional is bereft of merit and hence cannot be accepted.

56. Therefore, I find that the Noticee has misrepresented the status of the appeal (Appeal No. 583/2020) filed by it before the Hon'ble SAT and also omitted to mention about the Administrative Warning issued to it in 2017 to the inspection team of SEBI.

57. Accordingly, it is established that Noticee has violated Regulation 13 read with Clauses 20 and 22 of Schedule III of the MB Regulations 1992.

V. Whether the Noticee failed to disclose the handling of the open offer during FY 2021-22 by it during the IP and thereby violated Regulation 13 read with Clause 20 of Schedule III of the MB Regulations?

58. It is alleged in the SCN that the Noticee in its reply to the PIQ had submitted that it did not handle any open offer during FY 2021-22 and the same was also verbally confirmed by the compliance officer during the inspection. However, it was observed that Noticee had handled one open offer of Elitecon International Limited in FY 2021-22.

59. I note that the Noticee has admitted in its reply that it has not disclosed the handling of the open offer of Elitecon International Limited in FY 2021-22 in the PIQ. In this regard, the Noticee has attributed the omission to inadvertent error. In this regard, I note that Noticee, being a registered market intermediary, is expected to comply with the requirements of the law in letter and spirit. Here, reference is drawn to Clause 20 of Schedule III of the MB Regulations 1992, which, *inter alia*, provides that:

“A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board”

60. In this context, I find it rather surprising that an MB is not aware of an open offer handled by it. Handling an open offer involves rounds of discussions and involvement at various levels. Therefore, the submission of the Noticee that it was an inadvertent error cannot be accepted.

61. Therefore, I have no hesitation in concluding that the Noticee has violated Regulation 13 read with Clause 20 of Schedule III of the MB Regulations on the above matter.

VI. Whether the Noticee failed to submit quarterly reports and thereby violated the provisions of Regulation 27 of the MB Regulations?

62. It is alleged in the SCN that Noticee has not filed quarterly reports to SEBI.

63. I note that the Noticee has not denied the allegation that the quarterly reports were not submitted as mandated under MB Regulations during the IP.

64. I note that the Noticee has, *inter alia*, stated that “*vide their earlier reply dated 13.06.2023, the Noticee has submitted that on 21.10.2022 the Noticee had filed copies of the quarterly reports. Further, even during the settlement proceedings the Noticee has been complied with the discrepancies vide email dated 9th October 2024.*” In this regard, I note that the subsequent compliance, if any, does not dilute the past non-compliance. It is not disputed that the Noticee has not filed the quarterly reports as alleged in the SCN. Therefore, subsequent compliance, if any, can in no manner validate the failure of the Noticee to submit quarterly reports.

65. Thus, it is established that the Noticee has violated Regulation 27 of the MB Regulations.

VII. Does the violation, if any, on the part of Noticee attract a monetary penalty under Sections 15A(a) and 15HB of the SEBI Act?

66. From the previous paragraphs, it has been established that Noticee has violated the following provision of law:

- Regulation 27 of the MB Regulations,
- Regulation 13 read with Clauses 4, 20 and 22 of Schedule III of the MB Regulations,
- Regulation 14(1)(e) of the MB Regulations,
- Regulation 245(3) of the ICDR Regulations and
- SEBI Circular CIR/MIRSD/6/2012 dated May 14, 2012 and SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 2, 2017.

67. The Noticee has stated that the discrepancies noted vide the SCN are technical in nature and the purpose of carrying out an inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. The Noticee further has stated that every minor discrepancy/irregularity found during the course of inspection is not culpable. The Noticee has referred to the Hon'ble SAT's Order in the matter of **Religare Securities Limited v. SEBI**⁵. Further, the Noticee has relied on the Hon'ble SAT's judgment in the matter of **SRBC & Co. LLP v. SEBI**⁶, wherein it was, *inter alia*, held that

“20. Therefore, imposition of penalty is clearly unsustainable. The contention urged on behalf of SEBI that once the violation is admitted, the AO had no choice but to impose penalty is illogical and liable to be rejected. If this argument were to be accepted it would result in absurd consequences and therefore the said contention is only noted to be rejected.

21. We trust and hope that while imposing the penalty, the SEBI authorities shall examine the facts in a holistic manner and exercise restraint in passing mechanical orders”

68. In this regard, I note that inspection plays a vital role in ensuring proper functioning of the securities market. I note that in order for the inspection to be complete and proper, it is essential that the intermediary provide full, complete and true information to SEBI. In the present case, it is established that the Noticee, on multiple occasions during the course of inspection, has not furnished true and complete information to SEBI. I note that such conduct of the Noticee has the potential to undermine the entire exercise of inspection and make the exercise futile.

69. I further note that MB is responsible for due diligence and proper disclosures in the offer document, which are relied upon by the investors. Any lapses by the MB in this regard cannot just adversely affect the interests of the investors but can also have market-wide ramifications. In this regard, I note that there was a failure of the Noticee to undertake proper due diligence in the three IPOs as mentioned in the previous paragraphs. Furthermore, the Noticee has also failed to submit the quarterly reports and half yearly

⁵Appeal no. 23 of 2011 decided on June 16, 2011.

⁶Appeal no. 700 of 2022 decided on November 22, 2022.

reports for multiple FYs. In this context, I take note of the Order of the Hon'ble SAT in the matter of **Religare Securities Limited v. SEBI**,⁷ which has been referred to by the Noticee in its reply. The relevant extract of the said Order is reproduced below:

*“... 5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and **we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent. ...**”*
(Emphasis supplied)

70. In this regard, I find that the infractions brought to the fore in the instant proceedings had the potential to adversely impact the interests of the investors and are in no manner minor breaches that could have been condoned. I further note that the trust in an entity, including the registered intermediary, is dependent on the conduct of the entity. Any conduct of the registered intermediary that takes away the trust in the said entity needs to be checked. Therefore, the violations alleged against the Noticee are serious violations and cannot be dismissed as minor discrepancies.

71. Accordingly, this contention of the Noticee cannot be accepted.

72. The text of the above said Sections 15A(a) and 15HB of the SEBI Act is reproduced below:

SEBI Act

“15A. If any person, who is required under this Act or any rules or regulations made thereunder,— (a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information,

⁷ Appeal no. 23 of 2011 decided on June 16, 2011.

return, report, books or other documents], he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees...

15HB. Penalty for contravention where no separate penalty has been provided.

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."

VIII. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

73. While determining the quantum of penalty under Sections 15A(a) and 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act

"15J. Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

74. I note that there is no finding on the record that brings out that the activities of the Noticee have caused loss to any client or have impacted the securities market in any manner. Further, no material has been brought out on record to prove any undue gain to the Noticee.

75. I note that pecuniary penalties have been previously imposed on Noticee for violations of ICDR Regulations and MB Regulations. In this regard, I note that the submission of the Noticee that it has an unblemished record in the past is not only factually incorrect,

but it is also misleading. This conduct of not providing factual information does not befit the conduct of a registered intermediary.

76. In this context, I note that the Regulations and Circulars, etc., have laid down the specific procedural requirements that must be adhered to, especially by an intermediary. In this regard, I note that the Hon'ble SAT in the matter of **Premchand Shah and Others v. SEBI**⁸, *inter alia*, held as under:

"...When a law prescribes a manner in which a thing is to be done, it must be done only in that manner..."

77. In the present case, the violations, as mentioned in the preceding paragraphs, by the Noticee exhibit significant deviation from the applicable provisions. The conduct of the Noticee wherein it, *inter alia*, failed to submit true and complete information to SEBI reflects its casual approach and blatant disregard for the entire inspection process. I note that such laxity is not expected from an MB that has been operational for over a decade.

78. I note that the MB owes a duty of care to present a true and complete picture of the company to the investors, as the disclosures and details in the IPO tend to sway the decision making of the investors. It is pertinent to mention that the onus of diligence cast upon the MB is to independently undertake the verification of the background of directors and promoters as to whether any of them are willful defaulters, fugitive economic offenders or debarred by SEBI along with the verification of the physical existence of the issuer company/site. However, it is a fact that the Noticee failed to undertake the necessary due diligence in this regard.

79. I have taken note of the fact that the Noticee, in its replies, has stated that it has submitted the half yearly reports and the quarterly reports for the period subsequent to the IP. Further, I have also noted the fact that the violation pertaining to non-submission of half reports includes period from March 2014 onwards.

⁸Appeal No. 192 of 2010 decided on February 21, 2011.

80. The conduct of the Noticee during the inspection and the violations that have been proved in the previous paragraphs deserve a suitable monetary penalty.

81. The aforementioned factors have been taken into consideration while adjudging the penalty.

ORDER

82. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee:

Table 1

Noticee	Violations established	Penal Provisions	Penalty (in Rs.)
First Overseas Capital Limited	SEBI Circular CIR/MIRSD/6/2012 dated May 14, 2012 and SEBI Circular SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 2, 2017.	Section 15A(a) of the SEBI Act	Rs. 7,00,000/- (Rupees Seven Lakhs) only
	Regulation 13 read with Clauses 20 and 22 of Schedule III of the MB Regulations, 1992.		
	Regulation 27 of the MB Regulations, 1992.		
	Clause 4 of Schedule III read with Regulation 13 of SEBI (Merchant Banking) Regulations, 1992, Regulation 245(3) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and Regulation 14(1)(e) of the MB Regulations, 1992.	Section 15HB of the SEBI Act	Rs. 3,00,000/- (Rupees Three Lakhs) only
Total amount of penalty (in Rs.)			Rs. 10,00,000/- (Rupees Ten Lakhs) only

83. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of Noticee.

84. Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through the online payment facility available on the website of SEBI, i.e.,

www.sebi.gov.in on the following path, by clicking on the payment link:
ENFORCEMENT > Orders > Orders of AO > PAY NOW.

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

Date: February 27, 2025
Place: Mumbai

N HARIHARAN
CHIEF GENERAL MANAGER AND
ADJUDICATING OFFICER