

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

UNDER SECTION 11(1), 11(4A), 11B(1) and 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 34 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATE INVESTMENT FUNDS) REGULATIONS, 2012 .

In respect of:

S.No.	NOTICEE	PAN No.
1.	India Infrastructure Fund II	AABTI0624H
2.	Global Infrastructure Partners India Private Limited	AAJCG4994R
3.	IDBI Trusteeship Services Limited	AAACI8912J

BACKGROUND

1. India Infrastructure Fund II (**'Noticee No. 1'/'Fund'**) is registered with Securities and Exchange Board of India (**'SEBI'**) as a Category I Alternate Investment Fund under the provisions of the Securities and Exchange Board of India (Alternate Investment Funds) Regulations, 2012 (**'AIF Regulations'**), having registration No. IN/AIF1/13-14/0084 since October 18, 2013. The registered office of the Fund is at C-32, G-Block, Naman Chambers, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
2. The Fund is managed by Global Infrastructure Partners India Private Limited (**'Noticee No. 2'/'Manager'**). IDBI Trusteeship Services Limited (**'Noticee No. 3' 'Trustee'**) is the Trustee of the Fund. The Fund has launched one scheme. The details of the said scheme as on March 31, 2022 are as follows: -

Table 1: Details of scheme launched by the Fund

(INR in crore)

Name of the Scheme	Type of scheme	Target Corpus	Corpus	Investible Funds INR	Sponsor Contribution INR	No. of investors	AUM INR	Date of initial closing	Date of Final Closing	Tenure of scheme as per PPM
IIF2	Closed Ended	5,500	5,500	5,173.60	5	4	5,769.91	December 16, 2013	October 8, 2014	12 years from final closing of IIF2, which may be extended by two terms of 1 year each

3. SEBI carried out an on-site inspection of the Noticee No.1 for the period April 01, 2021 to March 31, 2022 (**‘Inspection Period’**) to look into compliance with respect to the AIF Regulations and circulars issued thereunder. During the course of inspection, violation of provisions of the AIF Regulations and circulars issued thereunder were observed on the part of the Noticee No.1.
4. On the basis of findings of the inspection, common Show Cause Notice dated March 29, 2023 (**‘SCN’**) was issued to the Noticees, inter-alia, alleging that: -
 - a. The Fund had pledged securities of various portfolio companies with lenders as a collateral for loan taken by the portfolio companies. In the quarterly report dated June 30, 2021, the Fund had disclosed to the investors pledge of following securities held by the Fund in the portfolio companies: -

Table 2

Name of Portfolio Company	Instrument Type	Number Of Securities	Amount in Rs	Pledgee
Dewas Bhopal Corridor Limited	Equity Share	51,000	1,43,62,22,772	IDBI Services Trusteeship Ltd.
Bangalore Elevated Tollway Ltd	Equity Share	1,10,11,552	45,17,49,518	Axis Trustee Services Limited
Godhra Expressways Private	Equity Share	1,19,24,229	68,74,21,452	Axis Trustee Services Limited

Name of Portfolio Company	Instrument Type	Number Of Securities	Amount in Rs	Pledgee
Jodhpur Pali Expressways Ltd	Equity Share	31,437	66,08,97,189	IDBI Services Trusteeship
Shillong Expressways Limited	Equity Share	1,50,000	1,60,21,650	IDBI Services Trusteeship
Bangalore Elevated Tollway Private Limited	Preference Share	66,00,343	30,85,41,834	Axis Trustee Services Limited
Shillong Expressways Limited	Preference Share	5,45,100	16,35,30,000	IDBI Trusteeship Services Limited
Bangalore Elevated Tollway Private Limited	Debentures	5,39,13,370	41,26,25,092	Axis Trustee Services Limited
Vector Green Sunshine Limited	Debentures	84	8,40,00,000	Axis Trustee Services Limited
Vector Green Surya Urja Limited	Debentures	102	10,20,00,000	Axis Trustee Services Limited
Godhra Expressways Private Limited	Debentures	1,29,65,727	97,24,29,525	Axis Trustee Services Limited
Godhra Expressways Private Limited	Debentures	65,66,666	49,24,99,950	Axis Trustee Services Limited
Winsol Solar Fields (Polepally) Private Limited	Debentures	7,266	82,12,32,384	Axis Trustee Services Limited
Hindupur Solar Park Private Limited	Debentures	7,646	89,43,98,496	Axis Trustee Services Limited
Yarrow Infrastructure Private Limited	Debentures	6,03,23,341	79,21,11,821	Axis Trustee Services Limited
RattanIndia Solar 2 Private Limited	Debentures	3,65,65,928	36,54,80,107	Axis Trustee Services Limited
Sepset Constructions Limited	Debentures	2,19,02,893	29,00,02,788	Axis Trustee Services Limited
Pristine Logistics & Infraprojects Private Limited*	Equity Share	1,36,85,725	4,87,80,96,180	Axis Trustee Services Limited
Total		23,62,52,409	13,82,92,60,758	

- b. As on March 31, 2022, the Fund's Assets Under Management (**'AUM'**) were Rs.5,770 crore. The Fund had pledged securities amounting to Rs.1,383 crore (approx.). The pledges undertaken by the Fund were substantial in comparison to the AUM i.e. approx. 24% of the AUM of the Fund.
- c. Due to the pledging of the securities held by the Fund, the investee companies were able to secure larger size loans, i.e. get increased leverage in an indirect manner. The Fund had engaged in leverage by pledging fund assets for loans taken by portfolio companies. This act of the Fund was observed to be in violation of the AIF Regulations which prevented AIFs to undertake/engage in leverage.
- d. The aforesaid act of the Noticees had the effect of jeopardizing the investments of the investors in the Fund, thus, the same was not in the best interest of the investors in the Fund.
- e. The Fund was set up as a trust. The Trustee was responsible for the overall compliance of the Fund with the applicable regulatory provisions. The Trustee had appointed the Manager to make investments on behalf of the Fund and run day to day functions.
- f. The Fund was run and operated by the manager in consultation with the Trustee. The manager was controlling the overall functioning of the Fund in consultation with the trustee.
- g. The manager was expected to diligently perform its duties with honesty, fairness, skill and care in administering the affairs of the Fund. The manager is also liable for non-compliance by the Fund.
- h. The Trustee and the Manager had all powers in respect of the assets of the scheme including the power to manage the assets, therefore, they were responsible for creating pledge on the assets of the Fund. In terms

of AIF Regulations, the Manager and the Trustee were required to ensure compliance with the Code of Conduct by the Fund.

- i. The Noticees were alleged to have violated the provisions of Regulation 16(1)(c), 20(1), 20(2) read with the provisions of clauses 1(b), 2(d), 3(b) of the Code of Conduct specified in the Fourth Schedule of the AIF Regulations.
5. The SCN called upon the Noticees to show cause as to why suitable directions under Section 11(1), 11B(1) of the Securities and Exchange Board of India Act, 1992 (**‘SEBI Act’**) read with Regulation 34 of the AIF Regulations including the direction to remove the pledge on the Fund’s assets should not be issued against the Noticees. Further, the SCN called upon the Noticees to show cause as to why penalty under Section 11(4A) and 11B(2) read with Section 15EA of the SEBI Act further read with Regulation 34 of AIF Regulations should not be imposed.

SERVICE OF SCN AND REPLY OF THE NOTICEE

6. SCN was served on the Noticees through speed post (**“SPAD”**) as well as email. In response thereto, the Noticees submitted a common reply dated April 20, 2023, whereby, it was submitted as follows: -
- a. The investment strategy, investment purpose and investment methodology of the Fund was duly stated by the Fund in the Trust Deed dated September 17, 2013, the Contribution Agreement entered into with investors and its private placement memorandum dated August 2013(**“PPM”**).
 - b. The Trust Deed sets out the investment mandate of the Fund i.e. to carry on activity as an AIF for the purpose of raising resources to make funds available for portfolio companies so as to achieve long- term capital appreciation and to earn current income for its beneficiaries i.e. the investors. The Trust Deed sets out powers of the Trustee which included the power to hypothecate, pledge or create an encumbrance of any

nature on securities held by the Fund, including as collateral to enable any portfolio company to avail of financial assistance. In terms of the Contribution Agreement, the Trust Deed is deemed to be incorporated in the Contribution Agreement. Thus, every investor of the Fund was aware of the investment mandate and the terms of the Trust Deed.

- c. In terms of Regulation 16(l)(c) of the AIF Regulations, an AIF is prevented from: (i) borrowing funds directly or indirectly or (ii) engaging in leverage, except for meeting its temporary funding requirements as per the conditions set out in the provision. The terms "directly or indirectly" as set out in the provision is applicable to the borrowing of funds by AIF and not leverage. The Fund has not engaged in any leverage, accordingly, the provisions of Regulation 16(1)(c) are not attracted.
- d. The applicability of AIF Regulations is limited to borrowings (whether direct or indirect) or leverage availed of by the Fund. In the present case, the borrowings for which the Fund has pledged its securities/created other charge were availed of by the portfolio companies and not the Fund itself. Therefore, the Fund has not directly borrowed funds or directly availed of any leverage. There is no evidence on record and not even an allegation in the SCN that the borrowings for which the Fund has pledged or created other charge over its securities is any kind of structure, artifice or device for the Fund to have indirectly borrowed or taken leverage over its investments.
- e. There is no allegation or suggestion in the SCN that the borrowings availed of by the portfolio companies have through some means found their way to the Fund so as to bring them within the ambit of the charging provisions of Regulation 16(1) (c) of the AIF Regulations. In fact, the SCN makes it clear that the pledge or other charge created over the securities held by the portfolio companies enabled the portfolio companies to avail of increased borrowings.

- f. The SCN simply proceeds on a simplistic premise that because the Fund has pledged its securities for borrowings availed of by its portfolio companies, the very act of creation of such pledge amounts to leverage by the Fund in an indirect manner, thereby violating Regulation 16(1)(c) of the AIF Regulations.
- g. As per the Noticees' understanding of Regulation 16(1)(c) of the AIF Regulations, pledging of securities of portfolio companies to enable such companies to undertake borrowing/leverage would not amount to borrowing (whether direct or indirect) or leverage on part of the Fund, as the portfolio companies and the Fund are distinct and separate entities. The Noticees' have acted on the basis of such understanding.
- h. In case the interpretation sought to be taken in the SCN is even remotely plausible, the principles of doubtful penalization would apply in the present matter and as per settled rule of interpretation construction which exempts penalty rather than which imposes penalty should be adopted.
- i. The Fund was set up with the objective of investing in Indian infrastructure projects with the strategy of ensuring meaningful stakes for participation in the management of the underlying asset/business. In pursuance of the said declared portfolio strategy/investment mandate, the Fund acquires meaningful stake in portfolio companies and acts as promoter/majority shareholder of such companies. The pledging of securities of portfolio companies by the Fund to enable such companies to obtain loans for their business requirements was in normal course of business and undertaken with prior knowledge of all investors.
- j. Regulation 3(4)(c) of the AIF Regulations permits Category III AIF to employ leverage. SEBI vide circulars dated July 29, 2013, September 29, 2017 and April, 2021 has prescribed a reporting format for Category III AIFs that undertake leverage. The prescribed format for reporting of

leverage does not include disclosures in respect of pledge of securities for borrowings by the investee companies. The pledging of securities does not amount to undertaking leverage.

- k. The Manager of the Fund and the Trustee of the Fund have exercised due skill and care and have invested in portfolio companies after conducting thorough due diligence.
- l. Clause 1(b) of the Code of Conduct provides that the fund should be operated and managed in the interest of all investors and not only in the interest of the sponsor, manager, directors or partners of the sponsor and manager or a select class of investors. No undue gain/benefit has accrued to the Fund or the Manager by pledging or creating charge over securities.
- m. The Fund had pledged/created other charges over the securities of portfolio companies to enable such portfolio companies to borrow funds for their business requirements keeping in the mind the best interest of the portfolio companies and in turn, the best interest of investors of the Fund. The investors in turn benefited from the performance of the portfolio companies in which the Fund had a meaningful stake.
- n. At every instance, GIPIPL as the Manager of the Fund and consequently, ITSL as the Trustee of the Fund have exercised due skill and care and have invested in portfolio companies after conducting thorough due diligence. GIPIPL has ensured proper care and independent professional judgment in carrying out its role in relation to all investments made by the Fund in portfolio companies, including in relation to pledging or creation of other charge over securities of portfolio companies for borrowing/ leverage by the portfolio companies. The same has been in discharge of its fiduciary capacity towards investors of the Fund and all decisions have been taken by GIPIPL in the interest of the investors.

- o. Clause 2(d) of the Code of Conduct provides that manager must act in a fiduciary capacity towards investors of the AIF and ensure that decisions are taken in the interest of the investors. Pledging of securities of portfolio companies by the Fund has enabled these companies to raise capital, which is in the interest of the investors of the Fund.
- p. With respect to violation of Clause 3(b) of the Code of Conduct, it is submitted that the Trustee in terms of the Trust Deed and Investment Management Agreement has delegated its powers to the Manager of the Fund to manage the day to day affairs of the Fund. The Manager of the Fund has exercised due skill, care and independent professional judgment while managing the affairs of the Fund in the interest of investors of the Fund.
- q. As on date, all pledges created by the Fund over securities held by it in the portfolio companies have been released. As such, the question of any direction to remove the pledge over assets of the Fund does not arise.

OPPORTUNITY OF HEARING

- 7. In the interest of principles of natural justice, the Noticees were granted an opportunity of hearing on May 22, 2023. In this regard, hearing notices dated May 08, 2023 were sent to the Noticees through SPAD as well as email.
- 8. On May 22, 2023, Mr. Somasekhar Sundaresan, Advocate, Ms. Yugandhara Khanwilkar, Advocate, Mr. Vikram Raghani, Advocate, Mr. Pulkit Sukhramani, Advocate, Ms. Vidhi Jhavar, Advocate, Mr. Deepank Anand, Advocate, Mr. Manish Jindal, Mr. Amit Shetye and Mr. Naresh Sachwani appeared for the hearing and submitted on lines of the Noticees reply dated April 20, 2023.

CONSIDERATION

9. Before moving forward, it will be appropriate to refer to the relevant provisions of the SEBI Act, the AIF Regulations alleged to have been violated by the Noticees:

AIF Regulations

Conditions for Category I Alternative Investment Funds.

Regulation 16 (1) (c):

16. (1) *The following investment conditions shall apply to all Category I Alternative Investment Funds:-*

(a)

(c) *Category I Alternative Investment Funds shall not borrow funds directly or indirectly or engage in any leverage except for meeting temporary funding requirements for not more than thirty days, on not more than four occasions in a year and not more than ten percent of the investable funds.*

General Obligations.

20 (1) *Alternative Investment Fund, key management personnel of the Alternative Investment Fund, trustee, trustee company, directors of the trustee company, designated partners or directors of the Alternative Investment Fund, as the case may be, managers and key management personnel of managers shall abide by the Code of Conduct as specified in the Fourth Schedule.*

Explanation.– For the purpose of this sub-regulation, ‘key management personnel’ shall have the meaning as specified by the Board from time to time.

(2) *The Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the Alternative Investment Fund, as the case may be, shall ensure compliance by the Alternative Investment Fund with the Code of Conduct as specified in the Fourth Schedule.*

Fourth Schedule

SEBI (Alternative Investment Funds) Regulations, 2012

[Regulation 20(1) and 20(9)]

I. Code of Conduct for Alternative Investment Funds

1. *An Alternative Investment Fund shall:*

.....

(b) *be operated and managed in the interest of all investors and not only in the interest of the sponsor, manager, directors or partners of the sponsor and manager or a select class of investors.*

II. Code of Conduct for the Managers of Alternative Investment Funds and key management personnel of Managers and Alternative Investment Funds

2. Every Manager of Alternative Investment Funds and key management personnel of the manager and Alternative Investment Funds shall:

.....

(d) act in a fiduciary capacity towards investors of the Alternative Investment Fund and ensure that decisions are taken in the interest of the investors;

III Code of Conduct for members of the Investment Committee, trustee, trustee company, directors of the trustee company, directors or designated partners of the Alternative Investment Fund

3. Members of the Investment Committee, trustee, Trustee Company, directors of the Trustee Company, directors or designated partners of the Alternative Investment Fund shall:

.....

(b) ensure proper care and exercise due diligence and independent professional judgment in carrying out their roles;

10. The primary issue for consideration is whether pledging of securities of portfolio companies by the Category 1 Alternative Investment Fund for borrowing of funds or leverage by portfolio companies will fall foul of Regulation 16(1)(c) of the AIF Regulations or not?

11. In this regard, the Noticees have submitted that the investment strategy, investment purpose and investment methodology of the Fund was duly stated by the Fund in the Trust Deed dated September 17, 2013, the Contribution Agreement entered into with investors and its private placement memorandum dated August 2013 ("**PPM**"). The Trust Deed sets out the powers of the Trustee which included the power to hypothecate, pledge or create an encumbrance of any nature on securities held by the Fund, including as collateral to enable any portfolio company to avail of financial assistance. In terms of the Contribution Agreement, the Trust Deed is deemed to be incorporated in the Contribution Agreement. Thus, every investor of the Fund was aware of the investment mandate and the terms of the Trust Deed.

12. Further, it is submitted that Regulation 16(1)(c) of the AIF Regulations prohibited borrowing of funds or leverage by the Fund for itself only. In the present case, the borrowings for which the Fund has pledged its securities/created other charge were availed of by the portfolio companies and not the Fund itself. Therefore, the Fund has not directly borrowed funds or directly availed of any leverage. Regulation 16(1)(c) of the AIF Regulation did not specifically bar the Fund from pledging securities of portfolio companies for loans or leverage availed of by the portfolio companies. Regulation 16(1)(c) of the AIF Regulations prevented AIF from: (i) borrowing funds directly or indirectly or (ii) engaging in leverage, except for meeting its temporary funding requirements as per the conditions set out in the provision. The terms "directly or indirectly" are applicable to the borrowing of funds by the Alternative Investment Fund ('AIF') and not leverage. The Fund has not engaged in any leverage, accordingly, the provisions of Regulation 16(1)(c) are not attracted.

13. Further, it is submitted by the Noticees that as per their understanding of Regulation 16(1)(c) of the AIF Regulations, pledging of securities of portfolio companies to enable such companies to undertake borrowing/leverage would not amount to borrowing (whether direct or indirect) or leverage on part of the Fund, as the portfolio companies and the Fund are distinct and separate entities. The Noticees' have acted on the basis of such understanding. In case the interpretation sought to be taken in the SCN is even remotely plausible, the principles of doubtful penalization would apply in the present matter and as per settled rule of interpretation construction which exempts penalty rather than which imposes penalty should be adopted.

14. Further, it is submitted that Regulation 3(4) (c) of the AIF Regulations permits Category III AIF to employ leverage. SEBI vide circulars dated July

29, 2013, September 29, 2017 and April, 2021 has prescribed a reporting format for Category III AIFs that undertake leverage. The prescribed format for reporting of leverage does not include disclosures in respect of pledge of securities for borrowings by the investee companies. The pledging of securities does not amount to undertaking leverage.

15. I note that the Noticee No.1 is Category I AIF which has been set up with the objective of investing in Indian infrastructure projects with the strategy of ensuring meaningful stakes for participation in the management of the underlying asset/ business. In pursuance of its declared portfolio strategy/ investment mandate, the Noticee No.1 acquired meaningful stake in portfolio companies and thus acts as the promoter/ majority shareholder of such companies.

16. I note that Regulation 3 of the AIF Regulations provides for categorization of AIF in 3 categories i.e. Category I AIF, Category II AIF, Category III AIF. Category I AIF invests in start-up or early stage venture or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable. Category I AIFs include Funds which are perceived to have positive spillover effects on economy and for which the Board or Government of India or other regulators in India might consider providing incentives or concessions. Category II AIFs are those which do not fall in Category I and III and which do not undertake leverage or borrowing other than to meet day-to-day operational requirements and as permitted in the AIF Regulations. Category II AIFs include Funds such as private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other Regulator. Category III AIFs are those which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. Category III AIFs include funds such as hedge funds or funds which trade with a view to make short term returns or such other funds which

are open ended and for which no specific incentives or concessions are given by the government or any other Regulator.

17. Regulation 16(1)(c) of the AIF Regulations bars the Category I AIF from borrowing either directly or indirectly or engaging in any leverage except for meeting temporary funding requirements. Regulation 17(c) of the AIF Regulations bars the Category II AIFs from borrowing either directly or indirectly or engaging in leverage except for meeting temporary funding requirements. Even Regulation 18(c) of the AIF Regulations permits Category III AIFs to engage in leverage or borrow subject to consent from investors and subject to maximum limit, as may be specified by the Board.

18. As per Regulation 2(b) of the AIF Regulations, AIF is a privately pooled investment vehicle which collect funds from investors for investing it in accordance with a defined investment policy for the benefit of its investors. AIFs can be set up in the form of a trust, body corporate or limited liability partnership wherein assets of AIF are basically assets of its beneficiaries i.e investors., Category I and II AIFs are not permitted to borrow funds either directly or indirectly or engage in leverage against assets of AIF. Even Category III AIFs have been permitted to engage in leveraging or borrowing subject to consent from investors in the fund and subject to maximum limit, as may be specified by the Board. In case, AIFs are permitted to engage in borrowing or leveraging against pledge or charge or hypothecation of assets of Funds or in any manner such as enabling portfolio companies to obtain loan then this may expose investors of AIF to probable financial risk in case the portfolio companies default on repayment of their loan/debt.

19. Regulation 16(1)(c) of the AIF Regulations uses expression “*shall not borrow funds directly or indirectly*”. Owing to the above stated object behind prohibiting borrowing or leverage by Category I AIF, in my view, use of expression ‘directly or indirectly’ prohibited Category I AIF from being party

to any borrowing either directly or indirectly. In the present case, the Noticee No.1 was set up with the objective of investing in Indian infrastructure projects with the strategy of ensuring meaningful stakes for participation in the management of the underlying asset/ business. In pursuance of its declared portfolio strategy/ investment mandate, the Noticee No.1 acquired meaningful stake in portfolio companies and thus acted as the promoter/majority shareholder of such companies. The Noticee No.1 pledged securities held by it in portfolio companies for loans availed of by the portfolio companies. In my view, pledging of securities of companies by an AIF, holding meaningful stakes in such companies, for loans availed of by such companies fall within meaning of indirect borrowing. Accordingly, in my view, the Noticee No.1, by pledging securities held by it in portfolio companies for loans availed of by the portfolio companies, engaged in indirect borrowing, thereby, the Noticee No.1 violated Regulation 16 (1)(c) of the AIF Regulations.

20. Regulation 16(1) (c) of the AIF Regulations also prohibits the Category I AIF from engaging in any leverage. In my view, use of expression “*any leverage*” is not confined to leverage availed of by the Category I AIF itself. It prohibits Category I AIF from being party to any leverage availed of either by Category I AIF or by any other entity. In the present case, portfolio companies availed of large size of loan against pledge of securities by the Noticee No.1 which enabled the portfolio companies to leverage. In my view, the Noticee No.1 by pledging securities of portfolio companies for loans availed of by portfolio companies engaged in leverage, thereby, the Noticee No.1 violated Regulation 16(1)(c) of the AIF Regulations.

21. The Noticees have alternatively contended that Regulation 16(1)(c) of the AIF Regulation does not specifically prohibit pledging of securities, therefore, it is case of doubtful penalization. In my view, Regulation 16(1)(c) of the AIF Regulations clearly prohibited borrowing as well as leverage by the Category I AIF. Thus, the present case is not a case of doubtful penalization.

22. The Noticees have submitted that the Trust Deed sets out the powers of the Trustee which included the power to hypothecate, pledge or create an encumbrance of any nature on securities held by the Fund, including as collateral to enable any portfolio company to avail of financial assistance. In terms of the Contribution Agreement, the Trust Deed is deemed to be incorporated in the Contribution Agreement. Thus, every investor of the Fund was aware of the investment mandate and the terms of the Trust Deed. In my view, the provisions of the AIF Regulations and circulars issued thereunder will have overriding effect over covenants contained in the Trust Deed and the Contribution Agreement. Even if the Trust Deed and the Contribution Agreement contained covenants contrary to the AIF Regulations and circulars issued thereunder (applicable laws), such terms cannot prevail over the applicable laws.

23. I note that the Noticees have submitted that leverage does not include pledging of securities as Regulation 3(4) (c) of the AIF Regulations permits Category III AIF to employ leverage. Further, it is submitted that SEBI circulars dated July 29, 2013, September 29, 2017 and April, 2021 have prescribed a reporting format for Category III AIFs that undertake leverage which does not include disclosures in respect of pledge of securities for borrowings by the investee companies.

24. Regulation 18(c) of the AIF Regulations permits Category III AIFs to engage in leverage or borrowing. In pursuance thereof, the said circulars have been issued for reporting of leverage by the Category III AIFs. However, Regulation 16(1)(c) of the AIF Regulations prohibits Category I AIFs to engage in any leverage, therefore, the said circulars are not applicable to the present case.

25. I note that Regulation 20(1) of the AIF Regulations requires the AIF to comply with the Code of Conduct as specified in the Fourth Schedule. Regulation 20(2) of the AIF Regulations requires the Manager and the Trustee to ensure compliance by the AIF with the Code of Conduct specified in the Fourth Schedule. Further, Regulation 20(5) of the AIF Regulations provides that the Manager shall be responsible for every decision of the AIF including ensuring that the decisions are in compliance with the provisions of the AIF Regulations.

26. I note that Fourth Schedule provides for code of conduct wherein clause 1 provide for code of conduct for the AIF. Clause 2 provides for code of conduct for Manager of AIFs and key management personnel of managers and AIF. Clause 3 provides for code of conduct *inter-alia* for trustee. Clause 1 (b) requires an AIF to be operated and managed in the interest of all investors. Clause 2(d) requires the Managers of AIFs to act in a fiduciary capacity towards investors of the AIF and ensure that decisions are taken in the interest of the investors. Clause 3 (b) requires trustee to ensure proper care and exercise due diligence and independent professional judgment in carrying out their roles.

27. In this regard, the Noticees have submitted that the Fund had pledged/created other charges over the securities of portfolio companies to enable such portfolio companies to borrow funds for their business requirements keeping in the mind the best interest of the portfolio companies and in turn, the best interest of investors of the Fund. The investors in turn would have benefited from the performance of the portfolio companies in which the Fund had a meaningful stake. At every instance, GIPIPL as the Manager of the Fund and consequently, ITSL as the Trustee of the Fund have exercised due skill and care and have invested in portfolio companies after conducting thorough due diligence. GIPIPL has ensured proper care and independent professional judgment in carrying out its role in relation to all investments made by the Fund in portfolio companies, including in relation

to pledging or creation of other charge over securities of portfolio companies for borrowing/ leverage by the portfolio companies. The same has been in discharge of its fiduciary capacity towards investors of the Fund and all decisions have been taken by GIPIPL in the interest of the investors.

28. I note that the Noticees have not shed any light on the downside risk of pledging of securities of portfolio companies by the Fund i.e. the investors of the Fund were exposed to the possibility of default risk in case the portfolio companies had defaulted in repaying the loans availed of by them. I find that pledging of securities of portfolio companies by the Fund cannot always be considered to be in the interest of investors as it exposes the investors of the Fund to the additional risk of possible default by the portfolio companies. In view of the above, I find that the Noticee No. 1 failed in its duty to be operated and managed in the interest of investors, therefore, the Noticee No.1 violated clause 1(b) of the Code of Conduct read with Regulation 20(1) of the AIF Regulations. I find that the Noticee No.2, who is manager of the Fund, failed to ensure that decisions are taken in the interest of the investors, thereby, the Noticee No.2 violated clause 2(d) of the Code of Conduct read with Regulation 20(1) and 20(2) of the AIF Regulations. I also find that the Noticee No.3, who is Trustee of the Fund, failed to ensure proper care and exercise due diligence and independent professional judgment in carrying out its roles, thereby, it violated clause 3(d) of the Code of Conduct read with Regulation 20(1) and 20 (2) of the AIF Regulations.

29. In view of the above, I find that the Noticee No.1 has violated Regulation 16(1)(c) and 20(1) of the AIF Regulations and clause 1(b) of the Code of Conduct specified in Fourth Schedule to the AIF Regulations. The Noticee No.2 has violated Regulation 20(1) and 20(2) of the AIF Regulations and clause 2(d) of the Code of Conduct specified in Fourth Schedule to the AIF Regulations. The Noticee No.3 has violated Regulation 20(1) and 20(2) of the AIF Regulations and clause 3(d) of the Code of Conduct specified in Fourth Schedule to the AIF Regulations.

30. I note that the pledge on securities of portfolio companies created by the Noticees was released on March 20, 2023. Accordingly, no direction to remove pledge on the assets of the Fund is required. I note that the inspection report has not brought out any loss caused to the investors. The violations detailed hereinabove are not repetitive as per the documents on record. Having considered the totality of the facts and circumstances, I am of the view that no monetary penalty is required in the present case.

ORDER–

31. In view of the above, I, in exercise of powers under Section 11(1), 11B(1) of the SEBI Act read with Regulation 34 of the AIF Regulations, which have been delegated upon me under Section 19 of the SEBI Act, direct as follows:-

- a. The Noticees are warned to be careful in future;
- b. The Noticees shall suitably modify terms of its Trust Deed which are inconsistent with the provisions of the AIF Regulations and circulars issued thereunder and submit duly modified Trust Deed to Securities and Exchange Board of India, Alternative Investment Fund and Foreign Portfolio Investors Department, Division of Supervision, Enforcement and Compliance-1, SEBI Bhavan, Plot No. C-4A, G Block, Bandra Kurla Complex, Bandra East, Mumbai-400051 within 30 days from the date of this order.

Sd/-

Date: May 31, 2023

Place: Mumbai

K SARAVANAN

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA