

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) READ WITH SECTIONS 15A, 15C AND 15HB OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 23 OF THE SEBI (VENTURE CAPITAL FUNDS) REGULATIONS, 1996 READ WITH REGULATION 39 OF THE SEBI (ALTERNATE INVESTMENT FUNDS) REGULATIONS, 2012.

In respect of:

Noticee No.	Name of the Entity	PAN / DIN
1.	Unitech Advisors (India) Private Limited (<i>Now known as Auram Asset Management Pvt Ltd</i>)	AACCC5880D
2.	Mr. Sanjay Chandra	AACPC5804C
3.	Mr. Ajay Chandra	AACPC5803F
4.	Mr. Ramesh Chandra	AACPC5805D
5.	Mr. Moti S. Masand	AALPM1434H / 00231644
6.	Mr. Hitender Malhotra	CDUPM8087L
7.	Mr. Deepak Bajaj	AJIPB3941N
8.	Mr. S. K. Misra	ADQPM3235L
9.	Mr. Anil Harish	AAAPH8876M
10.	Mr. Vijay Tulshyan	ACFPT5009H
11.	Mr. Mahesh Kumar Sharma	AYYPS1602E
12.	Mr. Rakesh Dhingra	AAHPD6226A

(The abovementioned Noticees are hereinafter individually referred to by their respective names or Noticee number and collectively as “the Noticees”)

IN THE MATTER OF CIG REALTY FUND – SCHEME I, II AND IV

BACKGROUND:

1. The Securities and Exchange Board of India (“SEBI”) received 139 complaints on SCORES between May 30, 2011 and January 28, 2022 against CIG Realty Fund (“CIGRF / VCF-CIGRF / Fund”), a SEBI registered Venture Capital Fund having registration no. IN/VCF/05-06/075, with respect to Schemes I, II and IV. In the said complaints, *inter alia*, allegations with regard to extension of tenure beyond the period

mentioned in the placement memorandum / PPM, non-liquidation of the schemes upon completion of the tenure of the fund, non-receipt of money invested in funds, cheating and poor performance of the fund were made against VCF-CIGRF. The complaints received against CIGRF were forwarded to the fund by SEBI on SCORES. However, it was observed that CIGRF did not redress the complaints forwarded to it.

2. In view of the large number of investor complaints received against CIGRF, SEBI conducted an inspection of books of accounts and other records of CIGRF to ascertain violations, if any, of the provisions of the SEBI (Venture Capital Funds) Regulations, 1996 (*replaced by the SEBI (Alternate Investment Funds) Regulations, 2012 and hereinafter referred to as the VCF Regulations, 1996*) with respect to Scheme IV launched by the Fund. It was observed that in the past adjudication proceedings were initiated against Unitech Advisors (India) P. Ltd (Noticee No. 1), Fund Manager / Investment Advisor to CIGRF and its Trustees namely, Mr. S.K. Misra (*Noticee No. 8*), Mr. Anil Harish (*Noticee No. 9*), Mr. Vijay Tushyan (*Noticee No. 10*), Mr. Mahesh Kumar Sharma (*Noticee No. 11*) and Mr. Rakesh Dhingra (*Noticee No. 12*), for failure to wind up the operations of Scheme I and II (*launched by the Fund in the past*) upon expiry of the time-period of the schemes. The Adjudicating Officer, vide order dated March 28, 2019, had imposed monetary penalties on the said Noticees. However, it is observed that even after lapse of more than two years of passing of the said order by the Adjudicating Officer giving a finding of non-winding up of the said schemes by the Noticees therein, SEBI received complaints with respect to Scheme I and II as well alleging non-winding up of the said schemes and therefore, SEBI conducted an inspection of books of accounts for the said schemes along with Scheme IV. The period of inspection was from April 01, 2019 to March 2020.
3. It was observed in the inspection that CIGRF is set up in the nature of Trust by way of trust deed dated August 11, 2005 and is registered with SEBI as Venture Capital Fund on December 02, 2005 bearing SEBI Registration No. IN/VCF/05-06/075. The settler of the fund is Mayfair Capital Private Limited, which was also one of the sponsors of the fund. Noticee No. 1 is the Investment Advisor / Fund Manager to the Fund. The Fund had launched three schemes i.e. CIG Realty Fund -I, CIG Realty Fund-II and CIG Realty Fund-IV. The name of investment advisors has been changed to Auram Asset

Management Pvt Ltd (Formerly Unitech Advisors (India) Pvt Ltd. / Unitech Realty Investors (India) Pvt. Ltd.) from November 19, 2020. The directors of the investment advisors/fund manager were/are as under tabulated below:

Sr No	Name of the director	Designation	Date of appointment	Date of resignation or end of term	PAN	DIN	Present address	Contact number	Present email addresses
1	Ajay Chandra	Director	21/04/2005	-----	AACPC5803F	00004234	C-41 Mayfair Gardens 110016	---	acoffice1967@gmail.com
2	Sanjay Chandra	Director	21/04/2005	-----	AACPC5804C	00004484	C-41 Mayfair Gardens 110016	---	sc@sanjaychandra.com
3	Ramesh Chandra	Director	21/04/2005	---	AACPC5805D	00004216	C-41 Mayfair Gardens 110016	---	rcoffice1939@gmail.com
4	Hitender Malhotra	Director	11/08/2020	---	CDUPM8087L	08338409	A-1404, Tower A, Exotica Fresco, Noida, Gautam Buddha Nagar, UP 201301	---	Hitendermalhotra007@gmail.com
5	Moti S. Masand, MD & CEO	MD & CEO	<p style="text-align: center;">DETAILS NOT PROVIDED BY THE FUND</p>						
6	Dr. Deepak Bajaj	Director, Projects & Investments of Unitech Realty Investors (India) Pvt. Ltd. and nominee of Investment Advisor on Investment Committee							
7	Sanjiv Goyal	AVP-Finance							
8	Rajiv Virmani	Company Secretary and							

		manager – Legal	
9	Nitish Aggarwal	AVP	

4. With respect to Scheme – I & II, it is noted that during the inspection carried out by SEBI, no information was received from VCF-CIGRF in response to the said schemes, even after follow up, to the pre-inspection questionnaire sent to them. In view of the same, the information in regard to schemes I & II as available in the adjudication order dated March 28, 2019 passed by the Adjudicating Officer has been considered for the purpose of the present proceedings. The details of the Schemes I and II as per the order dated March 28, 2019 are as under:

Sr. No.	Name of the Scheme	Date of Final Closing	Total Corpus /Total funds raised (₹ in crores)	Total investment made (₹ in crores)	Total amount retained for expensed (₹ in crores)	Tenure of the scheme as per the PPM
1	CIG Realty Fund- Scheme 1	06-Oct-06	350.00	322.13	27.87	7 years from date of Final closing (The tenure may be extended for two 1 year terms by the Trustees upon recommendation of the Investment Advisor)
2	CIG Realty Fund- Scheme 2	28-Sep-07	298.50	269.57	28.93	

The details of extension of Schemes I and II, as per Order dated March 28, 2019, are as under:

Scheme	Extension	Period up to	On the basis of
1	1st	October 05, 2014	1st Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	2nd	October 05, 2015	2nd Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	3rd	October 05, 2018	3rd Extension of 3 years on the basis of response received from the investors, wherein 75% investors approved extension

2	1st	September 27, 2015	1st Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	2nd	September 27, 2016	2nd Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	3rd	September 27, 2019	3rd Extension of 3 years on the basis of response received from the investors, wherein 75% investors approved extension

The details of the Trustees of Scheme I and II, as per the Order dated March 28, 2019, are as under:

S. No.	Scheme	Trustees
1	Scheme 1	Mr. S. K. Misra
2		Mr. Anil Harish
3		Vistra ITCL (India) Ltd. (IL & FS Trust Company Ltd.) (*)
4	Scheme 2	Mr. Rakesh Dhingra
5		Mr. Mahesh Kumar Sharma
6		Mr. Vijay Tulshyan

5. It was noted that as per the Private Placement Memorandum ('PPM'), the tenure of Scheme-I was till October 05, 2015 and that of Scheme-II was till September 28, 2016. However, it was observed that the fund had extended its tenure beyond the permissible period in the PPM i.e. the third extension of 3 years' period as mentioned in the table above (*October 05, 2018- Scheme I and September 27, 2019-Scheme II*), which was not in compliance with PPM of the respective schemes.
6. With respect to Scheme IV of the Fund, the following details (as on March 31, 2020) are noted from the inspection report:

Name of the Scheme	Corpus / funds raised (Rs. in cr)	No. of investors	Investments made during tenure of the Fund (Rs. in cr. approx)	Date of initial closing	Date of Final Closing	Total Tenure of scheme as per PPM	Date of end of tenure of the scheme (including extended period of 2 years)	Industry type
CIG Realty Fund - IV	64.85	46	57.11	01/04/2009	26/09/2009	6 years extendable by two years (1+1)	25/09/2017	Real Estate sector

7. It is observed from the client details provided by VCF-CIGRF during the inspection that out of the corpus of Rs.64.85 crores of the Scheme-IV, an amount of Rs.51.90 crore, i.e. more than 80% of the corpus of the Fund, was invested by Unitech Limited. As per the PPM, the tenure of Scheme IV was until September 25, 2017. Details of the Trustees of Scheme IV are as tabulated below:

Name of the Trustee	Designation	Date of Appointment	Date of resignation or end of term	PAN
Anil Harish	Trustee	October, 2009	June, 2016	AAAPH8876M
S.K. Mishra	Trustee	October, 2009	June, 2016	ADQPM3235L
IL & FS Trust Company Limited	Trustee	October, 2009	June, 2016	
Mr. Vijay Tulshyan	Trustee	June, 2016	--	ACFPT5009H
Mr. Rakesh Dhingra	Trustee	June, 2016	--	AAHPD6226A
Mr. Mahesh Kumar Sharma	Trustee	June, 2016	--	AYYPS1602E

The categorisation of investors on the basis of their PAN as on March 31, 2020 in regard to Scheme-IV is tabulated below:

Category	Number of unique investors	% to total investors	Cumulative funds raised by Fund (Rs. in Crore)	% of total cumulative funds raised by scheme/Fund
Individuals/joint/HuF	38	82.61	9.30	14.34
Corporates/institutions/Others	8	17.39	55.55	85.66
Total	46	100.00	64.85	100.00

The details of clients, as per the Adjudication Order dated March 29, 2019 for all the three schemes is as under:

Category	No. of Investors	No. of Units (in crores)	Total Amount Invested / funds raised by Fund (Rs.in crores)	Total amount distributed till date, if any
SCHEME 1				
(A) Units held by Sponsor/Manager or entities related to Sponsor/Manager	73	11.07	110.58	NIL
(B) Units held by other investors	135	23.92	239.22	NIL
Total outstanding Units (A+B)	208	35.00	350.00	NIL
SCHEME 2				
(A) Units held by Sponsor/Manager or entities related to Sponsor/Manager	77	8.77	87.68	NIL
(B) Units held by other investors	357	21.08	210.82	NIL

Total outstanding Units (A+B)	434	29.85	298.50	NIL
SCHEME 4				
(A) Units held by Sponsor/Manager or entities related to Sponsor/Manager	7	5.17	51.65	NIL
(B) Units held by other investors	43	1.32	13.20	NIL
Total outstanding Units (A+B)	50	6.49	64.85	NIL

8. It was observed that the Investment Advisor of Scheme IV (Noticee No. 1) had constituted an Investment Committee to whom investment and divestment proposals to be made on behalf of CIGRF – IV were referred and whose decisions on such matters were final. The members of Investment Committee since inception of the Fund is as follows:

S No.	Name	Date of Appointment	Date of Resignation or end of term	PAN	Present address	Present email address
1.	Mr. MY Khan	October 2009	--			mykhan1974@gmail.com
2.	Ramesh Chandra	October 2009	--	AACPC5805D	C-41 Mayfair Gardens 110016	rcoffice1939@gmail.com
3.	Dr. Deepak Bajaj	October 2009	--	AJIPB3941N	Apartment No.101, Tower B-5, The World Spa-West, Sector 30/41, Gurgaon, Haryana -122 001.	dbajaj66@gmail.com

9. Furthermore, the Investment Advisor (Noticee No. 1) had in place an Advisory Board for providing inputs on industry trends, best practices, referrals for possible transactions in the target area of the fund, etc. The members of the Advisory Board were / are as under:

S No.	Name of the Member	Particulars	Date of Appointment	Date of Resignation
1.	Ramesh Chandra	Chairman, Unitech Limited	October 2009	--
2.	Sanjay Chandra	MD, Unitech Limited	October 2009	--
3.	M Y Khan	Former CMD, J&K Bank	--	--
4.	Harvansh Chawla	KR Chawla and Co., Solicitors	--	--
5.	Rajender Kumar	Rajender Kumar and Associates, Architects and Town Planners	--	--
6.	Anuj Puri	Chairman & Countryhead, Jones Lang Laselle Meghraj	--	--
7.	A.S. Johar	Director (Finance), Unitech Limited	--	--

* Date of appointment of members from sr.no.3 to 7 has not been provided by the fund

10. It was observed that the investments made by the Fund in Scheme – IV, pending for exit as on March 31, 2020 is as under:

Name of the Investee Company	Amount invested (in Rs. Cr)	Amount of investment as a %age of total investible funds
CIG Developers Pvt. Ltd.	14.30	25.07%
CIG Estate Pvt. Ltd.	14.20	24.89%
CIG Real Estate Developers Pvt. Ltd.	14.27	25.02%
CIG Realtors Pvt. Ltd.	14.26	25%

It is observed that the fund has failed to wind up / liquidate all the three schemes even after the tenure of the fund was over and thus, alleged failed to provide exit to the investors / contributors.

11. Thus, pursuant to the inspection and examination of the available material / documents, it was observed that Noticee No. 1 (*being the Fund Manager / Investment Advisor*), its directors namely, Mr. Sanjay Chandra (*Noticee No. 2*), Mr. Ajay Chandra (*Noticee No. 3*), Mr. Ramesh Chandra (*Noticee No. 4*), Mr. Moti S Masand (*Noticee No. 5*), Mr. Hitendra Malhotra (*Noticee No. 6*) and Mr. Deepak Bajaj (*Noticee No. 7*) and its Trustees i.e. Noticee Nos. 8 (*Mr. S.K. Misra*), 9 (*Mr. Anil Harish*), 10 (*Mr. Vijay Tushyan*), 11 (*Mr. Mahesh Kumar Sharma*) and 12 (*Mr. Rakesh Dhingra*) allegedly violated the following provisions of law:

- 11.1. By not complying with the requirement of winding up of the schemes and returning the money to the investors even after expiry of tenure as per the PPM, the Noticees have violated the provisions of Regulation 23(1)(a) of SEBI (VCF) Regulations, 1996.
- 11.2. By failing to redress the investor grievances, the Noticees have violated the provisions of SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014.
- 11.3. By failing to extend co-operation during inspection, the Noticees have violated the provisions of Regulation 27(1), 27(2) and Regulation 21 r/w the provisions of Regulations 11, 12(b), 12 (ba), 12(c), 12A, 13, 14, 15, 16(1)(a) & (b) of SEBI (VCF) Regulations, 1996, SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014, SEBI Circular No. MIRSD/Cir-23/2011 dated December 02, 2011 and SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011.

- 11.4. By investing the proceeds of Scheme IV in associate companies, the Noticees have violated the provisions of Regulation 12(c) of SEBI (VCF) Regulations, 1996.
- 11.5. By failing to report on a quarterly basis, as prescribed, on venture capital activity on SEBI portal within 7 days from the end of calendar quarter for the quarters ending September 2019, December 2019 and March 2020, the Noticees have violated the provisions of Regulation 22 of VCF regulations read with SEBI circular ref. SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010.
- 11.6. By failing to communicate Names, designation and addresses (including email addresses) of 'Principal Officer' and 'Designated Director' including any changes therein to the Office of the Director - FIU, the Noticees have violated the provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06 dated March 20, 2006 read with SEBI Master circular SEBI/HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.
- 11.7. By failing to capture KYC details of some client in the account opening form as specified, verify / download and maintain the clients' details from the system of the KRA and obtain registration with KRA, the Noticees have violated the provisions of SEBI circulars No. MIRSD/Cir-23/2011 dated December 02, 2011 and No. MIRSD/Cir-26/2011 December 23, 2011.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. A common Show Cause Notice dated March 10, 2023 (SCN) was issued to the Noticees calling upon them to show cause as to why suitable directions under Section 11(1) and 11B(1) of the SEBI Act, 1992 read with Regulation 23(1)(d) of the VCF Regulations, 1996 read with Regulation 39 of the SEBI (Alternate Investment Funds) Regulations, 2012 (AIF Regulations, 2012), including a direction to wind up schemes I, II and IV and distribute the proceeds accruing to the investors in the said schemes be not issued and why monetary penalty be not imposed on the Noticees under Sections 11(4A) and 11B(2) read with Sections 15A, 15C and 15HB of the SEBI Act, 1992 read with Regulation 39 of the AIF Regulations, 2012 for the alleged violations of the aforementioned provisions of law.
13. The allegations levelled against the Noticees in the SCN, *in brief*, are as under:

13.1. Non winding up of the schemes of the Fund before the expiry of tenure:

13.1.1. The details of three schemes of CIGRF as per available information are as under:

Sr. No.	Name of the Scheme	Date of Final Closing	Total Corpus /Total funds raised (₹ in crores)	Total investment made (₹ in crores)	Total amount retained for expenses (₹ in crores)	Tenure of the scheme as per the PPM	End date of the Fund after extension of two (1) year terms
1	CIG Realty Fund- Scheme I	06-Oct-06	350.00	322.13	27.87	7 years from date of Final closing (The tenure may be extended for two 1 year terms by the Trustees upon recommendation of the Investment Advisor)	05-Oct-2015
2	CIG Realty Fund- Scheme II	28-Sep-07	298.50	269.57	28.93		27-Sep-16
3	CIG Realty Fund- Scheme IV	26-Sep-09	64.85	57.11	7.74	6 years extendable by two years (1+1)	25-Sep-2017

13.1.2. The tenure of the three schemes was respectively embodied in the concerned PPM/s and the clauses relating to the same for the three scheme in the PPM are as under:

“CIG Realty Fund- I shall operate for a period of 7 (seven) years from the date of Final Closing and may be extended for two 1 (one) year terms by the Trustees upon the recommendation of the Investment Advisor, unless wound up or dissolved earlier as discussed in this Placement Memorandum.”

“CIG Realty Fund- II shall operate for a period of 7 (seven) years from the date of Final Closing and may be extended for two 1 (one) year terms by the Trustees upon the recommendation of the Investment Advisor, unless wound up or dissolved earlier as discussed in this PPM.”

“CIG Realty Fund- IV will operate for a period of 6 (six) years (plus two periods of one year each if extended), unless wound up or dissolved earlier as discussed in this PPM and the Fund Agreements.”

13.1.3. It was also observed that VCF-CIGRF had addressed letters to the complainants, in response to their complaints filed on SCORES, stating therein

that it had issued letters to the investors seeking their consent on whether *in-specie* distribution should be made or the investments in projects be disposed. These letters seeking consent from the investors were made vide letter dated October 05, 2015 for Scheme I, letter dated July 29, 2016 for Scheme II and letter dated December 13, 2017 for Scheme IV. However, it is noted that even after the passage of considerable time, the said schemes were neither liquidated nor *in-specie* distribution has been made by VCF-CIGRF to the investors till the date of issuance of the SCN in the present proceedings.

13.2. Non-redressal of complaints received in SCORES: It is alleged that VCF-CIGRF failed to redress investor grievances on SCORES, which were already communicated to it on SCORES, thereby violating the provisions of SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014.

13.3. Failure to extend co-operation in connection with the inspection:

13.3.1. During the inspection period, CIGRF did not respond to the inspection notice sent to its known address with respect to Schemes I and II. Further, the Noticee failed to reply to the observations made in the inspection report pertaining to all the schemes, which was forwarded to it by post. It is noted that the Advocate of VCF-CIGRF, vide his email dated September 25, 2021, had confirmed receipt of the inspection report. Reminders were also sent by emails, however, no reply was received from the Noticee.

13.3.2. In view of the same, it was alleged that the Noticee failed to extend co-operation in connection with the inspection and failed to submit its comments in respect of the addendum to the inspection report sent to its address by post as well as through email.

13.4. Breach of Investment Conditions:

13.4.1. It was observed that VCF-CIGRF had invested the proceeds of Scheme –IV in its associate companies, which was, is in violation of the provisions of Regulation 12(c) of the VCF Regulations, 1996. Details of the same are as under:

Name of the Investee Company	Amount Invested (in Crore)
CIG Developres Pvt. Ltd	Rs. 14.30
CIG Estate Pvt. Ltd	Rs. 14.20
CIG Real Estate Developers Pvt. Ltd	Rs. 14.27
CIG Realtors Pvt. Ltd	Rs. 14.26

13.5. Reporting Lapses:

13.5.1. It is alleged that VCF-CIGRF had failed to report its venture capital activity on a quarterly basis on SEBI portal within 7 days from the end of the calendar quarter ending September 2019, December 2019 and March 2020.

13.5.2. Further, it is alleged that the fund had failed to communicate Names, designation and addresses (including email addresses) of '*Principal Officer*' and '*Designated Director*' including any changes therein to the Office of the Director-FIU.

13.5.3. It was also alleged that the fund had failed to capture KYC details of some clients in the account opening form as specified, verify / download and maintain clients' details from the system of KRA and obtain registration with KRA.

14. From the available records, it is noted that the SCN was duly delivered to all the Noticees at their last correspondence address/s except in case of Noticee No. 04 and 10. The SCN/s were returned undelivered from the last correspondence address of Noticee No. 04 with the remark "*Left*" and in case of Noticee No. 10 with the remark "*Locked*". In view of the same, service of the SCN/s was attempted to be done through Market Infrastructure Institutions i.e. NSE in the instant case. Accordingly, NSE, vide letter dated May 18, 2023, informed that the SCN dated March 10, 2023 was duly delivered to Noticee No. 10 (*Mr. Vijay Tushyan*) through the Trading Member viz. ICICI Securities Ltd and acknowledgement of the same is available on record. With respect to Noticee No. 04 (*Mr. Ramesh Chandra*), the SCN was delivered by way of affixture on June 28, 2023 on his last known address and the affixture report stating delivery of the said SCN is available on record.

15. Thereafter, vide email dated April 18, 2023, Noticee No. 07 (*Mr. Deepak Bajaj*) made preliminary submissions in the matter. Also, vide two different emails both dated April 06, 2023, M/s Mindspright Legal, Advocates forwarded separate replies, both dated April 05, 2023, on behalf of Noticee Nos. 08 & 09 (*i.e. Mr. S.K Misra & Mr. Anil Harish*)

to the SCN dated March 10, 2023. Similarly, Noticee No. 12 (*Mr. Rakesh Dhingra*), vide email dated April 13, 2023, made submissions on behalf of himself, Noticee No. 10 (*Mr. Vijay Tulshyan*) and Noticee No. 11 (*Mr. Mahesh Kumar Sharma*).

16. The submissions made by the aforementioned Noticees are summarized as under:

16.1 *Reply dated April 18, 2023 of Noticee No. 07 (Mr. Deepak Bajaj):*

- (i) The Noticee states that he left Unitech Advisors India Pvt Ltd and the relieving documents of December 2016 has been provided in support thereof. In view of the same, he has no communication or contact with Unitech Advisors India Pvt Ltd since the last two plus years. For the period before, he states that from time to time team of Unitech Advisors would contact for verifying some historical data / advice.
- (ii) While working with Unitech Advisors prior to December 2016, there were no SEBI VCF lapses.
- (iii) The Noticee states that he was made an employee director in the VCU's of the fund schemes on behalf of the fund as were other employees of the fund. When the Noticee left, he had requested the company to remove him as a director of the VCU and they said they were trying and after a long time the company removed the said Noticee as a director.
- (iv) The Noticee states that he is, for the last few years, a full time academic working in RICS School of Built Environment, Amity University Noida, as a professor and head of institute.

16.2 *Replies dated April 05, 2023 of Noticee Nos. 08 & 09 (Mr. S.K. Misra and Mr. Anil Harish):*

Preliminary submissions:

- a) While denying the allegations levelled against them, the Noticee Nos. 08 & 09 referred to the Adjudication proceedings initiated against them vide SCN dated November 30, 2018. Vide their respective replies the said Noticees stated that it was submitted before the authority that the Noticee Nos. 08 and 09 had resigned as trustees of the Scheme I w.e.f. February 10, 2015 and June 02, 2016, respectively. In view of the same, the Adjudicating Officer, while holding that the said Noticees were not concerned with respect to the second charge in the SCN

w.r.t. winding up and dissolution/ liquidation of units of the fund after October 2018, had passed an order on March 28, 2019 imposing Rs. 1,00,000/- each on the Noticees, being the trustees of the fund.

- b)** The Noticees further state that they had preferred an appeal against the said Adjudication Order before the Securities Appellate Authority ('SAT') vide Appeal Nos. 370 of 2021 and 371 of 2021. The said appeals were dismissed by the Hon'ble SAT vide its order dated May 04, 2021.
- c)** Thereafter, the Noticees state that they have preferred an appeal before the Hon'ble Supreme Court (*Civil Appeal Nos. 6517 of 2021 and 6495 of 2021*) against the order of the Hon'ble SAT, which have been admitted by the said Court, vide order dated December 03, 2021. Therefore, it is the case of the Noticees that the subject matter of the present SCN, so far as the Noticees are concerned, is pending before the Hon'ble Supreme Court.
- d)** The Noticees state that the same subject matter has been covered under the Adjudication SCN and the consequential proceedings. Further, without prejudice to the pendency of the Civil appeals the Noticees state that they have already paid the amount of Rs. 1,00,000/- each imposed a penalty under the Adjudication proceedings along with the applicable interest thereon. Continuance of the present proceedings against the Noticees would, therefore, amount to double jeopardy and is in violation of law. Therefore, the Noticees submit that they may be discharged from the charges levelled against them in the present SCN.

Submissions by Noticee No. 08 and Noticee No. 09:

- (i)** The Noticee No. 08 submits that he is a Padma Bhushan awardee and is a retired senior civil servant. He entered the IAS in 1956 and retired as a Principal Secretary to Prime Minister in 1991. During his tenure as public servant the Noticee held numerous responsible positions, including Principal Secretary to three Chief Ministers of State of Haryana and Secretary in the Ministries of Tourism, Civil Aviation and Agriculture. The Noticee states that he was also responsible for creation of numerous educational and cultural institutions and initiatives.
- (ii)** In 1991, Noticee No. 08 was appointed as a Member of the Union Public Service Commission, where he served for six years. Subsequently, the Noticee served for

ten years as Vice- Chairman and then Chairman of the Indian National Trust for Art and Cultural Heritage (INTACH), a post which he effectively served as Chief Executive Officer, a full time honorary basis, without any remuneration. In 2011, with a number of distinguished and like-minded colleagues, the Noticee founded the Indian Trust for Rural Heritage and Development (ITRHD). He continues to serve as a Chairman of ITRHD, a position like that in INTACH, is a full time and completely honorary.

(iii) In 2005, due to his outstanding professional reputation as a distinguished civil servant and administrator, Noticee No. 08 was requested to become a Trustee of CIG Realty Fund and he was appointed as Trustee of the Fund by way of an Indenture of Trust dated August 11, 2005.

(iv) Noticee No. 09 states that he is a lawyer and has completed a Bachelors of Arts and LLB degree from University of Mumbai and an LLM degree from University of Miami, United States of America. The Noticee further states that he is a Partner of D.M. Harish & Company, a well-reputed law firm in Mumbai specializing in taxation and other laws.

(v) Further, Noticee No. 09 submits that he was an independent director on the Board of Unitech Limited from 2001 to 2015. He resigned as a director in May 2015. He was requested to act as the trustee of CIG Realty Fund in connection with his role as an independent director of Unitech Limited. Accordingly, the Noticee was appointed as the Trustee of the Fund by way of an Indenture of Trust dated August 11, 2005.

(vi) The Noticee Nos. 08 and 09 state that they performed their role as Trustees, took decisions and approved resolutions based on the advice of the Investment Advisor of the Fund viz. Unitech Advisors (India) Pvt. Ltd. On account of Noticee No. 08's age, he had tendered his resignation as a Trustee of CIG Realty Fund on February 10, 2015. Further, due to personal and professional commitments, Noticee No. 09 had also tendered his resignation on May 25, 2015 as a Trustee of CIG Realty Fund. However, the resignations of the Noticees were given effect at the 16th meeting of the board of trustees of the Fund held on June 02, 2016. At the said meeting, one Mr. Rakesh Dhingra (i.e. Noticee No. 12) was appointed as the Trustee of the Fund instead.

- (vii) Thus, the Noticees states that while they remained trustees of the Fund between February 2015 and June 2016, the Noticees had already put the Fund to notice of their intention to resign and were only awaiting a suitable replacement.
- (viii) Further, with respect to the tenure of the schemes, the Noticees state that the tenure of the schemes were extended in terms of their respective Private Placement Memorandums. The Private Placement Memorandum of every scheme of the Fund has a similar amendment clause which reads as follows:
“Contribution Agreement may be amended only by the written consent of the Trustees (in consultation with the Investment Advisor) and of the Contributors representing 75% of the Capital Contributions of the Fund.”
- (ix) Each contributor to the scheme executed a separate contribution agreement which had an amendment clause as follows:
“No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by the Parties.”
- (x) The Noticees submit that in compliance with Regulation 16 of the VCF Regulations, the fund had issued the Private Placement Memorandum, entered into the Contribution Agreement with every investor and sample copy of the Contribution Agreement and Private Placement Memorandum has also been filed with SEBI.
- (xi) Further, in terms of the amendment clause of the Private Placement Memorandum and Contribution Agreement, the life of various Schemes of the Funds were extended with the approval of the requisite majority. All such extensions were duly reported to SEBI and was proposed in the best interest of the investors / contributors. Therefore, the Noticees state that there is neither any violation of regulation 23(1)(a) read with regulation 16 of the VCF Regulations, 1996 nor any violation of any provisions of Private Placement Memorandum or the Contribution Agreement.
- (xii) Further, at the time of extension of Scheme no. 01 of the Fund, representatives of the Fund had met SEBI officials on May 26, 2015 and had discussed the tenure of CIG Realty Fund – Scheme I and its extension. It was unanimously agreed by SEBI’s officials that the decision whether to extend the tenure of the scheme of the Fund must be left to the collective wisdom of the contributors. Thereafter, on July 13, 2015, the Fund had written to SEBI referring to the meeting dated May

26, 2015 and had forwarded SEBI a draft communication proposed to be sent to the contributors of Scheme I for extension of the term, for SEBI's inputs. Following the discussions, the decision was put up for the consideration of the contributors, by way of letter dated July 20, 2015. Thus, the Noticees states that the extension was proposed keeping in mind the interests of the contributors and in consideration of the state of the real estate market.

(xiii) The Noticees further state that the decision of the contributors to extend the tenure of the scheme of the Fund was intimated to SEBI vide letter dated September 14, 2015.

(xiv) It is the case of the Noticees that as they had resigned from the fund w.e.f June 02, 2016, they are not aware of the current status of divestment and / or liquidation of the investments of the fund or any correspondence exchanged in 2017 or of the status of distribution of funds to the unit holders at any time or non-redressal of complaints in SCORES, failure to extend cooperation to the inspection team and breach of investment conditions after their respective resignation. The Noticees submit that they are even not aware of the correspondence exchanged between SEBI and Advocate for the Investment Adviser in relation to the present inspection.

16.3 Reply dated April 03, 2023 of Noticee Nos. 10, 11 & 12 (Mr. Vijay Tushyan, Mr. Mahesh Kumar Sharma & Mr. Rakesh Dhingra):

(i) The Noticees state that all three of them were appointed as the Trustees of the Fund on June 02, 2016. They attended the 17th meeting of the Board of Trustees for the first time on June 30, 2016.

(ii) After the last meeting of the trustees for approval of accounts, etc. held through video conferencing on March 31, 2021, wherein agenda discussion was not held properly due to technical problem of video link, all the three Noticees had requested to accept their resignations and appoint other persons as trustees. However, due to cognizance by Hon'ble Supreme Court, no action was taken by the Investment Adviser /Investment Manager of CIG Realty Fund.

(iii) With respect to the complaints as stated in para 1 of the SCN, it is submitted by the said Noticees that they are not aware of the said complaints as no communication was sent to them either by SEBI or by the Investment Adviser /

Investment Manager of CIG Realty Fund. The Noticees state that it was for CIG Fund and / or the Investment Adviser to redress the complaints, if any and the Noticees, as Trustees were not associated to redress the complaints.

(iv) The Noticees further state that they were not informed of any decision of inspection of books of accounts and other records of CIG and further, it is the responsibility of the management advisor to co-operate during the inspection of records and redress the complaints.

(v) With respect to the allegations in paras 4 to 11 of the SCN, the Noticees state that they are not liable to comply with the same and had no role to play. The communications mentioned in the said paras of the SCN were to CIG Realty Fund / Investment Adviser and therefore, the trustees to whom no information was provided were not authorized to operate the accounts and cannot be held liable for the violations, if any, by the Investment Adviser of the Fund.

(vi) The Noticees submit that in one of the meetings of the trustees, it was approved that the Investment Advisor of the Fund may undertake the action for sale of assets and distribution thereof. Further, the violations, if any, as stated in para no. 11 of the SCN is even prior to the joining of the said Noticees as Trustees of the Fund and therefore, it is submitted by them that they cannot be held liable for the same.

(vii) Referring to the peculiar situation of cognizance taken by Hon'ble Supreme Court and placing the directors of the company in custody, the Noticees submit that action could not have been taken by them and further no action was required to be taken by the trustees.

(viii) The Noticees submit that winding up of schemes and returning the money to the investors is not to be done by the trustees but by the operating investment advisor and directors of CIG Fund and it was their responsibility and duty to do the same. Trustees have no role to play.

(ix) The responsibility to redress the investor complaints, cooperate during the inspection, investments in associate companies, etc. was all to be done by the investment advisor of the fund.

17. Thereafter, in compliance with the principles of natural justice, opportunity of personal hearing was granted to the Noticees on August 22 & 23, 2023. On the scheduled date

(August 22, 2023), Noticee No. 07 (*Mr. Deepak Baja*) attended the hearing and made oral submissions. In addition, the said Noticee submitted documents showing the investment status of the Schemes. Further, the Authorized Representatives (ARs) viz. Adv. Saran Jagtiani, Adv. Ankit Lohia and Adv. Suyash Bhandari attended the hearing on the scheduled date (August 23, 2023) on behalf of Noticee Nos. 08 and 09 (*Mr. S.K. Misra and Mr. Anil Harish*) and reiterated the submissions made in the replies dated April 05, 2023 filed by the said Noticees. Further, the ARs stated that the Noticees had tendered their resignation as Trustees of CIGRF on May 25, 2015, which was ultimately accepted by the Board of the Fund on June 02, 2016. Also, Noticee Nos. 10 (*Mr. Vijay Tulshyan*), 11 (*Mr. Mahesh Kumar Sharma*) and 12 (*Mr. Rakesh Dhingra*) attended the hearing on the scheduled date (August 23, 2023) in person and reiterated the submissions made by them vide their common reply dated April 03, 2023. The said Noticees stated that they were neither aware of any of the complaints which have been referred to in the SCN nor were responsible for resolving the same. The responsibility of redressal of the complaints was that of the Investment Advisor. Further, with respect to winding up of the Scheme, the Noticees submitted that the decision to wind up the scheme was taken in the Board Meeting held on March 09, 2018. Winding up of the schemes and returning the monies to the investors is not to be done by the trustees but by the operating Investment Advisor and directors of CIGRF. Further, the Noticees were advised to file additional reply, if any, along with a copy of the Board Resolution dated March 09, 2018 on or before August 30, 2023. The Noticee Nos. 10, 11 and 12, vide email dated August 31, 2023, submitted additional reply enclosing copies of Board approvals dated October 05, 2018, October 11, 2018 and June 30, 2018 for *in-specie* distribution of assets to the contributors of CIGRF – Schemes I and IV in SPV(s) and approvals for disinvestment by sale of the land parcel at Badshahpur, Haryana.

18. Further, it was learnt from news articles that Noticee Nos. 02 (*Mr. Sanjay Chandra*), 03 (*Mr. Ajay Chandra*) and 04 (*Mr. Ramesh Chandra*) were in judicial custody in the light of the investigation carried out by Central Bureau of Investigation (CBI). In order to ascertain the details of the Jail in which they are detained currently, SEBI issued emails dated August 02, 2023 to '*Taloja Central Prison*', '*Byculla District Prison*', '*Thane Central Prison*' and '*Mumbai Central Prison*' requesting them to confirm if the

said Noticees are currently in their custody. Vide email dated September 09, 2023, a response was received from '*Byculla District Jail*' stating that the said Noticees are not currently lodged in the said Jail. However, it was informed that Noticee No. 03 i.e. Mr. Ajay Chandra is currently lodged in Taloja Central Jail for P.I.D. No. 442307 filed from U.T. No. 437/2023 dated August 08, 2021. As no information with respect to the jail in which Noticee Nos. 02 and 04 are currently lodged in was received from any of the Jail authorities, in compliance with the principles of natural justice and to proceed further in the light of time lapse since the date of issuance of the SCN in the instant case, another opportunity of personal hearing was granted to the Noticee Nos. 01, 02, 03, 04, 05 and 06 on November 28, 2023 and attempts were made to deliver the SCNs and hearing notices at the last known addresses of the said Noticees by way of hand delivery / SPAD, affixture and newspaper publication in terms of Rule 7 of the SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 ('*Adjudication Rules*'), details of which are tabulated as under:

Sr. No.	Name of the Noticee	Last known correspondence address	Delivered by			Status of Delivery
			Hand / SPAD	Affixture	Newspaper Publication	
1.	Unitech Advisors (India) Pvt. Ltd	L-1 & L-2, 3 rd Floor, Green Park Extn, New Delhi- 110016	-	Affixed on 29.11.2023	Published in Navbharat Times and Gurgaon Mail on 10.11.2023	Completed
		7 th Floor, Tower-A, Unitech Signature Towers, NH-08, South City, Gurgaon - 122001	-	Did not allow affixture		
		13 th Floor, Tower-B, Signature Tower-1, Sector-30, South City-1, Gurgaon-122001	-	Did not allow affixture		
2.	Mr. Sanjay Chandra	L-1 & L-2, 3 rd Floor, Green Park Extn, New Delhi- 110016 & 18/9 Chinar Drive, Chhatarpur, Delhi 74	-	The person available did not take delivery of the SCN and Hearing Notice. Did not allow affixture.	Published in Navbharat Times and Gurgaon Mail on 10.11.2023	Completed

3.	Mr. Ajay Chandra	L-1 & L-2, 3 rd Floor, Green Park Extn, New Delhi- 110016 & 18/9 Chinar Drive, Chhatarpur, Delhi 74	Delivered by hand on 28.11.2023		Published in Navbharat Times and Gurgaon Mail on 10.11.2023	Completed
		The Superintendent of Police, Taloja Central Prison Inampuri, Taloja, Navi Mumbai - 410208	Delivered by hand on 09.11.2023			
4.	Mr. Ramesh Chandra	C-41, Mayfair Gardens, New Delhi C-39, Mayfair Gardens, New Delhi	-	The person available did not take delivery of the SCN and Hearing Notice. Did not allow affixture on the wall/gate of the premises.	Published in Navbharat Times and Gurgaon Mail on 10.11.2023	Completed
5.	Mr. Moti S. Masand	12/8, Sarvpriya Vihar, New Delhi - 11016	Delivered by hand on 29.11.2023		Published in Navbharat Times and Gurgaon Mail on 10.11.2023	Completed
6.	Mr. Hitendra Malhotra	A – 1404, Tower- A, Exotica Fresco, Noida	Delivered by hand on 25.11.2023		Published in Navbharat Times and Gurgaon Mail on 10.11.2023	Completed

19. It is noted that upon receipt of the notice of hearing, vide email dated November 14, 2023, while confirming receipt of the SCN dated March 10, 2023 (*sent via email*) and the hearing notice dated October 30, 2023, Noticee No. 05 (*Mr. Moti S. Masand*) submitted his reply to the SCN. The submissions made by the said Noticee are summarized as under:

- (i) Noticee No. 05 stated that he received the SCN dated March 10, 2023 only on October 19, 2023 via email as the address mentioned on the SCN did not belong to him and the correct address is *12/8, Sarva Priya Vihar, New Delhi – 110016*.

- (ii)** The Noticee states that he is a qualified BE Civil Engineer, having experience in Building (Civil) Construction activities of around five decades. During the said tenure, he looked after various small and big projects as an employee of renowned builders i.e. Unitech, Vipul, Pioneer, etc. and does not have any knowledge of finance, accounts and / or other laws, provisions / sectors. The Noticee further states that as per the convenience of the management, the Noticee was posted in different roles i.e. Director, Managing Director, CEO, President, etc. of various companies / units.
- (iii)** The Noticee submits that he had joined Unitech Group in the month of December 2006 and was posted as Managing Director Cum CEO of CIG Realty Investor India Pvt Ltd (A Unitech Promoter Group Company), subsequently known as Unitech Realty Investors (India) P. Ltd on December 21, 2006 and remained posted at the said post till August 31, 2010. Further, after being relieved from the said concern / Promoter Company, the management of Unitech Group posted him as the President of Unitech Limited w.e.f September 01, 2010 until retirement i.e. up until March 31, 2015.
- (iv)** During the tenure i.e. from December 21, 2006 to August 31, 2010, the Noticee looked after the works as a Civil Engineer of Unitech Hospitality Division, Unitech IT Parks in SEZ and Unitech Real Estate Projects at Kolkata and did not indulge in or participate in any of the activities, working and / or investment programmes, etc. of CIG Realty Investors P. Ltd. Further, he did not sign any balance sheets including other financial records / accounts.
- (v)** With respect to the allegations levelled against the said Noticee in the SCN, he states that,

 - (a)** Receipt of all the 139 complaints, non-redressal of the same, non-winding up and non-liquidation of the schemes, non-cooperation with the inspection team, etc. has taken place after the date of his being relieved from the post of Managing Director/ CEO of CIG Realty Investors P. Ltd i.e. August 31, 2010 and accordingly, he cannot be held liable to comment / reply on the said count.
 - (b)** Furthermore, he states that the tenure of any of the funds was not complete during the period of his affiliation with CIG Realty Investors P. Ltd.

- (c) He was not admittedly in the advisory committee of the investment fund of the said company and hence, does not have any knowledge of its functioning and investment plan.
- (d) No scheme was due for maturity / winding up during the tenure / affiliation of the Noticee with the Company.
- (e) As the Noticee was looking after the non-financing activities i.e. Civil Construction of Unitech Group and not at all was the member of the Investment Committee and control of the fund was with key persons of Unitech Group i.e. Mr. Ajay Chandra, Mr. Ramesh Chandra and Mr. Sanjay Chandra, the Noticee submits that he cannot be held liable for any of the investments made by the Company.
20. On the scheduled date of hearing i.e. November 28, 2023, Noticee No. 05 appeared through video conferencing and reiterated the submissions made by him vide his abovementioned reply. With respect to Noticee No. 06 (*Mr. Hitendra Malhotra*), Mr. Anish Gupta, Partner – M/s VKMG & Associates LLP, Practicing Company Secretaries (AR) attended the hearing on the scheduled date and submitted that as Noticee No. 06 had authorized him only on November 22, 2023 further time is required to file a reply to the SCN. In addition, during the hearing, the AR for the Noticee read out written submissions made by Noticee No. 06 to SEBI. Acceding to the request made by the AR, Noticee No. 06 was granted time until December 05, 2023 to file a reply in the matter. Accordingly, the AR for the Noticee No. 06, vide letter dated December 04, 2023, made submissions to allegations levelled against Noticee No. 06 in the SCN, which are summarized as under:
- (i) The English translation of the written submissions in Hindi language which was also read out by the AR during the hearing is reproduced as under:
- “I have received your notice on 18th November, 2023 through speed post. I do not know anything about the CIG Realty Fund. My father is tailor by profession and he is stitching clothes for Mr. Ravindra Nagpal, who is a Chartered Accountant from so many years. He also knows me. He used to give many clients for tailoring work. I used to sign on documents on his advice. He used to send his person at our home for getting signatures on the documents. Mr. Ravindra Nagpal expired on 2nd May, 2021. We went to his office after 2-3 months, we met Mr. Rohit Mehra, we asked what to do now, and which of Company where we were there, he was also not aware about those matters.*

He asked us to meet Mr. R Nagpal w/c/ Manju Nagpal, I talked to Manju Nagpal, she gave mobile no. xxxxxx6766 of CA Damani. I called Mr. Damani, he said he received call from Manju Nagpal and she will send details of all the Companies in Pen Drive. I first time came to know about my appointment as directors in the Company/ies. Then on 24th November, 2021, I send my resignation by speed post to all the Companies. Then we received summons from the ED on 28th June 2022, we were asked to appear on 6th July, 2022, we appeared there and replied to all the questions asked by ED office. I do not know anything other than what I have written above.”

- (ii) The Noticee No. 06 further states that he is incompetent to read, understand or write in English and therefore, when he received the SCN, he was unable to respond to the same within prescribed timeline.
- (iii) It is submitted that the Noticee has never visited office of the company i.e. M/s Unitech Advisors (India) P. Ltd, now known as Auram Asset Management P. Ltd.
- (iv) His name was used as Director of the Company. He was not aware about the activities of the Company and did not receive any communication from the company regarding any Board Meetings / Committee Meetings or AGM /EGM held by the Company. Therefore, the Noticee submits that he cannot be held responsible for any acts, mistakes, non-compliance by the Company and its Management.
- (v) The Noticee states that he has not received any remuneration or any other monetary benefits from the Company.
- (vi) He is not aware of any other directors of the Company with whom he can contact. Further, it is submitted that the Noticee has also given his resignation letter to the company to remove his name from Board of Directors with the help of professional person.

21. I note that, as brought out in the table at para 18 above, the service of SCN and the hearing notice is complete in the case of Noticee Nos. 01, 02, 03 and 04. In case of Noticee No. 03, the hearing notice dated October 30, 2023 was even delivered through the Superintendent of Police, Talaja Central Prison, Mumbai and the proof for the same is available on record before me. Further, in case of hearing notice attempted to be hand delivered at the last known address of Noticee No. 2 (*Mr. Sanjay Chandra*), it is noted that the said notice has been received by Mr. Ramesh Chandra

(Noticee No. 4) and his name and signature along with date of receipt has been mentioned by hand on the same. Therefore, I find that the said Noticees were aware of the present proceedings initiated against them. Considering that despite providing sufficient opportunities to the said Noticees to defend their case and the fact that enough time has lapsed since the date of issuance of the SCN, I am constrained to proceed with passing of the order against the said Noticees on the basis of the material available on record in the matter. In this regard, I find it apposite to draw attention to the observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Sanjay Kumar Tayal & Others Vs. SEBI (Appeal No. 68 of 2013) decided on February 11, 2014* which are as under:

"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..."

22. Without prejudice to the above observation, I now proceed to examine the matter on merits.

CONSIDERATION OF ISSUES AND FINDINGS:

23. I have carefully perused the allegations levelled against the Noticees in the SCN issued, the replies filed by Noticee Nos. 05, 06, 07, 08, 09, 10, 11 and 12 and the material available on record. On perusal of the material available on record, the following issues arise for consideration in the instant case in hand:

Issue No. I: Whether the Noticees have failed to wind up the schemes and return the monies to the investors even after expiry of tenure as per the PPM and thereby, have violated the provisions of Regulation 23(1)(a) of SEBI (VCF) Regulations, 1996?

Issue No. II: Whether the Noticees, by failing to redress the investor grievances, have violated the provisions of SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014?

Issue No. III: Whether the Noticees, by failing to extend co-operation during inspection, have violated the provisions of Regulation 27(1), 27(2) and Regulation 21 of SEBI (VCF) Regulations, 1996?

Issue No. IV: Whether the Noticees, by investing the proceeds of Scheme IV in associate companies, have violated the provisions of Regulation 12(c) of SEBI (VCF) Regulations, 1996?

Issue No. V: Whether the Noticees, by failing to report on a quarterly basis, as prescribed, on venture capital activity on SEBI portal within 7 days from the end of calendar quarter for the quarters ending September 2019, December 2019 and March 2020, have violated the provisions of Regulation 22 of VCF regulations read with SEBI circular ref. SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010?

Issue No. VI: Whether the Noticees, by failing to communicate Names, designation and addresses (including email addresses) of 'Principal Officer' and 'Designated Director', including any changes therein to the Office of the Director-FIU, have violated the provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06 dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019?

Issue No. VII: Whether the Noticees, by failing to capture KYC details of some client in the account opening form as specified, verify / download and maintain the clients' details from the system of the KRA and obtain registration with KRA, have violated the provisions of SEBI circulars No. MIRSD/Cir-23/2011 dated December 02, 2011 and No. MIRSD/Cir-26/2011 December 23, 2011?

Issue No. VIII: If the answers to the above issues are in affirmative, who are responsible for the said violations of the provisions of law by the Fund and what directions should be issued against such Noticees?

24. Before moving forward to address the abovementioned issues, I find it apposite to refer to the provisions of the VCF Regulations and relevant parts of the SEBI Circulars that have been alleged to be violated by the Noticees and relevant to the present proceedings. The said provisions of law are reproduced as under for ready reference:

VCF Regulations, 1996

Minimum investment in a Venture Capital Fund.

11.(1) A venture capital fund may raise monies from any investor whether Indian, foreign or non-resident Indian by way of issue of units.

(2) No venture capital fund set up as a company or any scheme of a venture capital fund set up as a trust shall accept any investment from any investor which is less than five lakh rupees:

Provided that nothing contained in sub-regulation (2) shall apply to investors who are,

—
(a) *employees or the principal officer or directors of the venture capital fund, or directors of the trustee company or trustees where the venture capital fund has been established as a trust;*

(b) *the employees of the fund manager or asset management company;*

(3) *Each scheme launched or fund set up by a venture capital fund shall have firm commitment from the investors for contribution of an amount of at least Rupees five crores before the start of operations by the venture capital fund.*

Investment Conditions and restrictions.

12. *All investment made or to be made by a venture capital fund shall be subject to the following conditions, namely: -*

(a).....

(b) *venture capital fund shall not invest more than 25% corpus of the fund in one venture capital undertaking;*

(ba) *venture capital fund may invest in securities of foreign companies subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the Board from time to time.*

(c) *not invest in the associated companies*

Placement memorandum or subscription agreement.

16(1) *The venture capital fund shall—*

(a) *issue a placement memorandum which shall contain details of the terms and conditions subject to which monies are proposed to be raised from investors; or*

(b) *enter into contribution or subscription agreement with the investors which shall specify the terms and conditions subject to which monies are proposed to be raised.*

Contents of placement memorandum.

17.(1) *The placement memorandum or the subscription agreement with investors referred to in sub-regulation (1) of regulation 16 shall contain the following, namely:—*

(a) *details of the trustees or trustee company and the directors or chief executives of the venture capital fund;*

(b) (i) *the proposed corpus of the fund and the minimum amount to be raised for the fund to be operational;*

(ii) *the minimum amount to be raised for each scheme and the provision for refund of monies to investor in the event of non-receipt of minimum amount;*

(c) *details of entitlements on the units of venture capital fund for which subscription is being sought;*

(d) *tax implications that are likely to apply to investors;*

(e) *manner of subscription to the units of the venture capital fund;*

(f) *the period of maturity, if any, of the fund;*

(g) *the manner, if any, in which the fund shall be wound up;*

- (h) the manner in which the benefits accruing to investors in the units of the trust are to be distributed;
- (i) details of the fund manager or asset management company if any, and the fees to be paid to such manager;
- (j) the details about performance of the fund, if any, managed by the Fund Manager;
- (k) investment strategy of the fund;
- (l) any other information specified by the Board.

Power to call information.

21.(1) The Board may at any time call for any information from a venture capital fund with respect to any matter relating to its activity as a venture capital fund.

(2) Where any information is called for under sub-regulation (1) it shall be furnished within the time specified by the Board.

Submission of reports to the Board.

22. The Board may at any time call upon the venture capital fund to file such reports as the Board may desire with regard to the activities carried on by the venture capital fund.

SEBI circular number SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010
VCFs are required to upload quarterly report on venture capital activity on SEBI portal within 7 days from the end of each calendar quarter. Physical copies of the report are not required to be submitted.

Winding – up.

23. (1) A scheme of a venture capital fund set up as a trust shall be wound up,

- (a)** when the period of the scheme, if any, mentioned in the placement memorandum is over;
- (b)** if it is the opinion of the trustees or the trustee company, as the case may be, that the scheme shall be wound up in the interests of investors in the units;
- (c)** if seventy-five per cent of the investors in the scheme pass a resolution at a meeting of unit holders that the scheme be wound up; or
- (d)** if the Board so directs in the interests of investors.

SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014:

Para 9 : All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

Para 13 : Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be

treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

Para 14 : The Board of Directors of the listed company or the Board of Directors/ Proprietor/ Partner of the registered intermediary shall be responsible for ensuring compliance with the provisions of this Circular.

SEBI Circular No. MIRSD/Cir-23/2011 dated December 02, 2011

Clause 3 : “An intermediary shall perform the initial KYC of its clients and upload the details on the system of the KRA. When the client approaches another intermediary, the intermediary can verify and download the client’s details from the system of the KRA. As a result, once the client has done KYC with a SEBI registered intermediary, he need not undergo the same process again with another intermediary.”

SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011

Clause 1(iii) :

“For existing clients, the KYC data may be uploaded by the intermediary provided they are in conformity with details sought in the uniform KYC form prescribed vide SEBI circular no. MIRSD/SE/Cir-21/2011 dated October 05, 2011. While uploading these clients’ data the intermediary shall ensure that there is no duplication of data in the KRA system”.

Clause 3(ii):

“The intermediary shall ensure that the details like name of the person doing IPV, his designation, organization with his signatures and date are recorded on the KYC form at the time of IPV.”

Obligation of venture capital fund on inspection or investigation.

27. (1) *It shall be the duty of every officer of the Venture Capital Fund in respect of whom an inspection or investigation has been ordered under regulation 25 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such Venture Capital Fund including Fund Manager or asset management company, if any, to produce to the Investigating or Inspecting Officer such books, accounts and other documents in his custody or control and furnish him with such statements and information as the said Officer may require for the purposes of the investigation or inspection.*

(2) *It shall be the duty of every officer of the Venture Capital Fund and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the Venture Capital Fund to give to the Inspecting or Investigating Officer all such assistance and shall extend all such co-operation as may be required in connection with the inspection or investigations and shall furnish such information sought by the Inspecting or Investigating Officer in connection with the inspection or investigation.*

25. I note that VCF Regulations have been repealed by AIF Regulations from May 21, 2012. In this regard, Regulation 39 of AIF Regulations provides as under:

“Repeal and saving.

39.(1) *The Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 hereby shall stand repealed.*

(2) *Notwithstanding such repeal:*

(a) *Anything done or any action taken or purported to have been done or taken, including suspension or cancellation of certificate of registration, any inquiry or investigation commenced or show cause notice issued under the repealed regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

(b) *All venture capital funds or schemes launched by such venture capital funds prior to date of notification of these regulations shall continue to be governed by provisions of Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 till the fund or Scheme is wound up:*

Provided that such funds shall not launch any new Scheme after notification of these regulations;

(c) *Any application made to the Board under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 and pending before it shall be deemed to have been made under the corresponding provisions of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.....”*

26. In this regard it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of *Sahara Real Estate Corporation and Others Vs. SEBI & Ors.* (2013) 1 SCC 1, wherein, it was held that:

“103. Repeal and Saving Clause under ICDR 2009 would clearly indicate that the violation under DIP Guidelines was a continuing one. Regulation 111 of ICDR reads as follows:

“Repeal and Savings

111. (1) *On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.*

(2) *Notwithstanding such rescission;*

(a) *anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

(b) any offer documents, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

104. Regulation 111(1) of ICDR 2009 rescinded the DIP Guidelines from 26.8.2009 and clause (2) of Regulation 111 contains the saving clause. The expression “anything done” or “any action taken” under Regulation 111(1) are of wide import and would take anything done by the company omitted to be done which they legally ought to have done. Non-performance of statutory obligations purposely or otherwise may also fall within the above mentioned expressions. Failure to take any action by SEBI under DIP Guidelines, in spite of the fact that Saharas did not discharge their statutory obligation, would not be a ground to contend that 2009 Regulations would not apply as also the saving clause. 2009 Regulations, in my view, will apply to all companies whether listed or unlisted. Further, in the instant case, SEBI was not informed of the issuance of securities by the Saharas while the DIP Guidelines were in force and Saharas continued to mobilize funds from the public which was nothing but continued violation which started when the DIP Guidelines were in force and also when they were replaced by 2009 Regulations. Further, it may also be recalled that any solicitation for subscription from public can be regulated only after complying with the requirements stipulated by SEBI, in fact, an amendment was made to Schedule II of the Companies Act vide notification No. GSR 650(3) dated 17.9.2002 by inserting a declaration which has to be signed by the directors of the company filing the prospectus, which reads as under:

“That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules made there-under or guidelines issued, as the case may be.”

27. I find that ratio of the aforesaid judgment of Hon'ble Supreme Court in Sahara case (supra) with respect to interpretation of repeal and saving clause of ICDR 2009 squarely applies to the interpretation of Regulation 39 of AIF Regulations. Therefore, violation of VCF Regulations can be pursued under the corresponding provisions of AIF Regulations.

28. Now, I would be proceeding to deal with each of the issues at length.

Issue No. I: Whether the Noticees have failed to wind up the schemes and return the monies to the investors even after expiry of tenure as per the PPM and thereby have violated the provisions of Regulation 23(1)(a) read with Regulation 16 of SEBI (VCF) Regulations, 1996?

29. The SCN has alleged that the Fund has failed to wind up all its three Schemes upon expiry of the respective terms. Regulation 17 of VCF Regulations lays down the contents of memorandum of placement or PPM. Regulation 17(1)(f) provides that the period of maturity, if any, of the fund shall be disclosed in the PPM. I note that in the present case, the tenures for the three Schemes i.e. I, II and IV are mentioned in the respective PPM/s and the clauses relating to the tenure of the said schemes specifically state about the date of closing and the extension periods, if any. Upon perusal of the PPMs, I note that with regard to Schemes I & II, the tenure clause/s specifically stated that the said schemes shall operate for a period of 7 (seven) years from the date of final closing and may be extended for two one (1) year terms by the trustees upon the recommendation of the Investment Advisor, unless wound up or dissolved earlier as discussed in the placement memorandum. With respect to Scheme – IV, the tenure clause in the PPM stated that the said scheme shall operate for a period of 6 (six) years (plus two periods of one year each, if extended), unless wound up or dissolved earlier as discussed in the PPM and the Fund Agreements. I find from paragraph no. 4 above that Schemes I & II which as per their respective PPMs were to be extended for two one (1) year terms by the trustees were extended for the third time for a period of 3 years on the basis of response received from the investors, wherein 75% investors approved extension upto October 05, 2018 in case of Scheme-I and September 27, 2019 in case of Scheme-II. The same was not in accordance with the PPM. Further, with respect to Scheme IV of the Fund, I note that as per the PPM, the tenure of the said scheme expired on September 25, 2017 i.e. after two extensions of one year each.

30. I note that in terms of Regulation 23(1)(a) of the VCF Regulations, a scheme has to be compulsorily wound up, when the period of the scheme as mentioned in the PPM comes to an end. The schemes cannot be extended beyond the time period mentioned in the placement memorandum even if any extension is approved by the resolution of seventy-five percent of the investors in the scheme. With respect to the

procedural requirements, Regulation 23(3) of the VCF Regulations provide that the trustee of the VCF shall intimate SEBI and the investors of the circumstances leading to the winding up of the Fund or scheme under sub-Regulation (1) of Regulation 23 of the VCF Regulations. Further, Regulation 24(2) of VCF Regulations provides that within three months from the date of intimation of the intention to wind up the scheme under Regulation 23(3) of VCF Regulations, the assets of the scheme shall be liquidated and the proceeds accruing to investors shall be distributed. Thus, on a conjoint reading of the aforesaid provisions of VCF Regulations, it is clear that the Scheme of the Fund was required to be wound up after the expiry of the term within three months from the date of intimation by the trustee to SEBI and the investors. As found above, the terms of Schemes I, II and IV ended on October 05, 2015, September 27, 2016 and September 25, 2017, respectively. However, I find that the Fund has not wound up the said schemes and liquidated the assets of the schemes till date.

- 31.** I find that during the inspection, it was observed that CIGRF had addressed letters to the complainants, in response to their complaints filed on SCORES, stating therein that it had issued letters to the investors seeking their consent on whether *in-specie* distribution should be made or the investments in projects be disposed. These communications seeking consent from the investors were made vide letter dated October 05, 2015 for Scheme –I, vide letter dated July 29, 2016 for Scheme – II and vide letter dated December 13, 2017 for Scheme- IV. Further, Noticee Nos. 08 and 09 have stated that CIGRF, in compliance with Regulation 16 of the VCF Regulations, had issued the PPM, entered into the Contribution Agreement (CA) with every investor and sample copy of the CA and PPM was filed with SEBI. In order to deal with the contention raised by the said Noticees, it is important to understand the scheme of VCF Regulations. As per VCF Regulations, a VCF may receive investments only through private placement of its units. For this purpose, the VCF, under Regulation 16, is obligated to issue a placement memorandum; or enter into contribution or subscription agreement with the investors. Such PPM or the contribution/subscription agreement, as the case may be, should specify the terms and condition subject to which the monies are proposed to be raised by the VCF from investors. Thus, the terms and conditions for raising money from the investors are required to be mentioned in PPM or the contribution/subscription agreement, as the case may be.

Regulation 16(1) relates to the terms and conditions pertaining to raising of money and does not refer to tenure or extension of tenure of the scheme. The period of maturity, as already mentioned in paragraph no. 29 above, is specifically stipulated under Regulation 17.

32. Further, I find that the use of the word “*namely*” in Regulation 17(1) indicates that the items listed under the said regulation must be mentioned in PPM or contribution / subscription agreement. This word indicates what is to be included specifically and does not intend to include something that is not listed therein under the VCF Regulations. This proposition is further substantiated by the residuary clause listed in Regulation 17(1)(l) which provides that any other information, than those listed, can only be specified in the PPM by the Board. Thus, on harmonious construction of provisions of Regulation 16 and 17, it is noted that both complement each other without diluting the effect of the provisions under Regulation 17. Therefore, if the VCF has contemplated the period of maturity of its scheme, it must be mentioned in the PPM or contribution / subscription agreement, as the case may be. Regulation 23(1)(a) provides expiry of the period of the scheme as one of the ground of winding up of the scheme.

33. Before moving to the contentions of the Noticees on the main issue, it is felt appropriate to deal with the preliminary objection raised by Noticee Nos. 08 and 09. I note that the said Noticees have contended that the Adjudicating Officer, SEBI on the same cause of action, has already passed an adjudication order dated March 29, 2019 against them and therefore, the current proceedings would amount to ‘*double jeopardy*’. I note that the principle of ‘*double jeopardy*’ flows from the fundamental right enshrined in Article 20(2) of the Constitution of India. I note that it is judicially settled position that the said principle applies in criminal proceedings and does not apply to civil proceedings and / or quasi- judicial proceedings. Here, I would like to refer to the case of *SEBI Vs. Cabot International Capital Corporation (2004) to Comp L J* wherein The Hon'ble High Court of Bombay held that, “*the adjudication for imposition of penalty by Adjudication Officer, after due inquiry, is neither a criminal nor a quasi criminal proceeding. The penalty leviable under this Chapter or under these sections, is penalty in cases of default or failure of statutory obligation or in other words, breach*

of civil obligation". Further, reliance is also placed in the case of *Shriram Mutual Fund & Anr (Appeal (Civil) 9523-9524 of 2003)* in which the Hon'ble Supreme Court has held that adjudication proceedings under the SEBI Act, 1992 are civil proceedings. Therefore, I note that as the present proceedings are also civil proceedings, the principle of '*double jeopardy*' does not apply to the present proceedings initiated under Sections 11(1) and 11B of the SEBI Act, 1992 and the earlier adjudication proceedings that were settled by the order dated March 29, 2019, do not bar the civil actions by way of directions under Sections 11 and 11B of the SEBI Act, 1992.

- 34.** Furthermore, it is pertinent to mention here that SEBI is empowered to initiate penalty proceedings under Chapter VI A of the SEBI Act, 1992 and also issue directions under Section 11B of the SEBI Act, 1992 against any of the violations of the provisions of the SEBI Act, 1992 and the regulations framed thereunder for the same cause of action in the interests of investors and securities market; the said powers being independent of each other. Here, I would like to place reliance on the observations of the Hon'ble SAT in the matter of *Sunita Gupta Vs. SEBI in Appeal No. 193 of 2016 decided on April 21, 2017* which read as under:

"Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted."

- 35.** Notwithstanding the same, it is pertinent to mention here that despite passing of an Adjudication Order against Noticee Nos. 01, 08, 09, 10, 11 and 12, Schemes I and II have still not been wound up and liquidated so as to distribute the proceeds to the investors / contributors. Therefore, the non-compliance being a continuing violation of the provisions of VCF Regulations, the present proceedings initiated against the said Noticees under Sections 11 and 11B of the SEBI Act, 1992 cannot be faulted.

36. Now, coming to the contentions raised by Noticee Nos. 08 and 09 on the main issue in hand, it is admittedly noted that, the tenure of the Schemes I and II, as mentioned in PPM / CA was 7 years from the date of final closing and could be extended for two 1 (one) year terms by the Trustees upon recommendation of the Investment Advisor. Accordingly, the period of maturity of the respective schemes i.e. Schemes I & II was maximum of 9 years from the date of final closing. This term was in compliance with the provisions of Regulation 16 and 17 of the VCF Regulations. However, as found hereinabove, the VCF Regulations do not permit change of the term already mentioned in PPM / CA. In this case, the PPM specifically defines that the “term” means *“the life of CIG Realty Fund-1 which is 7 years and which can be extended two 1 year periods by the Trustees, on the recommendation of the Investor Advisor.”* Thus, the term of the scheme has been defined as a ‘fixed term’ with maximum two 1 year extensions. Further, the PPM clearly permits winding up or dissolution of the Schemes earlier than the period mentioned in PPM. However, it does not provide anywhere for the postponement of winding up on expiry of period of the maturity. The PPM also provides that the CA to which any investor is party may be amended *only by the written consent of the Trustees in consultation with the Investment Advisor and of the investors representing 75% of the capital contribution of the Fund.* However, this clause cannot dilute the requirements laid down under Regulations 16 and 17 of the VCF Regulations so as to postpone the winding up of the schemes on expiry of expressed / disclosed period of maturity. Notwithstanding the same, here, it is pertinent to note that the Hon’ble SAT while dealing with the appeals filed against the Adjudication Order passed by the Adjudicating Officer SEBI dated March 28, 2019, vide its order dated May 04, 2021, while dealing with the issue on extension of schemes by 75% consent of the investors, has observed and found as under:

“20. Assuming for a moment that the appellants had the power to amend the Contribution Agreement and extend the period of term of the scheme, the same was required to be done in accordance with the provision relating to the amendment to the fund agreements as provided under the Private Placement Memorandum. The said provision relating to amendments to the fund agreement clearly provides that there has to be written consent from the contributors representing 75% of the capital contribution of the CIG Realty Fund. We find from the letter dated September 14, 2015 written by the investment advisor to SEBI that 75% of the contributors had consented to the extension of the scheme for three years. This fact as depicted by the letter dated September 14, 2015 is patently erroneous and against the terms contained in the

amendments to the fund agreement under the Private Placement Memorandum. This letter dated September 14, 2015 indicates that total number of contributors are 208 and only 74 contributors gave the response which is less than 50% and cannot be 75%. However, the percentage of the contributors is not the required norm under the Private Placement Memorandum for amending the fund agreement. What is essential is that the resolution is required to be passed by 75% of the capital contributors. The total capital contribution in the instant case was Rs. 350 Crore. 75% of the total contribution would be Rs. 262.50 Crore. The letter dated September 14, 2015 indicates that contributors who had given their consent had a total capital contribution of Rs. 120.515 Crore which is far less than the prescribed Rs. 262.50 Crore.

21. Thus, in our view, even if the appellants had the power to extend the term of the scheme by amending the Contribution Agreement, the same was not done in accordance with the conditions contained in the Private Placement Memorandum which required that this amendment could be passed only by 75% of the capital contribution and not by 75% of the contributors. Since the appellants did not pass the amendment in accordance with the provisions stipulated in the Private Placement Memorandum, the term of the scheme was illegally extended.”

- 37.** In view of the observations and findings of the Hon'ble SAT, the claim of the Noticees that the terms of Schemes I & II were extended by further 3 years as per the amendment made in the CA with 75% consent of the investors / contributors has no merit and is incorrect as there was no written consent from 75% of the 'capital contributors' of the Fund. Further, it is pertinent to note that the charge against the Noticees is that of non-winding up of Schemes I, II & IV and non-liquidation of the assets of the fund and further to have failed to distribute the monies to the contributors / unit holders and not that of illegally extending the tenure of the Schemes. Therefore, the submissions of the Noticees with regard to extension of the Schemes is found to be irrelevant to the present proceedings. Further, I find that no documentary evidence has been brought on record to show that the schemes were wound up on the expiry of their respective terms as per the PPMs and that the assets of the fund were liquidated so as to distribute the proceeds to the investors of the said schemes. Also, the filing of complaints by investors on the SCORES platform alleging non-winding up of the Schemes and non-distribution of proceeds to the contributors further substantiates the charge levelled against the Noticees and the fact that the contributors were not in favour of extending the tenure of the Schemes I & II. In view

of the same, the contentions of Noticee Nos. 08 and 09 are without any merit and therefore, cannot be accepted.

- 38.** Noticee Nos. 10, 11 and 12, i.e. the present Trustees of CIGRF have submitted that the decision to wind up the scheme was taken in the Board Meeting held on March 09, 2018. Accordingly, the said Noticees were advised to bring on record the resolution passed for winding up of the schemes dated March 09, 2018. I note that vide their additional reply dated August 29, 2023, the Noticees have submitted Board resolution dated October 05, 2018 approving in-specie distribution of assets to the contributors of CIG Realty Fund – I invested in SPV(s) wherein it was resolved that *“the consent & approval of the Trustees, be and is hereby granted for the distribution of assets in specie to the contributors of the Fund as the tenure of the Fund is expired. The assets of the Fund be distributed amongst all the contributors in proportion to their capital investments with all Contributors getting rights on all the assets in proportion to their capital investments. The Fund assets comprise of the investment in equity of 13 Venture Capital Undertakings which are private limited / wholly owned companies of Fund incorporated in India”*. However, no evidence has been brought on record by the said Noticees showing execution of the said resolution by them / Investment Advisor. Further, Noticee Nos. 10, 11 and 12 have also submitted a Board resolution dated October 11, 2018 for ‘Disinvestment by sale of the land parcel at Badshahpur, Haryana’ proposing area to be sold as 5.00 Acres and the proposed sale value to be Rs. 6.35 Crores per acre and the same was approved by the trustees. In addition, proposal was approved to proceed with the Bid process management followed by disposing of ‘59.97 Acres’ land at Kochi Veegaland, Kerala for CIG Realty Fund Scheme-I and to successfully complete the transaction by trustees approving appointment of Anarock Property Consultants P. Ltd (formerly known as Jones Lang Lasalle Residential Pvt. Ltd) for disposal of the said 59.97 Acres land parcel. Further, proposals to dispose of 94.06 Acres land located at Sriperumbuder, Tamil Nadu and 13.955 Acres land located at Sipcot, Chennai by appointing Anarock Property Consultants P. Ltd has also been approved in the said meeting. However, it is reiterated that the case before me is that of non-winding up of the schemes upon expiry of their respective terms as per the PPMs and non-liquidation of assets of the funds in order to distribute the proceeds to the investors / contributors and not that of

delay in winding up of the schemes. Further, even if the said Board resolutions are to be considered, I find that there has been no documentary evidence brought on record by the said Trustees i.e. Noticee Nos. 10, 11 and 12 showing proof of sale and distribution of proceeds to the investors / contributors. In view of the same, I find no reason to rely on the said resolutions without having anything on record winding up of the schemes upon expiry of their respective tenures and liquidation of the assets and further, to show execution of sale of land parcels and distribution of proceeds to the investors of the scheme I. Also, no evidence is brought on record for any resolutions passed for winding up and liquidation of assets for Schemes II upon expiry of its term as per the PPM.

39. Another Board resolution, which has been provided by Noticee Nos. 10, 11 and 12, is dated June 30, 2018 for approval for *in-specie* distribution of assets to the contributors of CIG Realty Fund – IV invested in SPV(s). However, again, the said Noticees have not provided any documentary evidence showing execution of the same. I find from the material available on record and in the absence of evidence to prove otherwise that the Fund has failed to wind up Scheme IV upon its expiry as per the term specified in the PPM. Further, no evidence has been brought on record by Noticee Nos. 10, 11 and 12 showing execution of the Board Resolution dated June 30, 2018. Therefore, the said documents cannot be taken on record and considered for the charges levelled against the Noticees in the present proceedings of not winding up the schemes upon expiry of the Funds and non-liquidation of funds.

40. In view of the foregoing, I find that Scheme I, II & IV did expire on October 05, 2015, September 27, 2016 and September 25, 2017, respectively. However, the Fund did not wind up the said schemes and further, has failed to liquidate them and distribute the proceeds to the contributors / investors till date. Therefore, in view of the express provisions of Regulation 23(1)(a) of the VCF Regulations, I conclude that the Fund has violated the provisions of Regulation 23(1)(a) of the VCF Regulations by not winding up the schemes after their expiry, extending the tenure of Scheme I & II not in compliance with the term of the schemes mentioned in their respective PPM and failed to liquidate and distribute the proceeds to the investors / contributors of the said Schemes.

Issue No. II: Whether the Noticees, by failing to redress the investor grievances, have violated the provisions of SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014?

41. It has been alleged in the SCN that CIGRF has failed to redress investor grievances on SCORES, which were already communicated to the entity on SCORES. I find from the inspection report that on examining the SCORES database, it was observed that 37 complaints were received against the Fund in respect of all the three schemes during the relevant period till August 31, 2021. Most of the complaints pertained to non-liquidation / non-winding up of the fund upon expiry of the tenure / term as specified in the PPM, etc. As already found above, the tenure of the Fund has already expired and the fund had failed to wind up and liquidate the funds. Therefore, even though the fund has replied to some of the complainants on the SCORES platform about the steps taken by it for winding up / liquidating the schemes, the same cannot be taken into consideration in the facts of the present case. I further find that since CIGRF failed to liquidate the schemes, most of the complaints received in SCORES were closed by SEBI stating that the tenure of the fund is over and it is yet to be liquidated and therefore, SEBI would consider inspection into the books of the Fund and if deemed fit, enforcement action would be taken against the Fund. It is worth noting that the current proceeding has been initiated based on the inspection conducted into the books of the Fund based on the complaints received on the SCORES platform.

42. In terms of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 all SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. Further, all the SEBI registered intermediaries are under an obligation to update the AR along with supporting documents, if any, electronically in SCORES. The said circular further specifically clarifies that the action taken by the SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded on SCORES and consequently, the complaints will be treated as pending. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a SEBI registered intermediary with respect to a complaint will not mean that the

complaint is not pending against them. Failure by SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

43. I find that in the instant case in hand, it is established beyond doubt and admittedly, none of the three schemes have been wound up and liquidated in order to distribute the monies / proceeds to the investors / contributors of the Fund till date. Therefore, considering that there is no repayment of monies and the investors are still being aggrieved, the action taken by the Fund with respect to complaints received in SCORES would constitute as non-redressal of investor grievances and therefore, I conclude that the Fund is in violation of provisions of SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014. It is even worth mentioning here that during the pendency of the current proceedings, SEBI is in receipt of certain letters from investors complaining against the Fund and placing on record how the fund, by not liquidating the assets, has failed to repay the monies invested by them / complainants in the Schemes. The same further substantiates the charge levelled against the Fund of non-winding up of schemes, non-liquidation of funds and further, non-redressal of investor complaints.

Issue No. III: Whether the Noticees, by failing to extend co-operation during inspection, have violated the provisions of Regulation 27(1), 27(2) and Regulation 21 of SEBI (VCF) Regulations, 1996?

44. I note that CIGRF has not responded to the inspection notice sent to its last known address with respect to information related to Schemes I & II. SEBI had even sent reminders by emails dated August 02, 2021, August 06, 2021 and August 13, 2021 however, no information was received from the Fund. Further, it is noted that CIGRF has even failed to reply to the observations made in the inspection report pertaining to all the schemes, which was forwarded to it vide SEBI letter dated September 09, 2021. I note that the receipt of the inspection report on September 15, 2021 was confirmed by the Advocate of the Fund vide his email dated September 25, 2021, wherein it was informed that,

“...the Enforcement Directorate (ED) conducted raids and searches on 29.07.2021 and 30.07.2021 at L1 & L2, 3rd floor, Green Park Extension New Delhi-110016 in

connection with the Unitech developers case. All the records, books of account, digital data and other documents pertaining to the CIG Reality Fund (Scheme 1 and 2) were duly seized and taken over by the officials of Enforcement Directorate. The same is still retained with the Enforcement Directorate and my Client is taking appropriate steps as available in law for seeking copies of the said records, books of account, digital data and other documents from the Enforcement Directorate.”

“That on instructions of my Client, I would like to inform that the documents and information being sought as per the Inspection Questionnaire are therefore not in possession or knowledge of my Client. Therefore, my Client does not have any access to the information sought by you. However, my Client undertakes that he will furnish the requisite information as soon as the Enforcement Directorate provides them a copy of the seized records and data.”

45. Thereafter, I note that reminder letters dated October 05, 2021 and November 02, 2021 were sent to CIGRF to file its reply, if any, on the observations made in the inspection report. However, no response was received from the Fund. I note that Regulation 27 of the VCF Regulations states the obligation of VCF on inspection or investigation. In terms of sub-regulation (1) of the said regulation, it shall be the duty of every officer of the VCF in respect of whom an inspection or investigation has been ordered under regulation 25 and any other associate person who is in possession of the relevant information pertaining to the conduct and affairs of such VCF *including* the Fund Manager or the asset management company, if any, to produce to the Investigating or Inspecting Officer such books, accounts and other documents in his custody or control and furnish him with such statements and information as the said Officer may require for the purposes of the investigation or inspection. Further, Regulation 27(2) of the VCF Regulations states that it shall be the duty of every officer of the VCF and any other associate person who is in possession of relevant information pertaining to the conduct and affairs of the VCF to give to the Inspecting or Investigating Officer all such assistance and shall extend all such co-operation as may be required in connection with the inspection or investigations and shall furnish such information sought by the Inspecting or Investigating Officer in connection with the inspection or investigation.

46. Considering that despite sending reminders to the Fund, neither any reply was received from the VCF on the observations of the inspection report nor has the Advocate, who has responded on receipt of the inspection report, provided a copy of

seizure memo from Enforcement Directorate, indicating that the information with regard to its schemes had been seized by them and / or the steps taken by the Fund to seek copies of relevant documents from Enforcement Directorate, I do not find any hesitation to conclude that the Fund by failing to provide information did not extend cooperation during the inspection carried out by SEBI and thereby there has been a violation of the provisions of Regulation 27(1), 27(2) and Regulation 21 of SEBI (VCF) Regulations, 1996 by the Fund.

Issue No. IV: Whether the Noticees, by investing the proceeds of Scheme IV in associate companies, have violated the provisions of Regulation 12(c) of SEBI (VCF) Regulations, 1996?

47. I note from the SCN that CIGRF has invested the proceeds of Scheme IV in its associate companies, details of which were provided by the Fund itself, vide its response dated October 27, 2020 and the same are as under:

Name of the Investee Company	Amount invested (in Rs. Cr)	Amount of investment as a % of the total investible funds (as mentioned in the inspection report)
CIG Developers Pvt. Ltd.	14.30	25.07%
CIG Estate Pvt. Ltd.	14.20	24.89%
CIG Real Estate Developers Pvt. Ltd.	14.27	25.02%
CIG Realtors Pvt. Ltd.	14.26	25%

48. Therefore, it is alleged in the SCN that the Fund has violated the provisions of Regulation 12(c) of the VCF Regulations by investing the corpus of Scheme – IV in its associate companies. I note that Regulation 12 of the VCF Regulations states the investment conditions and restrictions for a VCF. Regulation 12(c) of the said provision specifically prohibits a VCF to invest the proceeds collected by the Fund in associate companies. I find from the table above that the Fund has invested the monies collected under Scheme IV in its associate companies namely, CIG Developers Pvt. Ltd. (25.07%), CIG Estate Pvt. Ltd (24.89%), CIG Real Estate Developers Pvt. Ltd (25.02%) and CIG Realtors Pvt. Ltd (25.00%), which clearly is in violation of the provisions of Regulation 12(c) of the VCF Regulations. As mentioned above, the investment details of the proceeds of Scheme IV have been provided by the fund itself vide its reply dated October 27, 2020. In view of the same, I find that it is established

beyond doubt that the Fund, by investing the corpus of Scheme IV in its associate companies has violated the provisions of Regulation 12(c) of the VCF Regulations.

Issue No. V: Whether the Noticees, by failing to report on a quarterly basis, as prescribed, on venture capital activity on SEBI portal within 7 days from the end of calendar quarter for the quarters ending September 2019, December 2019 and March 2020, have violated the provisions of Regulation 22 of VCF regulations read with SEBI circular ref. SEBI/IMD/DOF-1/VCF/CIR-1/2010 dated January 11, 2010?

Issue No. VI: Whether the Noticees, by failing to communicate Names, designation and addresses (including email addresses) of 'Principal Officer' and 'Designated Director', including any changes therein to the Office of the Director-FIU, have violated the provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06 dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019?

Issue No. VII: Whether the Noticees, by failing to capture KYC details of some client in the account opening form as specified, verify / download and maintain the clients' details from the system of the KRA and obtain registration with KRA, have violated the provisions of SEBI circulars No. MIRSD/Cir-23/2011 dated December 02, 2011 and No. MIRSD/Cir-26/2011 December 23, 2011?

49. Now, I will be dealing with Issue Nos. V, VI and VII together as the said issues pertain to procedural lapses in complying with the provisions of the VCF Regulations and the Circulars issued thereunder by the Fund.

50. The SCN alleges that the fund had failed to report on a quarterly basis, as prescribed, on the venture capital activity on SEBI portal within 7 days from the end of calendar quarter for the quarters ending September 2019, December 2019 and March 2020. Further, it has been alleged that the fund had failed to communicate Names, Designation and addresses (including email addresses) of 'Principal Officer' and 'Designated Director' including any changes therein to the Office of Director – FIU. In addition to these, the fund had even failed to capture the KYC details of certain clients in the account opening form as specified, verify / download and maintain the clients' details from the system of KRA and obtain registration with KRA.

51. I note that in terms of Regulation 22 of the VCF Regulations, the Board may at any time call upon the venture capital fund to file such reports with regard to the activities carried out by the VCF as the Board may desire. Further, SEBI Circular dated January 11, 2010 specifically states that the report on venture capital activity of the VCF is to be uploaded online on SEBI portal within 7 days from the end of each calendar quarter and that physical copies of the said reports are not required to be submitted. The said SEBI Circular thus, clarifies the format for quarterly report on venture capital activity, the manner of submissions and the timeline within which the said reports are to be submitted to SEBI. I note that in the present case in hand, the Noticees have not contested the said allegations regarding failure to upload quarterly reports within the prescribed timelines. I find from the material available on record that the Fund has failed to report on a quarterly basis on the venture capital activity on SEBI portal within 7 days from the end of calendar quarter for the quarters ending September 2019, December 2019 and March 2020 thereby violating provisions of Regulation 22 read with SEBI Circular dated January 11, 2010.

52. I further note that SEBI Circular dated January 18, 2006 prescribes Guidelines on Anti Money Laundering Standards. It states that as per the provisions of the Prevention of Money Laundering Act, 2002 (PMLA), every banking company, financial institution (which includes chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company) and intermediary (which includes a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992) shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules notified under the PMLA. Further, all intermediaries are specifically advised to designate an officer as 'Principal Officer' who would be responsible for ensuring compliance of the provisions of the PMLA. Names, designation and addresses (including e-mail addresses) of 'Principal Officer' shall also be intimated to the Office of the Director-FIU.

- 53.** Furthermore, SEBI Circular dated March 20, 2006 prescribes that all intermediaries shall put in place a system of maintaining proper record of transactions as specified under the Rules framed under the PMLA and also, requires all the intermediaries who have not submitted details of their '*Principal Officer*' to FIU-IND to submit the same as required by the SEBI Circular dated January 18, 2006. In the present proceedings, I find that the Noticees have neither responded to the said allegations nor has the Fund made any submissions on any of the observations made in the inspection report. In view of the same, I conclude that the Fund by failing to communicate Name/s, Designation and addresses (including email addresses) of '*Principal Officer*' and '*Designated Director*' including any changes therein to the Office of Director – FIU is in violation of the provisions of SEBI Circulars dated ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06 dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.
- 54.** I find that in terms of SEBI Circular dated December 02, 2011 issued to all the SEBI registered intermediaries on the SEBI (KYC Registration Agency) Regulations, 2011, while referring to the simplified account opening process for investors issued by SEBI vide SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 and the guidelines for uniform KYC requirements for investors while opening accounts with any intermediary in securities market issued vide SEBI Circular No. MIRSD/SE/Cir-21/2011 dated October 05, 2011, prescribes that an intermediary shall perform the initial KYC of its clients and upload the details on the system of the KRA. When the client approaches another intermediary, the intermediary can verify and download the client's details from the system of the KRA. As a result, once the client has done KYC with a SEBI registered intermediary, he need not undergo the same process again with another intermediary. In view of the same, SEBI formulated the KYC Registration Agency (KRA) Regulations, 2011 covering the registration of KRAs, functions and responsibilities of the KRAs and intermediaries, code of conduct, data security, etc. Thereafter, SEBI, vide Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 has prescribed guidelines in pursuance of the SEBI KYC Registration Agencies Regulations, 2011 and for In-person Verification (IPV). In terms of the said Circular the intermediaries are under an obligation to upload the KYC data for the existing clients provided they are in conformity with the details sought in the uniform KYC form

prescribed vide SEBI Circular No. MIRSD/SE/Cir-21/2011 dated October 05, 2011. Further while uploading the existing clients' data, the intermediary shall ensure that there is no duplication of data in the KRA system.

55. I find from the inspection report and the annexures thereto that the Fund had not captured the KYC details of certain clients in the account opening form as specified, verified / downloaded and maintained the clients' details from the system of KRA and failed to obtain registration with KRA. The Noticees have neither made any contentions on the said allegations nor has the Fund made any submissions on any of the observations made in the inspection report. The Fund is, therefore, in violation of the provisions of SEBI Circulars dated December 02, 2011 and December 23, 2011.

Issue No. VIII: If the answers to the above issues are in affirmative, who are responsible for the said violations of the provisions of law by the Fund and what directions should be issued against such Noticees?

Role and liability of the Noticees for the violations by the Fund:

56. Before dealing with the role of the each of the Noticees, it would be appropriate to give a brief description of each of them in the context of the Fund. As mentioned in the preceding paragraph nos. 3 to 9 above, I note that CIGRF is set up in the nature of Trust by way of a trust deed dated August 11, 2005 and is registered with SEBI as a VCF on December 02, 2005 bearing SEBI Registration No. IN/VCF/05-06/075. The settler of the fund is Mayfair Capital Private Limited, which was also one of the sponsor of the fund. Noticee No. 01 is the Investment Advisor / Fund Manager to the Fund. The name of investment advisor has been changed to Auram Asset Management Pvt Ltd (*Formerly Unitech Advisors (India) Pvt Ltd. / Unitech Realty Investors (India) Pvt. Ltd.*) from November 19, 2020. The directors of the Investment Advisor were / are Noticee Nos. 02 (*Mr. Ajay Chandra*), Noticee No. 03 (*Mr. Sanjay Chandra*), 04 (*Mr. Ramesh Chandra- Chairman of Unitech Limited and Director of Noticee No. 01*), 05 (*Mr. Moti S Masand – Managing Director & CEO*), 06 (*Mr. Hitendra Malhotra*) and 07 (*Mr. Deepak Bajaj – Director, Projects & Investments of Unitech Realty Investors (India) Ltd and nominee of the Investment Advisor on Investment Committee*). The Fund had launched three schemes i.e. CIG Realty Fund -I, CIG Realty Fund-II and CIG Realty Fund-IV. The trustees for Scheme I were Noticee No. 08 (*Mr. S.K. Misra*)

and Noticee No. 09 (*Mr. Anil Harish*) and for Scheme II were Noticee Nos. 10 (*Vijay Tushyan*), 11 (*Mr. Mahesh Kumar Sharma*) and 12 (*Mr. Rakesh Dhingra*). Further, the trustees for Scheme IV of the Fund were Noticee Nos. 08, 09, 10, 11 & 12.

57. I find from the records available before me that the months of appointment and resignation / end of term of the said trustees is as under:

Name of the Trustee	Designation	Date of Appointment	Date of resignation or end of term
Anil Harish	Trustee	October, 2009	June, 2016
S.K. Mishra	Trustee	October, 2009	June, 2016
Mr. Vijay Tulshyan	Trustee	June, 2016	--
Mr. Rakesh Dhingra	Trustee	June, 2016	--
Mr. Mahesh Kumar Sharma	Trustee	June, 2016	--

58. I find that Noticee Nos. 01, 02, 03 and 04 have not made any submissions with respect to the allegations levelled against them. I find that Noticee No. 01 is an active private limited company as on date and the directors of the said Noticee are Noticee Nos. 02, 03 and 04 with appointment date being mentioned as April 21, 2005. Further, as mentioned in the PPMs available on record of the three schemes and forming part of the SCN, the Investment Advisor (Noticee No. 1) was to identify, evaluate and close investment opportunities and was to thereafter work to exit the investments to obtain maximum possible returns by creating and enhancing value. Further, the Fund was to invest in portfolio companies as identified by the Investment Advisor and interested in residential and mixed use of property as well as commercial property with relevance to a wide range of high growth segments / sectors. The Fund was also to invest in Portfolio companies identified by the Investment Advisor offering significant return opportunities. Further, it was the responsibility of the Investment Advisor to constitute an Investment Committee with a minimum (3) three members and maximum (5) five. The PPM in Scheme IV specifically states that the management team of the Investment Advisor will be actively involved in all phases of identification, investment structuring and management of the Scheme's investments. Noticee No. 04 (*Nominee of Board of Trustees*) and Noticee No. 07 (*Nominee of Investment Advisor*) were the members of the Investment Committee of the Fund in addition to their being the directors in Noticee No. 1.

59. I find from the submissions made by Noticee No. 07 (*Mr. Deepak Bajaj*) that he left Noticee No. 01 (*Investment Advisor*) in December 2016. He submits that he was made an employee director in the VCU's of the fund schemes on behalf of the fund as were other employees of the fund. When the Noticee left, he had requested the company to remove him as a director of the VCU and they said they were trying and it has been stated that after a long time, the company removed the said Noticee as a director. Further, as per the investment status of the three schemes provided by the said Noticee, I find that in case of Scheme I, out of the total fund corpus of Rs. 350 Crores plus premium, it is claimed that Rs. 29 Crore has been distributed to the investors on pro-rata basis and with respect to Schemes II (total corpus – Rs. 298.50 Crore plus premium) & IV (total corpus- Rs. 64.85 Crore) it has been claimed that *in-specie* distribution is under process. However, no documentary evidence in support of the said claim has been provided by Noticee No. 07. Therefore, it further substantiates the finding at paragraph no. 40 above, that the Fund has till date not wound up the schemes, liquidated the assets and distributed the proceeds to the investors / contributors of the schemes. I find that Noticee No. 07 was a part of the Investment Committee in addition to his being a director in Noticee No. 1 and was involved in the decision making and executing the decisions with respect to the investments for the Fund. Considering the role of Noticee No. 07 in managing the funds of the schemes and the fact that he was the director in Noticee No. 1 even after the expiry of the tenure of the schemes and no evidence has been brought on record in support his submission with respect to actual date on which he ceased to be a director of the Investment Advisor, I am unable to accept the submissions of the Noticee. Therefore, the Noticee, being one of the directors of Noticee No. 1 and part of the Investment Committee of the Fund, is liable for the violations of the provisions of the VCF Regulations by the Fund.

60. I further find from the submissions of Noticee Nos. 08 and 09 (*Trustees of the Scheme I*) that the said Noticees had tendered their respective resignations on February 10, 2015 and May 25, 2015, which were accepted by the Board of Directors of the Fund only on June 02, 2016. Therefore, they were not Trustees of the Fund during the period when Scheme-II was extended for further three years after September 27, 2016. However, I note that at the time of tendering of the resignations by the said

Noticees, Scheme-I was in its second extension of 1 year period. It is understood from the Trust Deed that the Trustees had to give 3 months' prior notice before their resignation and had to serve as Trustees till suitable replacement is found. Further, in terms of clause 12.3 of the CA, the Trustees shall continue to hold office till such time new Trustees are appointed by the Settlor to replace the Trustee/s. In this case, admittedly the Noticee No. 08 and 09 continued to hold office of Trustees of CIGRF even after their resignation. I note that while holding office as such they had permitted the third extension of Scheme - I in 15th meeting of Board of Trustees held on June 30, 2015 when Noticee No. 1 had proposed for the 3rd extension of tenure of Scheme I by 3 years which was not in compliance with the PPM of the said scheme as already established above. Subsequently, on acceptance of resignation of Noticee Nos. 08 and 09 (*the Trustees of Scheme I*), Noticee Nos. 10, 11 and 12 were appointed as Trustees of the Fund. They were Trustees of Scheme II and had permitted the third extension of Scheme II by 3 years on recommendation of Noticee No. 1. By virtue of the obligations under the Investor Advisory Agreement, the Investment Advisor (Noticee No. 1) and respective Trustees i.e. Noticees No. 08 and 09 (in respect of violations pertaining to Scheme – I) and Noticee Nos. 10, 11 & 12 (in respect of violations pertaining to Scheme II & IV) are responsible for non-winding up of the schemes upon their respective terms, non-liquidation of the assets of the fund and non-distribution of the proceeds upon liquidation to the contributors / investors / unit holders in this case.

- 61.** The Fund, in the present case, was registered as VCF with SEBI under VCF Regulations. In terms of Regulation 3 of VCF Regulations, an application for registration as VCF is required to be made in Form A as given in First Schedule to the VCF Regulations. Clause 7 of Para (viii) of said Form A provides that application for VCF shall provide the details of asset management company, if any. Regulation 11(1) of VCF Regulations provides that a VCF may raise monies from any investor by way of issue of units. Regulation 15 of VCF Regulations provides that a VCF may receive monies for investment in the VCF only through private placement of units. In terms of Regulation 16(1) of VCF Regulations, a VCF receiving monies for investment shall issue a placement memorandum or contribution or subscription agreement, which shall contain details of the terms and conditions subject to which monies are proposed

to be raised from investors. In terms of Regulation 17(1) of the VCF Regulations, the placement memorandum is required to contain, *inter alia*, details of trustee or trustee company, the details of the fund manager or asset management company, if any, the period of maturity, if any, and the manner, if any, in which the fund shall be wound up. As per the VCF Regulations and the details available on record and the facts mentioned, the Investment Advisor is liable for the non-winding up, non-liquidation and non-distribution of the monies to the investors along with the Trustees of the Fund. Further, the Investment Advisor is also liable for non-cooperation during the inspection carried out by SEBI, non-redressal of investor complaints, non-compliances with respect to KYC norms and non-registration with KRA by the Fund.

62. It has to be acknowledged that all the acts which are executed in the name of an incorporated entity, are done by the natural persons who by their own minds and wisdom, are controlling the affairs and management of such an artificial juristic person (company) in the capacity of its Directors. The company, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Directors who are controlling the overall functioning of the company. I note that the position of a 'Director' in a company comes along with various onerous responsibilities and compliances under law that are associated with such position, which have to be adhered to by such Directors and in case of any default to adhere to any applicable law, he / she has to face the consequences thereof. The Directors of a company are the persons who are appointed to direct and supervise the management of the affairs of the company. They are expected to diligently perform their duties with honesty, fairness, skill and care in administering the affairs of the company. Such a duty requires the Directors to devote adequate time and attention to the affairs of the company so as to be able to take decisions that do not expose the company to unnecessary risks / actions by enforcement agencies. This implies a high degree of accountability and knowledge of the overall functioning of the company. Therefore, the Director cannot absolve from his / her liability arising out of any wrongdoing by the company.

63. I find that Noticee No. 01 is a company and while discussing the liability of the directors of the company, the Hon'ble Supreme Court in the case of *N Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152* held as under,

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

64. I find that Noticee No. 05 (*Mr. Moti S Masand*), Managing Director and CEO of Noticee No. 1 has submitted that he had joined Unitech Group in the month of December 2006 and was posted as Managing Director Cum CEO of CIG Realty Investor India Pvt Ltd (*A Unitech Promoter Group Company*), subsequently known as Unitech Realty Investors (India) P. Ltd on December 21, 2006 and continued in the said post till August 31, 2010. In support of the said submission, the Noticee has provided letter of relieving dated November 08, 2010 wherein it has been stated that the said Noticee worked as the Managing Director & CEO of Unitech Realty Investors (India) Ltd for the period from December 21, 2006 to August 31, 2010. Further, after being relieved from the said concern / Promoter Company, the management of Unitech Group posted him as the President of Unitech Limited w.e.f September 01, 2010 until retirement i.e. up until March 31, 2015. Therefore, it is the case of the said Noticee that the allegations in the SCN pertain to a period after him being relieved as the Managing Director & CEO of Noticee No. 01 and therefore, he cannot be held liable for the said violations by the Fund. I find that during the inspection period, the Fund had not provided any information with respect to the term of directorship of the said Noticee. Therefore, based on the evidence produced by the Noticee in support of his submission, I conclude that as the said Noticee had ceased to hold the position of Managing Director & CEO in Noticee No. 1 on August 31, 2010 and was not in a position of a director during the cause of action, the said Noticee cannot be held liable for the violations committed by the Fund in the present case.

65. Noticee No. 06 on the other hand has submitted that he was not aware of the fact that he was named as the director of Noticee No. 1 and when he came to know of him being in the post of a director in many companies, he tendered his resignation as a director in Noticee No. 1. He even stated that summons from ED office were received by him on June 28, 2022, vide which, the Noticee was asked to appear on July 06, 2022. It is the case of Noticee No. 06 that his name was misused by Noticee No. 1. I find that the said Noticee has not supported his submission with any documentary evidence to show that he has tendered his resignation from the post of being the Director of Noticee No. 1. Further, I also note that it is an admitted fact that he was named as the director of Noticee No. 1. Therefore, I find that the submissions of the Noticee of not being aware of his directorship in the Company would not absolve him of the vicarious liability cast upon him, being a director of Noticee No. 1 at the time of the contraventions committed by the Fund, by virtue of Section 27 of the SEBI Act, 1992.

66. Here, I find it pertinent to mention that, as already referred in the preceding paragraphs, vide Adjudication Order dated March 28, 2019, Adjudicating Officer, SEBI had found Noticee Nos. 01, 08, 09, 10, 11 and 12 guilty of violating the provisions of Regulation 23(1)(a) of the VCF Regulations for extending the tenure of Schemes I & II beyond the permissible period in the PPMs, not winding up the said schemes, non-liquidation of the schemes and not making any distributions to its unit holders. Furthermore, monetary penalties of Rs. 1,00,000/- each were imposed on the said Noticees under Section 15HB of the SEBI Act, 1992 for the said violation. Thereafter, upon challenging the said Adjudication Order dated March 28, 2019 by Noticee Nos. 08 and 09 before the Hon'ble SAT, after hearing both the parties, while upholding the findings in the impugned Adjudication Order, the Hon'ble SAT vide its decision dated May 04, 2021 observed that,

“15. A perusal of the aforesaid provision in the Private Placement Memorandum indicates that the Contribution Agreement to which each contributor is a party can be amended only by written consent of the Trustee in consultation with the investment advisory and all the contributors representing 75% of the capital contributions of CIG Realty Fund – I i.e. the scheme”.

.....

19. Having heard the learned counsel for the parties at length, we are of the opinion that it is not necessary to dwell on the subject as to whether the appellants had the power to amend the contribution agreement and extend the life of the term of the scheme as in our view, the controversy can be decided on another issue.

20. Assuming for a moment that the appellants had the power to amend the Contribution Agreement and extend the period of term of the scheme, the same was required to be done in accordance with the provision relating to the amendment to the fund agreements as provided under the Private Placement Memorandum. The said provision relating to amendments to the fund agreement clearly provides that there has to be written consent from the contributors representing 75% of the capital contribution of the CIG Realty Fund. We find from the letter dated September 14, 2015 written by the investment advisor to SEBI that 75% of the contributors had consented to the extension of the scheme for three years. This fact as depicted by the letter dated September 14, 2015 is patently erroneous and against the terms contained in the amendments to the fund agreement under the Private Placement Memorandum. This letter dated September 14, 2015 indicates that total number of contributors are 208 and only 74 contributors gave the response which is less than 50% and cannot be 75%. However, the percentage of the contributors is not the required norm under the Private Placement Memorandum for amending the fund agreement. What is essential is that the resolution is required to be passed by 75% of the capital contributors. The total capital contribution in the instant case was Rs. 350 Crore. 75% of the total contribution would be Rs. 262.50 Crore. The letter dated September 14, 2015 indicates that contributors who had given their consent had a total capital contribution of Rs. 120.515 Crore which is far less than the prescribed Rs. 262.50 Crore.

21. Thus, in our view, even if the appellants had the power to extend the term of the scheme by amending the Contribution Agreement, the same was not done in accordance with the conditions contained in the Private Placement Memorandum which required that this amendment could be passed only by 75% of the capital contribution and not by 75% of the contributors. Since the appellants did not pass the amendment in accordance with the provisions stipulated in the Private Placement Memorandum, the term of the scheme was illegally extended.

22. The AO held the appellants to have violated the provisions of the regulations from another angle. Nonetheless, in view of our findings as given aforesaid, we are of the opinion, the order of the AO does not require any interference.”

67. It is further learnt from the submissions of Noticee Nos. 08 and 09 that they have approached the Hon'ble Supreme Court challenging the SAT Order dated May 04, 2021 and the said appeals are *sub-judice*. However, I find that no stay has been granted by the Apex Court as on date and therefore, the decision of the Hon'ble SAT vide order dated May 04, 2021 continues to be binding on the parties.

68. In the instant matter, no material has been made available on record which would show that the aforesaid Noticees i.e. Noticee Nos. 01, 02, 03, 04, 06 and 07 have carried out their duty in administering the affairs of the Fund as the Directors of Noticee No. 01, diligently with skill and care as the fact of non-winding up of the Schemes of the Fund for more than 6 to 8 years is not in dispute. In the absence of the aforesaid, I am constrained to hold that the aforesaid Noticees have abdicated their responsibility and duty as Directors of Noticee No. 01 and consequently, were not diligent enough in managing the affairs of the Fund, which is not permissible under law. Further, with respect to the role of trustees in a VCF, the VCF Regulations clearly state that the responsibility to wind up the fund and further to liquidate and distribute the proceeds to the unit holders/ contributors is that of the Trustees in the interests of the investors. In view of the same, Trustees of the Fund are liable for the defaults of the fund of non-winding up, non-liquidation and non-distribution of proceed to the investors / unitholders.

69. In view of the foregoing, I find that Noticee Nos. 1 (*Unitech Advisors (India) P. Ltd*), being the Investment Advisor to the Fund along with Noticee Nos. 2 (*Mr. Sanjay Chandra*), 3 (*Mr. Ajay Chandra*), 4 (*Mr. Ramesh Chandra*), 6 (*Mr. Hitendra Malhotra*) and 7 (*Mr. Deepak Bajaj*), being the directors of Noticee No. 1 are liable for the violations of the provisions of Regulation 23(1)(a) of the VCF Regulations, SEBI Circular dated December 18, 2014, Regulation 27(1) & 27(2) of the VCF Regulations, Regulation 22 read with SEBI Circular dated January 11, 2010 and SEBI Circulars dated January 18, 2006 and March 20, 2006 read with SEBI Circular dated October 15, 2019 by the Fund. I am, therefore, of the view that the said Noticees deserve issuance of directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992. Further, the said violations also attract imposition of monetary penalties on them under Sections 11(4A) and 11B(2) read with Section 15A, 15C and 15HB of the SEBI Act, 1992.

70. Furthermore, I find that Noticee Nos. 8 (*Mr. S.K. Misra*) and 9 (*Mr. Anil Harish*), being the Trustees of the Fund during the extensions granted to Scheme I were liable for non-winding and non-liquidation of assets of the fund and extending the tenure of the scheme which was not in compliance with the terms set out in the PPM of Scheme I.

However, as already mentioned in the paragraphs above, the said trustees have ceased to be the trustees of the Fund from June 02, 2016.

71. However, I find that Noticee Nos. 10, 11 and 12, being currently the Trustees of the Fund, are liable for the violations of Regulation 23(1)(a) of the VCF Regulations, SEBI Circular dated December 18, 2014, Regulation 27(1) & 27(2) of the VCF Regulations, SEBI Circulars dated December 02, 2011 and December 23, 2011, Regulation 22 read with SEBI Circular dated January 11, 2010 and SEBI Circulars dated January 18, 2006 and March 20, 2006 read with SEBI Circular dated October 15, 2019 by the Fund. In view of the same, I conclude that the present proceedings against the said Noticees deserve issuance of directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992 and further, attract imposition of monetary penalties on them under Sections 11(4A) and 11B(2) read with Section 15HB of the SEBI Act, 1992.

72. As already referred and mentioned in the preceding paragraphs, I note that in respect of Noticee Nos. 01, 08, 09, 10, 11 and 12, Adjudication Order dated March 28, 2019 imposing monetary penalty of Rs. 1,00,000/- each for violation of Regulation 23(1)(a) of the VCF Regulations has already been passed by the Adjudicating Officer, SEBI for non-winding up and non-liquidation of scheme- I (Noticee Nos. 01, 08 and 09) and Scheme – II (Noticee Nos. 01, 10, 11 and 12). I find that as Notice Nos. 08 and 09 have ceased to be the Trustees of the Fund w.e.f June 02, 2016 and the fact that Adjudicating Officer, SEBI has already imposed a monetary penalty for the violation of Regulation 23(1)(a) of the VCF Regulations against them (which has even been paid by them), the said Noticees cannot be held liable for the ongoing violations by the Fund. However, as the current proceedings are initiated for continued violations of the VCF Regulations by the Fund and further, with respect to non-winding up and non-liquidation of funds in case of Scheme I and II and Scheme – IV, imposition of monetary penalties for the violations established above i.e. non-winding up and liquidation of fund, non-cooperation during the inspection period, non-redressal of grievances, non-compliance with the KYC norms, etc. are attracted towards Noticee Nos. 01, 02, 03, 04, 06, 07 would be attracted under Sections 11(4A) and 11B(2) read with Sections 15A, 15C and 15HB of the SEBI Act. Further, monetary penalty for violation of Regulation 23(1)(a) of the VCF Regulations for non-winding up and

liquidation of Scheme IV would be attracted against Noticee Nos. 10, 11 and 12 under Sections 11(4A) and 11B(2) read with Section 15HB of the SEBI Act, 1992.

73. However, before proceeding forward with the directions, it is felt apposite to refer to the provisions of Section 15HB of the SEBI Act, 1992 which is reproduced as under:

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

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

74. For the purpose of adjudging the quantum of penalty, it is relevant to mention that discretion has to be exercised having due regard to the factors specified in Section 15J of the SEBI Act, 1992, which reads as follows:-

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

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

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

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

(c) the repetitive nature of the default.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

75. I note that the Fund, till now, has neither wound up nor liquidated the schemes which stand long expired in October 2015 (Scheme I), September 2016 (Scheme II) and September 2017 (Scheme IV). As mentioned in the above paragraphs the total corpus collected from the investors / contributors for the three schemes is Rs. 713.35 Crores as per the inspection report. Further, even if the submissions of Noticee No. 07 are taken into consideration only an amount of Rs. 29 Crore has been distributed to the investors on pro-rata basis, that too with respect to the corpus from Scheme I. Thus, I note that an amount of Rs. 684.35 Crores is still with the Fund which has not been distributed to the unit holders / contributors and the contributors / investors / unit holders of the respective schemes are still aggrieved and suffering, as their hard-earned monies have not been repaid by the Fund / Investment Advisor / Trustees despite the term of the said Schemes being expired for more than

a period of around 6 to 8 years. Although monetary penalties were imposed on Noticee Nos. 01, 08, 09, 10, 11 and 12 by Adjudicating Officer, SEBI in the past (*as mentioned in the above paragraphs*), I find that there is no material brought on record by the said Noticees to show any concrete steps taken by them to liquidate the funds and distribute the monies to the contributors / unit holders.

76. Further, with respect to the present proceedings in hand, as brought out at paragraph 21 above, considering that the whereabouts of the Jail in which the said Noticee are currently lodged were not available, attempts have been made by writing to the appropriate authorities to trace their location. Accordingly, in case of Noticee No. 03, the SCN and hearing notice has been delivered to the Superintendent of Police, Taloja Jail. As despite all efforts, it was not clear as to which Jail Noticee Nos. 02 and 04 are lodged, it was decided to attempt service of SCN/s and hearing notice/s by hand delivery/ SPAD, affixture and also through newspaper publication on Noticee Nos. 02 and 04. I note from the available records that the hearing notice issued to Noticee No. 02 has been hand delivered at his last known address and Noticee No. 04 has signed on the said notice by signing on the same and writing his name. The same shows that the Noticee Nos. 02, 03 and 04, despite being aware of the present proceedings have tried to evade them by not responding / replying to the SCN and not appearing for the opportunity of hearing granted to them to defend their case. In view of the same, I find that the conduct of the said Noticees towards the present proceedings clearly shows their casual approach towards regulatory actions.

77. I find that as a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and protect the integrity of the securities market. Since the conduct of Noticee No. 01 and its directors along with the Trustees of the Fund is not in the interest of the investors in the securities market and considering that considerable number of complaints are still being received by SEBI from the investors with respect to the non-winding up, non-liquidation of all the three schemes and non-distribution of monies to them, I am of the considered view that the Noticees, being under an obligation to wind up and liquidate the Schemes of the Fund and to distribute the monies to the contributors / unit holders / investors, deserve issuance of

appropriate directions including imposition of monetary penalties for their conduct and violation of the securities laws.

ORDER AND DIRECTIONS.

78. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B(2) read with Section 19 of the SEBI Act, 1992 and Regulation 29 of VCF Regulations and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby issue the following directions:

78.1 Noticee Nos. 01, 02, 03, 04, 06, 10, 11 and 12 shall wind up all the Schemes i.e. CIG Realty Fund – I, CIG Realty Fund – II and CIG Realty Fund –III by providing exit to its investors / unit holders within a maximum period of six (6) months from the date of this Order in the following manner:

- (a)** Two separate valuations of all the assets of the all the three Schemes of the Fund shall be obtained from two registered valuers as defined under the Companies (Registered Valuers and Valuation) Rules, 2017;
- (b)** The NAV of the three Schemes of the Fund shall be determined on the basis of the higher of the two valuations;
- (c)** Exit to the investors / unit holders shall be provided first, by offering an option to the existing investors / unit holders to take exit by way of *in-specie* distribution of interest / rights / stakes / shares, etc. in the investee companies / projects;
- (d)** The investors / unit holders who do not exercise their option for *in-specie* distribution, shall be given exit on the basis of the NAV determined as per directions stated in paragraph 78.1(b) above.
- (e)** The entire process of winding up of the three Schemes of the Fund and providing exit to the investors / unit holders as per the above directions shall be completed within a maximum period of six (6) months from the date of this Order.

78.2 Noticee Nos. 01, 02, 03, 04, 06, 10, 11 and 12 shall file three separate reports for the three schemes certified by a Chartered Accountant declaring that all the investors / unit holders of the respective Schemes of the Fund have been provided an exit and the Funds / schemes of the Fund stand wound up. The said

reports shall be filed within a period of three weeks after completion of the winding up and after providing an exit to the investors / unit holders of the said three Schemes of the Fund, as directed at 78.1(a).

78.3 Noticee No. 01 i.e. the Investment Advisor of the Fund shall not take new assignments as an Investment Manager / Investment Advisor for a period of two (2) years. This direction shall come into force after 45 days from the date of this order.

78.4 Noticee No. 01 is hereby also restrained from accessing the securities market by way of issuing prospectus, offer document or advertisement soliciting money from the public in any manner, either directly or indirectly, and further prohibited from buying, selling or otherwise dealing in the securities in any manner, either directly or indirectly, for a period of two (2) years from the date of this Order.

78.5 Noticee Nos. 02, 03, 04 and 06 i.e. the directors of Noticee No. 01 are hereby restrained from associating themselves, directly or indirectly, with any SEBI registered intermediary including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services, etc. which deal with investors' money in any manner for a period of two (2) years from the date of this order.

78.6 In addition, Noticee Nos. 02, 03, 04 and 06 are hereby debarred from accessing the securities market, directly or indirectly, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever till the completion of the winding up and providing exit to the investors / unit holders of the said three Schemes of the Fund, as directed at 78.1.

78.7 Noticee No. 07 is hereby restrained from associating himself, directly or indirectly, with any SEBI registered intermediary including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investors' money in any manner for a period of two (2) years from the date of this order and is further debarred from accessing the securities market, directly or indirectly, and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever for a period of one (1) year from the date of this order.

78.8 Noticee Nos. 08 and 09 shall not take any new assignments as Trustees of Alternative Investment Fund of any category for a period of one (1) year from the

date of this order and are hereby restrained from associating themselves, directly or indirectly, with any SEBI registered intermediary including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investors' money in any manner for a period of one (1) year from the date of this Order.

78.9 In addition, Noticee Nos. 08 and 09 are debarred from accessing the securities market, directly or indirectly, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever for a period of six (6) months from the date of this order.

78.10 Noticee Nos. 10, 11 and 12 shall not take any new assignments as Trustees of Alternative Investment Fund of any category for a period of two (2) years from the date of this order and are hereby restrained from associating themselves, directly or indirectly, with any SEBI registered intermediary including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investors' money in any manner for a period of two (2) years from the date of this Order.

78.11 In addition, Noticee Nos. 10, 11 and 12 are hereby debarred from accessing the securities market, directly or indirectly, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever, till the completion of the winding up and providing exit to the investors / unit holders of the said three Schemes of the Fund, as directed at 78.1.

78.12 The following monetary penalties are imposed on the Noticees named hereunder for the various violations of the provisions of VCF Regulations:

Noticee Nos.	Name of the Noticees	Penal Provision under which penalty attracted	Penalty Amount (in Rs)
1.	Unitech Advisors (India) P. Ltd <i>(Now known as Auram Asset Management P. Ltd)</i>	Section 15HB of the SEBI Act, 1992 <i>(In case of Scheme IV for Noticee No. 1 and in case of Schemes I, II and IV for Noticee Nos. 2, 3, 4, 6 and 7)</i>	Rs. 1,00,00,000/- to be paid jointly and severally
2.	Mr. Ajay Chandra		
3.	Mr. Sanjay Chandra		
4.	Mr. Ramesh Chandra	Section 15A of the SEBI Act, 1992	Rs. 10,00,000/- to be paid jointly and severally

6.	Mr. Hitendra Malhotra		
7.	Mr. Deepak Bajaj	Section 15C of the SEBI Act, 1992	Rs. 10,00,000/- to be paid jointly and severally
Total penalty to be paid by Noticee Nos. 01, 02, 03, 04, 06 & 07 - (Rupees One Crore Twenty Lakhs Only)			Rs. 1,20,00,000/- to be paid jointly and severally
10.	Mr. Vijay Tulshyan	Section 15HB of the SEBI Act (in case of Scheme IV)	Rs. 10,00,000/-
Total penalty on Noticee No. 10 – (Rupees Ten Lakhs Only)			Rs. 10,00,000/-
11.	Mr. Mahesh Kumar Sharma	Section 15HB of the SEBI Act (in case of Scheme IV)	Rs. 10,00,000/-
Total penalty on Noticee No. 11 – (Rupees Ten Lakhs Only)			Rs. 10,00,000/-
12.	Mr. Rakesh Dhingra	Section 15HB of the SEBI Act (in case of Scheme IV)	Rs. 10,00,000/-
Total penalty on Noticee No. 11 – (Rupees Ten Lakhs Only)			Rs. 10,00,000/-
Total penalty on all the Noticees – (Rupees One Crore Fifty Lakhs Only)			Rs. 1,50,00,000/-

78.13 The Noticees shall remit / pay the amounts of penalties mentioned against their names in the table above, within 45 days of receipt of this order by using the undermentioned pathway: www.sebi.gov.in / ENFORCEMENT → Orders → Orders of EDs / CGMs → Click on PAY NOW or by using the web link: <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>.

The Noticees shall forward the details / confirmation of penalty so paid through e-payment to “The Division Chief, AFD – SEC - 1, Securities and Exchange Board of India, SEBI Bhavan I, Plot no. C-4, "G" Block, Bandra - Kurla Complex, Bandra (E), Mumbai - 400 051” and also to e-mail id: tad@sebi.gov.in in the format given in the table below,

1. Case Name	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties / disgorgement / recovery / settlement amount and legal charges along with order details)	

79. This Order comes into force with immediate effect.

80. The direction for winding up and for providing exit to investors/unit holders, as given in para 78.1 above, does not preclude the investors /unit holders of the Fund to pursue other legal remedies available to them under any other law, against the Fund and/or the Noticees regarding their investment or deficiency in service before any appropriate forum of competent jurisdiction.

81. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents to ensure necessary compliance.

Date: December 29, 2023
Place: Mumbai

DR. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA