

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/GG/BS/2024-25/30459-30490

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

In respect of:

Sr.no.	Name	PAN
1	D. S. Kulkarni Developers Limited (Noticee No. 2)	AAACD6413H
2	Panyam Cements and Mineral Industries Limited (Noticee No. 3)	AABCP2298M
3	Hindustan Construction Company Limited (Noticee No. 5)	AAACH0968B
4	Jai Prakash Associates Limited (Noticee No. 7)	AABCB1562A
5	Shree Sukhakarta Developers Pvt. Ltd. (Noticee No. 8)	AATCS3173L
6	Amtek Auto Ltd. (Noticee No. 9)	AAGCA4447E
7	Monnet Ispat & Energy Limited (Noticee No. 10)	AAACM0501D
8	ESS DEE Aluminium Limited (Noticee No. 11)	Not Available
9	Essar Steel India Ltd. (Noticee No. 12)	AAACE1741P
10	Punj Lloyd Limited (Noticee No. 13)	AAACP0305Q
11	Educomp Solutions Limited (Noticee No. 15)	AAACE2983M
12	Mandhana Industries Limited (Noticee No. 16)	AABCM6615M

Adjudication Order in the matter of Non-Submission of NDS to CRAs

13	Reliance Communications Limited (Noticee No. 17)	AACCR7832C
14	Empee Distilleries Limited (Noticee No. 18)	AAACE1687N
15	Ginni Filaments Limited (Noticee No. 19)	AABCG0942K
16	Vardhman Industries Limited (Noticee No. 20)	AAACV3229R
17	Usher Agro Limited (Noticee No. 22)	AAACU1095N
18	Sunstream City Private Limited (Noticee No. 23)	AAACZ2602A
19	Jaypee Infratech Limited (Noticee No. 24)	AABCJ9042R
20	Reliance Infrastructure Limited (Noticee No. 25)	AACCR7446Q
21	The Mysore Paper Mills Limited (Noticee No. 26)	AAACT7735Q
22	Mayanagri World One Private Limited (Noticee No. 27)	AAKCM6580A
23	Nish Developers Private Limited (Noticee No. 28)	AACCN1457H
24	Reliance Power Limited (Noticee No. 29)	AAACR2365L
25	Paranjepe Schemes (Construction) Limited (Noticee No. 30)	AACCP1941Q
26	PVP Ventures Limited (Noticee No. 32)	AAACS3101P
27	McNally Bharat Engg. Co. Limited (Noticee No. 33)	AABCM9443R
28	Incredible Realcon Private Limited (Noticee No. 34)	Not Available
29	Gammon India Limited (Noticee No.35)	AAACG3821A
30	Lotus Greens Constructions Private Limited (Noticee No. 37)	AACCL4789J
31	Hindustan Cleanenergy Limited (Noticee No. 40)	Not Available
32	RHC Holding Private Limited (Noticee No. 41)	AAKCS7686P

(The entities mentioned above are individually referred by their respective names or Noticee No. or collectively referred to as “Noticees”)

In the matter of Non-Submission of No Default Statement (NDS)/ Information to Credit Rating Agencies (CRAs).

A. BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination with respect to Non-submission of ‘No Default Statement’ (hereinafter referred to as “**NDS**”) or not providing certain information relating to default/delay in payment obligations etc. to Credit Rating Agencies (hereinafter referred to as “**CRAs**”), by companies that had gone for debt issuances. During the course of examination, it was observed that 41 companies/Issuers (hereinafter collectively referred to as “**Noticees**”) had not submitted ‘NDS’/Information to CRAs as on May 20, 2019 and for June 01, 2019 to November 30, 2020, allegedly resulting in violation of provisions of SEBI circular ref. no. SEBI/HO/MIRSD/MIRSD3/P/2017/71 dated June 30, 2017, which mandates the Companies/Issuers to submit the said information to CRAs on a monthly basis.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed me, as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”) read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**SEBI Adjudication Rules**”) vide order dated December 29, 2021 to inquire into

and adjudge under Section 15A(b) of the SEBI Act, the violations alleged against the Noticees.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated May 19, 2022 (hereinafter referred to as “**SCN**”) was issued against 41 companies (Noticees), under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated against them and why penalty should not be imposed under Section 15A(b) of the SEBI Act against the Noticees for the alleged violation of provisions of Regulation 8 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**SEBI (LODR) Regulations**”) read with SEBI circular ref. no. SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/71 dated June 30, 2017.
4. In the interest of natural justice, opportunity of personal hearing was granted to the Noticees on different dates. Date-wise details of replies, personal hearings and names of the Authorized Representatives (ARs) who appeared for said hearings are given below:

Noticee No.	Noticee Name	Date of Reply	Date of Hearing	Name of AR
Noticee No. 2	D. S. Kulkarni Developers Limited*	No reply filed	Opportunity of hearing not availed	
Noticee No. 3	Panyam Cements and Mineral Industries Limited	No reply filed (SCN was delivered through Speed post Acknowledgment due)	Opportunity of hearing not availed	
Noticee No. 5	Hindustan Construction Co. Ltd.	24.06.2022 24.02.2023	Opportunity of hearing not availed	
Noticee No. 7	Jai Prakash Associates Limited	23.06.2022	16.06.2022 05.07.2022	Mr. Rakesh Puri, Advocate

Noticee No. 8	Shree Sukhakarta Developers Pvt. Ltd.	11.01.2023 19.04.2023	18.04.2023	Mr. Arvind Iyer (Company Secretary)
Noticee No. 9	Amtek Auto Limited	No reply filed	23.06.2022	Ms. Apoorva Chaudhary, Advocate Mr. Sushmit Parwal (Appeared on behalf of IRP Mr. Dinkar Tiruvannadapuram Venkatasubramnian)
Noticee No. 10	JSW Ispat Special Products Ltd. (Formerly known as Monnet Ispat & Energy Ltd.)	02.06.2022 10.06.2022	15.06.2022	Mr. Ajay Kadhao, Company Secretary
Noticee No. 11	ESS DEE Aluminium Limited	21.07.2022 22.05.2023	26.07.2022 18.04.2023	Mr. Amar Vivek, Advocate Appeared on behalf of Mrs. Deepika Bhugra Prasad, Liquidator Ms. Damini, Advocate and Mr. Dhananjaya, Advocate (Appeared for Liquidator)
Noticee No. 12	Essar Steel India Limited (Now known as ArcelorMittal Nippon Steel India Limited)	25.01.2023 20.02.2023	Opportunity of hearing not availed	
Noticee No. 13	Punj Llyod Limited	26.05.2022 14.06.2022 22.02.2023	Opportunity of hearing not availed	

Noticee No. 15	Educomp Solutions Limited	No reply filed. SCN delivered.	Opportunity of hearing not availed	
Noticee No. 16	Mandhana Industries Limited	01.06.2022	15.07.2022	Ms. Charu Desai, Ex RP of G B Global Limited (erstwhile Mandhana Industries Limited)
Noticee No. 17	Reliance Communication Limited	30.06.2022	15.06.2022	Mr. Dheeraj Garg, Advocate (<i>Appeared on behalf of Ex-IRP Mr. Pradeep Kumar Sethi</i>)
Noticee No. 18	Empee Distilleries Limited	No reply filed. SCN delivered.	Opportunity of hearing not availed	
Noticee No. 19	Ginni Filaments Limited	01.06.2022	Opportunity of hearing not availed	
Noticee No. 20	Vardhman Industries Limited	17.01.2023	Opportunity of hearing not availed	
Noticee No. 22	Usher Agro Limited	06.06.2022	Opportunity of hearing not availed	
Noticee No. 23	Sunstream City Private Limited	11.01.2023	18.04.2023	Mr. Prem Rajani (Legal Counsel) Ms. Pearl Boga (Legal Counsel)
Noticee No. 24	Jaypee Infratech Limited	08.06.2022 13.06.2022	15.06.2022	Mr. Divyanshu Jain, Advocate
Noticee No. 25	Reliance Infrastructure Limited	19.06.2023	16.06.2022 05.07.2022	Mr. Arka Saha, Advocate
Noticee No. 26	The Mysore Paper Mills Limited	30.06.2022	15.06.2022	Mr. Mohan Kulkarni, Company Secretary
Noticee No. 27	Mayanagri World One Private Limited	20.03.2023	18.04.2023	Mr. Sangeet Lakkar (Director of Noticee) Mr. Mukesh Prasad (Accounts &

				Finance)
Noticee No. 28	Nish Developers Private Limited	23.05.2022 05.07.2022	05.07.2022	Mr. Rajendra Dungarwal, Vice President Mr .Nandkishore Saraf, Finance Controller
Noticee No. 29	Reliance Power Limited	19.06.2023	1606.2022 05.07.2022	Mr. Arka Saha, Advocate
Noticee No. 30	Paranjepe Schemes (Construction) Limited	17.04.2023 25.04.2023	18.04.2023	Mr. Mahesh Singhi (Company Secretary)
Noticee No.32	PVP Ventures Limited	01.06.2022 16.06.2022	16.06.2022	Ms. S. Rukmani, Company Secretary Mr. Karthikeyan Shanumgam, CFO (Appeared in person)
Noticee No. 33	Mcnally Bharat Engg. Co. Limited	02.06.2022	15.06.2022	Mr. Brij Mohan Soni, CFO
Noticee No. 34	Incredible Realcon Private Limited	29.12.2022	Opportunity of hearing not availed	
Noticee No.35	Gammon India Limited	09.06.2022	16.06.2022	Ms. Niki Shingade , Company Secretary
Noticee No. 37	Lotus Greens Constructions Private Limited	15.12.2022	18.04.2023	Ms. Jyoti Gupta
Noticee No.40	Hindustan Cleanenergy Limited	26.05.2022 22.06.2022	16.06.2022	Mr. Manoj Ahuja, Company Secretary
Noticee No. 41	RHC Holding Private Limited	No reply filed. SCN delivered.	Opportunity of hearing not availed	

*SCN could not be delivered

5. Among the Noticees named above, an opportunity of inspection of documents was granted to Noticees viz. Reliance Infrastructure Limited (Noticee No. 25) and Reliance

Power Limited (Noticee No. 29), based on their request, and the same was duly availed by the said Noticees through their Advocates/ARs.

6. It is also relevant to state that certain Noticees covered in the common SCN dated May 19, 2022 are/were undergoing “Corporate insolvency Resolution Process” (*hereinafter referred to as ‘CIRP’*) under Insolvency and Bankruptcy Code (*hereinafter referred to as ‘IBC’*), during the relevant time. In certain appeals, the Hon’ble Securities Appellate Tribunal (SAT) had held that SEBI has no powers to initiate or maintain enforcement proceedings against entities that are undergoing CIRP. Such orders of SAT have been challenged by SEBI before the Hon’ble Supreme Court. Since the issue of SEBI’s jurisdiction to enforce securities law against companies undergoing CIRP, is pending adjudication before the Apex Court, such Noticees have been kept out of adjudication in this order, with the exception of those Noticees that are being exonerated of the allegations.

D. FACTUAL MATRIX

7. As seen from the facts narrated in the introductory paragraph, the SCN was issued based on SEBI’s examination with respect to non-submission of NDS or not providing certain information relating to default/delay in payment obligations to CRAs by the Noticees. Based on the findings of examination, certain allegations were levelled against the Noticees, which are detailed in the subsequent paragraphs.
8. The following CRAs were asked to provide the details of measures taken by them to obtain information from certain debt listed Issuers/companies, vide email dated March 13, 2020. Replies were received from the CRAs on the following dates: -

Sr.no.	Name of CRA	Date of Reply
1	Acuite Ratings & Research Limited	16.03.2020
2	Brickwork Ratings India Private Limited	23.03.2020
3	CARE Ratings Limited	17.03.2020
4	CRISIL Ratings Limited	18.03.2020
5	ICRA Limited	18.05.2020
6	India Ratings And Research Pvt. Ltd.	17.03.2020
7	Infomerics Valuation And Rating Pvt. Ltd.	19.03.2020

9. Simultaneously, SEBI sought comments from certain Companies/Issuers vide email dated May 26, 2020 with respect to Non-submission of NDS and information to CRAs. Reminders were sent on June 19, 2020 and June 30, 2020 to the companies/Issuers. Likewise SEBI, vide email dated October 14, 2020 sought the information from Debenture Trustees (DTs) of respective Issuers to provide the details of insolvency proceedings against the Issuers. Responses of DTs are tabulated below: -

Sr.no.	Name of DT	Date of Reply
1	Axis Trustee Services Limited	15.10.2020
2	Catalyst Trusteeship Limited	15.10.2020
3	IDBI Trusteeship Services Limited	15.10.2020
4	Milestone Trusteeship Services Pvt.Ltd.	15.10.2020
5	SBICAP Trustee Company Limited	22.10.2020
6	Vistra ITCL (India) Limited	23.10.2020

10. SEBI, vide email dated December 03, 2020 addressed to CRAs asked whether Issuers/Companies had submitted the requisite NDS/information to CRAs from June 01, 2019 to November 30, 2020. Reminders were issued to certain CRAs on December 11, 2020 and December 15, 2020 and December 17, 2020. The CRAs replied on different dates as tabulated below: -

Sr.no.	Name of CRA	Date of Reply
1	Acuite Ratings & Research Limited	N.A.
2	Brickwork Ratings India Private Limited	07.12.2020
3	CARE Ratings Limited	07.12.2020
4	CRISIL Ratings Limited	16.12.2020
5	ICRA Limited	28.12.2020
6	India Ratings And Research Pvt. Ltd.	07.12.2020
7	Infomerics Valuation And Rating Pvt. Ltd.	23.12.2020

11. Simultaneously, SEBI, vide email dated December 03, 2020 sought comments from Issuers/Companies. Reminders to the Issuers were sent on December 11, 2020.

12. Based on the information received from CRAs/DTs, it was noted that the Noticees herein, had not submitted NDS and/or the information regarding servicing of debt obligation by the Issuers to CRAs. Therefore, it was alleged that the Noticees were not in compliance with the provisions of Regulation 8 of SEBI (LODR) Regulations read with the provisions contained in clause 1(A) and/or 1(C) of SEBI circular ref. no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017 titled "Monitoring and Review of Ratings by Credit Rating Agencies".

Extract of Relevant Legal Provisions:

13. Relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI Circular dated June 30, 2017 are reproduced below for reference:

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Co-operation with intermediaries registered with the Board.

Regulation 8

“8. The listed entity, wherever applicable, shall co-operate with and submit correct and adequate information to the intermediaries registered with the Board such as credit rating agencies, registrar to an issue and share transfer agents, debenture trustees etc, within timelines and procedures specified under the Act, regulations and circulars issued there under:

Provided that requirements of this regulation shall not be applicable to the units issued by mutual funds listed on a recognised stock exchange(s) for which the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 shall be applicable.”

SEBI Circular ref. no. SEBI/ HO/ MIRSD/ MIRSD4/ CIR/ P/ 2017/ 71 dated June 30, 2017 (Subject: Monitoring and Review of Ratings by Credit Rating Agencies (CRAs)).

“1. Surveillance Mechanism for identifying potential defaults: As per Regulation 15 of SEBI (Credit Rating Agencies) Regulations, 1999, CRAs are required to continuously monitor the rating of securities and disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases on websites of CRAs as well as all the stock exchanges where the said securities are listed. In order to enable CRAs to develop efficient and responsive systems to keep track of all important changes relating to the client companies as required under clause 8 of Code of Conduct of SEBI (CRA) Regulations, 1999, following is clarified:

A. Monitoring of repayment schedules:

I. CRAs have to be proactive in early detection of defaults/ delays in making payments. In this regard, CRAs are required to track the servicing of debt obligations for each instrument rated by them, ISIN wise, and look for potential deterioration in financials which might lead to defaults/ delays, particularly before/ around the due date(s) for servicing of debt obligations, on the basis of monitoring of indicators including, but not restricted to, the following:

- a. EBITDA not being sufficient to meet even the interest payments for last 3 years*
- b. Deterioration in liquidity conditions of the Issuer*
- c. Abnormal increase in borrowing cost of the Issuer*

d. Any other information indicating deterioration in credit quality/ debt servicing capability of the Issuer.

II. The CRA shall also monitor the Exchange website for disclosures made by the Issuer in this regard.

III. In case no confirmation of servicing of debt obligation by the Issuer is received by the CRA from the Debenture Trustee within 1 day post the due date, the CRA shall immediately follow up with the Issuer for confirmation of payment. In case no response is received from the Issuer within 2 days of such communication, the CRA shall issue a Press Release as enlisted at point 3B (III) below and disseminate the same on its website and to all stock exchanges where the security is listed.

IV. The CRA shall also make a reference to SEBI regarding such suppression of information by the issuer/ non-cooperation of Issuer with CRA. Failure to make such reference shall be considered as aiding and abetting the Issuer in suppression of material information by the CRA which would be in contravention of Clause 12 of Code of Conduct of CRAs and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the CRA.

C. 'No Default Statement' to be sought from the Issuer on a monthly basis:

I. In order to enable timely recognition of default by the CRA, the CRA shall seek a 'No Default Statement (NDS)' from the Issuer at the end of each month, which shall be provided to the CRA by the Issuer on the first working day of the next month.

II. The NDS shall require the Issuer to explicitly confirm to the CRA that it has not delayed on any payment of interest/ principal in the previous month.

III. In case there have been delays, the Issuers shall state the same in this statement and the CRA shall promptly conduct a rating review and disseminate the rating action through Press Release within 2 days of receipt of such statement.

IV. A standardized format of the NDS is provided at Annexure A.”

14. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(b) of SEBI Act, which is reproduced below for reference:

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a)...

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to 67 a

penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
(c)...

E. SCOPE AND APPLICABILITY OF SEBI CIRCULAR DATED JUNE 30, 2017

15. The case is centered around the violation alleged against the Noticees which are listed companies or companies with listed debt securities for not submitting the “No Default Statement” to the CRAs as mandated in the SEBI Circular MIRSD4/CIR/P/2017/71 dated June 30, 2017 titled “Monitoring and Review of Ratings by Credit Rating Agencies (CRAs)”. Hence, for the purpose of instant Adjudication proceedings, it is relevant to examine the applicability of the circular in the context of its underlying objectives and ascertain the category of companies to which the circular would apply.

Monitoring financial parameters:

16. As seen from **Para 1 A** of the circular titled “Monitoring of repayment schedule”, the CRAs have been instructed to be proactive in early detection of defaults/ delays in making payments by the issuers that have issued debt securities. The CRAs are also required to look for potential deterioration in financials which might lead to defaults/delays, particularly before/around the due dates for servicing of debt obligations, by monitoring certain indicators some of which are enlisted as (a) to (d) thereunder. The indicators are “a) EBITDA not being sufficient to meet even the interest payments for last 3 years; b) Deterioration in liquidity conditions of the issuer; c) Abnormal increase in borrowing cost of the issuer and d) Any other information indicating deterioration in credit quality/ debt servicing capability of the issuer”. The list of indicators is not intended to be exhaustive, which means that all the indicators enlisted may not be completely self-explanatory. The enumerated list of parameters and other similar parameters ought to be monitored by the CRAs, to ascertain the defaults of debt issued companies.

Continuous Monitoring by CRA:

17. The circular has also highlighted the CRA's role in continuous monitoring of the rating of securities and the need to disseminate information regarding the newly assigned ratings and the changes made to the earlier rating promptly to the public. The circular mandates publication through Press Releases (PR) on websites of CRAs as well as all the stock exchanges where the said securities are listed. In terms of the circular, the CRAs are supposed to obtain the confirmation of debt obligation by the issuer within one day post the due date. In case no confirmation of servicing of debt obligation by the issuer is received from the Debenture Trustee within one day post the due date, then the CRA ought to immediately follow up with the issuer and in case the issuer company fails to respond within two days, then the CRA is required to issue a Press Release and make wide disclosures to all exchanges along with making a reference to SEBI regarding such suppression of information or the non-cooperation of the issuer with the CRA.

CRA to review rating based on Material Events:

18. **Paragraph 1 B** of the circular titled "Material Events requiring a review" enlists the material events that obligate the CRAs to suo moto review of the rating assigned by them, upon the occurrence of, or announcement /news of certain events. Such events include Merger / Demerger / Amalgamation / Acquisition; corporate debt restructuring and reference to BIFR and winding-up petition filed by any party/creditors; and any attachment or prohibitory orders passed against the issuer.
19. **Paragraph 1 C** of the SEBI Circular mandates obtaining "**No Default Statement**" from the issuer on a monthly basis. It provides that in order to enable timely recognition of default by the CRA, the CRA shall seek a No Default Statement (NDS)

from the issuer at the end of each month, which shall be provided to the CRA by the issuer on the first working day of the next month. Such NDS requires the issuer to explicitly confirm to the CRA that it has not delayed on any payment of interest/principal in the previous month. In case there have been delays, the Issuers ought to state the same in this statement and the CRAs shall promptly conduct a rating review and disseminate the rating action through Press Release within 2 days of receipt of such statement. A standardized format of the NDS is provided as Annexure to the Circular, extracted below, to illustrate the details of mandated disclosures:

“Standard Template for No Default Statement (Minimum Information be sought)

To

<CRA Name and Address>

Dear Sir/ Madam,

1. We hereby Confirm that as on date there are no Over dues or default on our debt obligations
2. We also confirm that in the month ended, there has been no instance of delay in servicing of our debt obligations.
3. We also confirm that there has not been any instance of devolvement of Letter of Credit in the month ended.
4. We also confirm that in the month ended, there has been no instance of delay in servicing of debt obligations guaranteed by us.
5. We also confirm that there has been no overdraft of the drawing power sanctioned by the bank for a period of more than 30 consecutive days in case of bank facilities which do not have scheduled maturity/repayment dates.
6. Details of delay/ default/ rescheduling of interest or principal as on date/ in the month ended, in any of the above case (if any):

<i>Name of the Instrument</i>	<i>ISIN</i>	<i>Amount to be paid</i>	<i>Due Date of Payment</i>	<i>Actual Date of Payment</i>	<i>Remarks</i>

Thanking You,
Yours faithfully,

<Authorized Signatory of Issuer>”

20. The SEBI Circular - **Para 2** under the heading “Timelines of review and Press Releases” deals with the timelines available to the CRAs for various disclosures in the context of the rating assigned to the issuer and the periodic surveillance of the rating. The circular further contains certain “Disclosure Norms” to be followed by the CRAs in various scenarios. In **Para 3B II** titled “Disclosures in case of considerable delay in providing information by the Issuer”, it is provided that if the issuer does not share the information sought by the CRA within 7 days of seeking such information from the Issuer, even after repeated reminders (within these 7 days) from the CRA, the CRA shall take appropriate rating action depending upon the severity of information risk of the issuer. Further, it provides that the Press Release in such cases shall mention the efforts made by the CRA in seeking such information and limitations regarding such information availability. The circular further deals with the requirement of signing a Rating Agreement between the Issuer and the CRA before commencement of the rating exercise and also provides for the Internal Audit of the CRA.

21. The regulatory intent of the circular, as far as debt issuers are concerned, is to compel them to disclose to their CRAs, their over dues or defaults on debt obligations; instances of delay in servicing of debt obligation guaranteed by them; exercising the over-draw facility given by the bank; devolvement of letter of credit; instances of delay/default/rescheduling of interest or principal. Such information would otherwise not come to the notice of the CRAs or would come with a lot of delay, which by itself would defeat the objective of the circular. I note, from the standard format extracted at Para 18 above, that the disclosure is not limited to the debt instruments rated by the CRA but also extends to Letter of credit/Guarantees/other bank defaults. Since the issue was subscribed based on the ratings assigned by the CRA, the rating needs to be downgraded by the CRAs at the earliest opportunity and the disclosures mandated under the circular would enable the CRAs to effectively monitor the ratings.

This is a measure aimed to protect the interest of the investors of such issuer companies, as timely disclosures to CRAs, would result in correct ratings. The underlying objective of the circular, is to instruct the CRAs to ensure prompt and accurate rating action, by proactively tracking all important changes relating to the client companies, so as to ultimately yield timely and accurate ratings.

22. Going by the scope and regulatory intent of the circular as explained above, in my view, the circular does not apply to those companies where the default has happened prior to the date of the circular or where the rating is already in “D” (default) category. As per the standards pertaining to rating norms, issuers rated to be in D Category would imply that such Issuer is in default or is in potential default, and no further downgrading of the rating is possible. Likewise, the circular is not relevant in the case of companies that were already before NCLT due to inability to repay creditors and at various stages of insolvency proceedings as on June 30, 2017, as the information of default is publicly available. Moreover, the filing of NDS by the companies that were before the insolvency court, during the relevant period would make it a redundant exercise. In all such cases, the credit rating agencies ought to have, suo moto, taken cognizance of such defaults as part of monitoring the issuers, as the information is in public domain. It is the obligation of the CRA to identify the potential default and downgrade the rating, in the case of issuers that are going to the insolvency court, even prior to such insolvency proceedings being initiated. In other words, the obligation on the issuer to file NDS cannot be placed at a higher pedestal than the obligation of the registered CRA to downgrade the rating of the issuer. One needs to balance the obligations of the listed issuers vis-à-vis that of the CRAs, while determining the liability of the issuer companies to make prompt disclosures about their defaults to the CRAs. At the same time, those issuers that have deliberately delayed/avoided disclosures, with the idea to prevent a downgrading of the ratings should not be allowed any lee way to escape the liability.

23. In this connection, it is relevant to state that the circular provides in Para A III & IV that:

“III. In case no confirmation of servicing of debt obligation by the Issuer is received by the CRA from the Debenture Trustee within 1 day post the due date, the CRA shall immediately follow up with the Issuer for confirmation of payment. In case no response is received from the issuer within 2 days of such communication, the CRA shall issue a Press Release as enlisted at point 3B(III) below and disseminate the same on its website and to all stock exchanges where the security is listed.

IV. The CRA shall also make a reference to SEBI regarding such suppression of information by the issuer/ non-cooperation of Issuer with CRA. Failure to make such reference shall be considered as aiding and abetting the Issuer in suppression of material information by the CRA which would be in contravention of Clause 12 of Code of Conduct of CRAs and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [SEBI (PFUTP) Regulations] by the CRA”

24. In short, the Circular tries to address a situation where the issuer may suppress material information from the CRA, despite diligent follow-up by the CRA, and in such a case the CRA has to take action as mandated above and if it fails to do so, then it will be seen as aiding and abetting the issuer and CRA will be liable for violation of SEBI (PFUTP) Regulations. In the case of Noticees enlisted herein, there is no such instance.

25. The adjudication in this matter has proceeded on the basis of the above understanding of the scope of the disclosure obligation arising out of the June 2017 circular read with Regulation 8 of SEBI (LODR) Regulations. I have also taken into

consideration the fact that the present adjudication is an outcome of an inspection as opposed to an investigation; and that the violation is of non-compliance with a disclosure circular and not a case of fraudulent non-disclosure. The approach is not to downplay the obligation of the issuers to make prompt and true disclosures to the CRAs. While the obligation of the issuer is important, the facts available on record does not bring out the month-wise details of the NDS filings of each company nor the material information that have not been disclosed. The examination report has relied on the replies of CRAs to get information about the debt size, date of issue, manner of placement etc. and most of replies did not contain the information sought as expected. The adjudication is based on the composite replies furnished by various CRAs in varying manners with respect to different issuers, for a particular period and the replies and submissions of the issuers to the SCN.

26. Amongst the Noticees named in this matter, there are a good number of Noticee-companies that have been proceeded against under the Insolvency and Bankruptcy Code, 2016 (IBC - in short) and those against whom RBI had directed the lenders to initiate insolvency proceedings. Both these factors are in public domain where the need to file NDS becomes superfluous. In such cases, I find that the non-compliance by Issuers ought to be viewed as technical and venial. I have proceeded to affix liability on those companies that have no reason such as recovery/ NCLT proceedings or steps taken to restructure the debt etc., and have yet failed to file the NDS. Further, I note from the replies of certain companies that they have completely repaid the debt and some have withdrawn the rating as they did not go for the issue, after obtaining the rating. In both these categories, a lenient approach has been adopted. Each of the Noticee's case has been evaluated on the basis of the applicable facts and records available, their replies and submissions made during the course of the instant proceedings and the information available in the websites of IBBI/CRAs/DTs etc.

F. INSPECTION PERIOD AND MATERIAL RELIED UPON FOR ADJUDICATION:

27. I note that SEBI's inspection had sought information from CRAs about the NDS filings for two spells of period – (i) “as of May, 2019” (**Inspection Period I**) and (ii) “for the period June 1, 2019 to November 30, 2020” (**Inspection Period II**). To elaborate, the first spell of period “as of May 2019” would signify the months between July 2017 to May 2019 and the second spell would signify the months from June 2019 to November 2020. SEBI had, vide emails dated March 13, 2020, December 03, 2020 and reminder emails dated December 11, 15 and 17, 2020 from 7 CRAs sought the details of the measures taken by them to obtain information from certain debt listed issuers/companies for the aforesaid two spells of period. Simultaneously, SEBI sought information from certain Companies/issuers vide email dated May 26, 2020 with respect to the Non-submission of NDS and information to CRAs. Each CRA has replied in different formats – some CRAs have indicated the last date on which the NDS was filed by some companies and some have not specifically indicated the same; while some CRAs have shown the date of categorizing the rating as Default “D” category through Press Release, some of the CRAs have not categorically stated the same; while some of the CRAs have indicated the nature of debt issue as public or private, some of them have not shown the same properly; the details of various debt issuance by the same Noticee company and the amount of debt raised is also not categorically forthcoming in respect of the Noticees. Thus, it is seen that the month-wise details of NDS filings with respect to each Noticee is not categorically made available from the records. In view of this, the replies of CRAs and issuers were analysed and segregated while issuing the SCN Noticee-wise and each Noticee's facts, as available, were collated in separate Reference Sheets and attached to the SCN. Besides considering the responses of the CRAs and the Noticee-companies, I have also placed reliance on information available in the Press Releases available in the website of the CRAs as well as the information pertaining to the status of insolvency proceedings available on the website of Insolvency and Bankruptcy Board

of India (IBBI), with respect to various Noticees. Now, I proceed to consider the facts and circumstances of each Noticee, to find out whether the allegations in the SCN are to be upheld or not.

G. CONSIDERATION ON MERITS:

I. Noticee No. 2: D. S. Kulkarni Developers Limited

28. In light of the facts disclosed in reply of the CRAs/DTs, it was alleged that the Noticee No. 2 failed to submit NDS to CRAs which was in violation of provision of Regulation 8 of SEBI (LODR) Regulations read with clause 1(C) of the circular ref. no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.

29. I also note from the SCN that Noticee No. 2 defaulted in payment of interest on July 01, 2017. Subsequently, the DT viz., Catalyst Trusteeship Limited had filed an application on January 22, 2018 with Debt Recovery Tribunal, Pune under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 on behalf of the debenture holders.

30. I note that CARE vide its press release dated June 30, 2017 downgraded the rating of NCDs issued by Noticee No. 2, to "CARE D" and stated the following:

"The revision in the rating of instruments is on account of inability of the company to service its interest obligations on due date on Option I and Option IV of its Non-Convertible Debentures as per the company's intimation to Stock Exchange. The likely delays are on account of deterioration in overall financial risk profile and stretched liquidity position of the company.

As per the intimation by the company to Stock Exchange, the company would not be able to service its interest obligations due on July 1, 2017 on the Option I and Option

IV of its Non- Convertible Debentures on account of its stretched liquidity position. Moreover, there are on-going delays in debt servicing in the existing bank facilities.”

31. In view of the above, I note that CRA had taken the necessary action for assigning/downgrading the rating pursuant to delay/default in payment obligation with respect to interest/principal of NCDs of the Noticee No. 2. CRA had also disseminated the rating action by issuing press releases in this regard. The information regarding default and/or “D” Rating was in public domain as on the date of circular. Therefore, SEBI Circular dated June 30, 2017 cannot be made applicable to Noticee No. 2 going by the rationale/scope of the circular expanded in paragraphs 15 to 26. Hence, the allegations in the SCN are being dropped against Noticee No. 2.

II. Noticee No. 3: Panyam Cements and Mineral Industries Limited

32. In light of the facts disclosed in reply of the CRA/DTs, it was alleged that Noticee No. 3 failed to submit NDS to CRAs, which was in violation of provisions of Regulation 8 of SEBI (LODR) Regulations read with clause 1(C) of the circular ref. no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.

33. I note that no reply to SCN was filed by Noticee No. 3. However, I note from the SCN that the Noticee had defaulted in payment of interest/principal on NCDs in September 2017, as seen during an examination by SEBI in a related reference made by Debenture Trustee pertaining to the non-compliance of requirements of SEBI (LODR) Regulations, 2015.

34. This issue being made through private placement and in view of the fact that the debts were already in Default category by CARE Ratings since September 2017, i.e. from the time of default itself, I am inclined to view the violation as technical and venial in

nature. The allegation in the SCN are being dropped against Noticee No. 3 without the levy of penalty.

III. Hindustan Construction Company Ltd. - Noticee No. 5

35. On the basis of reply submitted by CRA/DTs, it was alleged that the Noticee No. 5 failed to submit NDS to CRAs which was in violation of provision of Regulation 8 of SEBI (LODR) Regulations read with clause 1(C) of the circular ref. no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.
36. I note from the SCN that Noticee No. 5 started to default in payment of interest from October, 2017. I further note that Noticee No. 5 vide letter dated June 24, 2022 filed its reply to the SCN, and made additional submissions vide letter dated February 24, 2023. Extract of the replies filed by the Noticee are reproduced below:

M/s CARE Ratings Ltd. (CARE) has been carrying out the credit rating exercise for the Company since July 2002. Due to delay in payment of lenders' dues, CARE assigned "D" (default) rating to the credit facilities availed by the Company in February 2012 and since then our credit rating continues to be "D". We would like to inform that statements of bank-wise overdue and default status along with NCDs default and the outstanding amount of the facilities were provided annually to CARE by the Company. Further, the requisite information as required by CARE from time to time has always been provided by the Company. Since the credit rating of the Company has remained "D" on a continuous basis for the past many years, it was our understanding that there was no need of further submitting the Non-Default Statement (NDS). Later, we had started providing the Non-Default Statement from April 2020 onwards on monthly basis regularly to the Rating Agencies i.e. CARE Rating till date along with the defaults in NCDs.

Noticee No. 5 submitted that due to delay in lender's dues, CRA had assigned "D" (default) rating to the credit facilities availed by the company. The company has extended due co-operation from time to time to CRA in submitting information in accordance with Regulation 8 of SEBI LODR and Circular no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017. The Noticee also stated that statements of bank-wise overdue and default status along with NCDs default, outstanding amount of the facilities and any other requisite information including Non-Default statements were provided to CRA. (Non-Default statements submitted to CRA, for recent months, enclosed with reply)

37. I note from the reply of the Noticee No. 5 viz. Hindustan Construction Co. Ltd. that CARE Ratings Ltd. had been carrying out the credit rating exercise for the Noticee since July 2002. Due to delay in payment of lenders' dues, CARE assigned "D" (default) rating to the credit facilities availed by the Company in February 2012 and since then credit rating continued to be "D". Further, vide submissions dated June 24, 2022, Noticee No. 5 stated that since its credit rating had remained "D" on a continuous basis for the past many years, its understanding was that there was no need for further submission of NDS. I am inclined to accept this argument.
38. In view of the facts brought out by Noticee No. 5 in its reply and the rationale explained for deciding the applicability of the circular in paragraphs 15 to 26, more particularly that the debts came to be downgraded as Default category right from 2012 itself, I find that the Noticee cannot be held liable for non-compliance as alleged in the SCN.

IV. Noticee No. 7: Jaiprakash Associates Limited

39. On the basis of the facts disclosed in reply of the CRA/DTs, it was alleged that the Noticee No. 7 failed to submit NDS to CRAs which was in violation of provision of Regulation 8 of SEBI (LODR) Regulations 2015 read with clause 1(C) of the circular ref. no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.
40. I note from the SCN that as per disclosure made to the stock exchanges dated October 27, 2016, the Noticee had disclosed that it had defaulted in the payment of interest for three months as on October 26, 2016. Further, as per disclosure made by the Noticee to the DT on October 1, 2019, the Noticee had disclosed that it had entered into a Debt Realignment Plan under which outstanding ECBs/NCDs had been converted into Rupees Term Loan under a scheme of arrangement and there were no over-dues towards interest/principal on the NCDs.

41. I further note that Noticee No. 7 vide letter dated June 23, 2022 filed reply to the SCN.

Extract of the reply is reproduced below:

1. *The Privately Placed Secured Redeemable Non-convertible Debentures issued by the company and presently held by LIC of India & Axis Bank Ltd. are listed on BSE Limited. The credit rating of Privately Placed Secured Redeemable Non-convertible Debentures (NCDs) was downgraded by CARE Ratings Limited from CARE 'BB' to CARE 'D' (the lowest rating) with effect from 22 July 2015 and continues to be so till date.*
2. *There were / are only two Debenture Holders of the Privately Placed Secured Redeemable Non-convertible Debentures (NCDs) issued by the Noticee 7. They are - LIC of India and Axis Bank Ltd., who are also the Term Lenders to the Company and had agreed to the proposed conversion of outstanding principal & interest on the NCDs into Rupee Term Loan (RTL), which is in the knowledge of Debenture Trustees (DTs) and in turn Credit Rating Agencies (CRAs) have been informed about the same. The information is also regularly disclosed in the Annual Reports of the Noticee 7 Company.*
3. *The Noticee further contended that the information was also in the public domain by way of disclosures made by Noticee No. 7 to the BSE in respect of NCDs where NCDs of the Company are listed. The financial position of the Noticee 7 leading to 'alleged default' and approval of Debt Realignment Plan (DRP) by the Lenders took place on 22 June 2017 i.e. before the SEBI Circular dated 30 June 2017. Debt Realignment Plan (DRP) had been a matter of public knowledge and knowledge of various intermediaries like Debenture Trustees, Credit Rating Agencies (CRAs), Stock Exchanges, etc.*
4. *The Noticee No. 7 while bringing the attention to Reference Sheet No. 12 stated that it is inadvertently mentioned in Reference Sheet that the NCDs were by way of Public Issue. Noticee No. 7 confirmed that the NCDs were Privately Placed Secured Redeemable Non-convertible Debentures issued by the Noticee. LIC of India and Axis Bank Ltd. are /were the only holders of these NCDs. The requirements of Credit Rating Agencies (CRAs), Registrar and Transfer Agents (RTAs), Debenture Trustees (DTs) in relation to NCDs were duly complied with and it is acknowledged by the CRA in Reference Sheet No.12.*
5. *SEBI's Circular dated 30 June, 2017 was addressed to CRAs and the Noticee Company was under bonafide belief that since the Appointed Date in the Scheme of Arrangement under reference was 1 July 2017, it was not required to submit NDS to the intermediaries in terms of the said SEBI Circular dated 30 June 2017.*
6. *In the case of Noticee 7 Company, effective from 22 July 2015, rating was downgraded from CARE BB (Double B) to CARE-D (Single D) which is the lowest rating and the same continues till date. Moreover, the information was very much in public domain as the same was duly submitted to the Stock Exchanges as well as the Debenture Trustees and was always shared with the CRA as and when desired, especially during the Annual Review of the Rating, which in any case continued to be CARE 'D' since 22 July 2015.*

7. *Since the lowest rating was assigned to the Noticee Company w.e.f. 22 July 2015, there was no reason/intention not to provide the information to CRA and, for the aforesaid reasons, the Noticee 7 had bonafide belief that it has not contravened the provisions of Regulation 8 of SEBI (LODR) Regulations, 2015 and /or SEBI Circular dated 30 June 2017*

42. I am inclined to accept all the submissions of Noticee No. 7 in the reply. I further note that credit rating of the privately placed secured redeemable non-convertible debentures (NCDs) was downgraded by CARE from 'CARE BB' to 'CARE D' (the lowest rating) with effect from July 22, 2015. I also note that Noticee No. 7 had provided copies of various disclosures made to the stock exchanges during the period July 2016 to May 04, 2017. In this regard, I note that information regarding "D" (Default) rating was already in public domain before the issuance of SEBI Circular dated June 30, 2017, and there was no scope of further rating downgrade possible for CRAs in terms of said SEBI circular. Therefore, I note that the provisions of Circular dated June 30, 2017 were not applicable to the Noticee and hence I drop the allegations in the SCN without the levy of any penalty.

V. Noticee No. 8: Shree Sukhakarta Developers Private Limited

43. On the basis of facts disclosed in reply of the CRA/DTs, it was alleged that the Noticee No. 8 had failed to submit NDS to CRAs which was in violation of provision of Regulation 8 of SEBI (LODR) Regulation 2015 read with clause 1(C) of the Circular ref. no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017 titled as 'Monitoring and Review of Ratings by CRAs'.

44. I note from the SCN that Noticee No. 8 defaulted in payment of interest/principal since December 30, 2017, as per status of default cases as on March 06, 2019. I further note that Noticee No. 8, vide email dated January 11, 2023 filed its reply to SCN reproduced as below:

"We are in receipt of your notice dated December 12, 2022 pertaining to Non-submission of Non default statement/ information to Credit Rating Agencies (CRA) for period June 01, 2019

to November 30, 2020. We wish to inform you that 3500 NCD's of Rs. 10,00,000 aggregating to Rs. 350 Crores for which credit rating was obtained was already repaid in full on 20th February, 2020. Hence the Filing of NDS for stated period to credit rating agencies is not applicable.

However, the form for satisfaction of charge (Charge ID: 100345983) w.r.t aforesaid NCD's was filed with ROC on 7th December 2021 vide SRN: T62528856 due to COVID related delay.

Considering above submissions, requesting your good office not to levy any monetary penalty which will only cause further hardships to the company."

45. Vide email dated April 19, 2023, Noticee No. 8 forwarded the scanned copies of relevant documents including letter dated February 25, 2020 from Catalyst Trusteeship Limited conveying its "No objection" for filing relevant form with concerned Registrar of companies towards satisfaction of charge created for NCDs. In the circumstances, including the fact that entire debt has been repaid by February 20, 2020, I find that any breach of the provisions of Circular dated June 30, 2017 is venial and technical in nature, and I am not inclined to impose any penalty. The SCN against the Noticee No. 8 is dropped without levy of any penalty.

VI. Noticee No. 9: Amtek Auto Limited

46. Noticee No. 9 is one of the Noticees, in respect of which, the DTs/CRA's stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRA's/DTs, it was alleged in the SCN that Noticee No. 9 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.
47. I note that Authorized Representatives (ARs) viz. Ms. Apoorva Chaudhary and Mr. Sushmit Parwal, Advocates, appeared before me through webex hearing on June 23, 2022 on behalf of IRP, Mr. Dinkar Thiruvananthapuram appointed in the matter of Amtek Auto Limited. ARs requested for extension of time to file reply to SCN and

sought adjournment of hearing. Their request was acceded to and time was extended to file reply on or before July 05, 2022. Another opportunity of hearing was granted on July 05, 2022. However, I note that Noticee failed to appear before me on July 05, 2022 and no reply is filed to SCN. Therefore, I am proceeding further to deal with the issue, qua Noticee No. 9, based on material available on record.

48. I note that Noticee No. 9 was one of the companies against whom CIRP proceedings were initiated pursuant to RBI directive dated June 13, 2017. I also note that the rating of the Noticee as on August 07, 2015, was suspended by CARE as seen from its website, which is prior to the issuance of the circular.

49. I note that CIRP proceedings were initiated vide order of the Hon'ble NCLT dated July 24, 2017, which was a fortnight after the issue of SEBI Circular. As the news pertaining to the default status of the Company was in public domain, including the fact that it was one amongst the companies identified by RBI to be proceeded against under the IBC Code, I find that the non-disclosure, if at all, has not had any impact. I am inclined to view the violation as merely technical and venial in nature and thereby, not attracting any penalty. The SCN issued to the Noticee is hereby dropped without the levy of any penalty.

VII. Noticee No. 10: Monnet Ispat and Energy Limited (now known as JSW Ispat Special Products Limited).

50. Noticee No. 10 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 10 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

51.I note that Noticee No. 10 vide letter dated June 02, 2022 filed its reply to the SCN.

Extract of the Reply filed by the Noticee is given below:-

1. *The name of the Noticee No. 10 company has been changed from "Monnet Ispat and Energy Limited" to "JSW Ispat Special Products Limited" as per the fresh certificate of incorporation dated September 23, 2020 issued by the Registrar of Companies — Chhattisgarh. Further, Registered office of the Noticee No. 10 has been shifted from State of Chhattisgarh to State of Maharashtra.*
2. *The Noticee No. 10 is a public company whose non-convertible debentures ("NCDs") were listed on BSE Limited ("BSE"). Pursuant to the settlement and extinguishment of the Noticee No. 10's NCDs, such NCDs were delisted from BSE with effect from June 26, 2019.*
3. *The Noticee No. 10 was one of the twelve (12) companies identified by the Reserve Bank of India in its directive dated June 15, 2017 ("RBI Directive") against which lenders were instructed to commence insolvency proceedings in accordance with the Insolvency and Bankruptcy Code, 2016 ("IBC").*
4. *Accordingly, the State Bank of India filed a petition before the Hon'ble National Company Law Tribunal, Mumbai bench ("NCLT") for the commencement of the corporate insolvency resolution process of the Noticee No. 10, which was admitted by Hon'ble NCLT vide its order dated July 18, 2017. Subsequently, a resolution professional was appointed to manage the affairs of the Noticee No. 10. In compliance with the provisions of the IBC, the resolution professional invited prospective investors and other persons to submit a resolution plan for the Noticee No. 10. The resolution professional subsequently presented the Resolution Plan to the committee of creditors of the Noticee No. 10 ("COC") for its approval. The Resolution Plan was considered by the COC and approved by a majority vote of 98.97% of the financial creditors by value. Pursuant to such approval, the COC issued a letter of intent dated April 12, 2018 to the Consortium.*
5. *Subsequently, the Hon'ble NCLT vide its order dated July 24, 2018 ("NCLT Order") approved the Resolution Plan (as amended and supplemented), with certain modifications. A copy of the disclosure dated July 26, 2018 in relation to the NCLT Order made by Noticee No. 10 to BSE is annexed hereto as "Exhibit C".*
6. *Thereafter, the Noticee No. 10 complied with all necessary formalities required for satisfaction of charges over the assets of Noticee No. 10, extinguishment of such NCDs from the records of the depositories (i.e., National Securities Depository Limited ("NSDL") and Central Depository Services (India) Limited ("CDSL")) and delisting of such NCDs from BSE.*

7. Pursuant to the RBI Directive, the State Bank of India filed a petition before the NCLT for the commencement of the corporate insolvency resolution process of the Noticee No. 10, which was admitted by Hon'ble NCLT vide its order dated July 18, 2017. Subsequently, the Consortium submitted the Resolution Plan, which was approved by the COC and the Hon'ble NCLT. It is submitted that the Resolution Plan and NCLT Order (inter-alia) provides as follows:
- a. All financial liabilities (including the NCDs) and other liabilities and obligations which may have a financial impact on the Noticee No. 10, whether admitted or not, due or contingent, asserted or unasserted, known or unknown, present or future and which are in relation to any period prior to the Acquisition were settled or written off in full and deemed to be permanently extinguished ("Extinguished Financial Liabilities"); and
 - b. The Noticee No. 10 shall, at no point of time, directly or indirectly, be held responsible or liable in relation to the Extinguished Financial Liabilities.
8. It is therefore submitted that the listed NCDs of the Noticee No. 10 were paid and settled and permanently extinguished pursuant to the Resolution Plan and NCLT Order, as on August 31, 2018. It is pertinent to note that the Noticee No. 10 had promptly disclosed to the BSE the implementation of the NCLT Order on August 31, 2018. Further, following such settlement and extinguishment of the NCDs of the Noticee No. 10, the respective debentures trustees of the NCDs issued no-objection/ no-due certificates to the Noticee No. 10. Furthermore, the NCDs were extinguished from the records of NSDL and CDSL, and the listed NCDs were also delisted by BSE. Please refer to paragraphs 8 to 17 above for further details in this respect. Hence, there cannot be any obligation on the Noticee No. 10 to comply with disclosure requirements under Regulation 8 of the SEBI LODR read with clause 1(C) of the SEBI Circular in respect of its settled and extinguished listed NCDs after August 31, 2018. 23. In view of the aforesaid clear terms of the Resolution Plan and the NCLT Order, the SCN could not be issued to the Noticee No. 10 for the alleged contravention relating to the period after the settlement and extinguishment of the NCDs.
9. It would be pertinent to note that the Hon'ble Supreme Court in *Ghanashyam Mishra and Sone Private Limited v. Edelweiss Asset Reconstruction Company Limited* (in Civil Appeal No. 8129 of 2019 and other connected proceedings), has held as follows:
"94. Therefore, in our considered view, the aforesaid provisions leave no manner of doubt to hold, that the 2019 amendment is declaratory and clarificatory in nature. We also hold, that even if 2019 amendment was not effected, still in light of the view taken by us, the Central Government, any State Government or any local authority would be bound by the resolution plan, once it is approved by the Adjudicating Authority (i.e. NCLT),"
10. Moreover, in *Ultra Tech Nathdwara Cement Ltd. v. Union of India*, 2020 SCC OnLine Raj 1097, the Hon'ble Rajasthan High Court held that:
"66. Section 31(l) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution Applicant starts running the business of the corporate debtor on a fresh state as it were."

11. *It would also be pertinent to note that the Hon'ble Securities Appellate Tribunal in Monnet Ispat & Energy Limited v. SEBI, Appeal No. 238 of 2020, has held that "once a resolution plan has been approved it becomes binding on all creditors including the government and local authorities including the respondent under section 31(1) of the IBC."*
12. *In view of the aforesaid, it is clear that once the resolution plan is approved by the appropriate authority the same is binding on all concerned, including SEBI. Accordingly, the settlement and extinguishment of the NCDs of the Noticee No. 10 pursuant to the Resolution Plan is binding on all concerned, including SEBI.*
13. *Further, it is imperative to note that the Annexure 4 (reference pages 24 to 27) to the SCN clearly records that the Noticee No. 10 responded to its CRA (Brickwork Ratings India Private Limited) and provided the requisite details. The Annexure specifically states as follows: "Various email dated 07 Oct, 2019, 09 Oct 2019 and 14 Oct 2019 to seek the information were mailed to company and debenture trustee and company cooperated in submitting the information and rating of NCD's was withdrawn on 18 Oct 2019." Further, a copy of the letter dated October 18, 2019 from the CRA withdrawing its credit rating to the NCDs of the Noticee No. 10 is annexed hereto as "Exhibit K"., It is submitted that the allegations in the SCN in relation to the Noticee No. 10 lack merit and are liable to be set aside on this ground alone.*
14. *Without prejudice to the aforesaid, it is submitted that in the event SEBI continues to proceed against the Noticee No. 10 pursuant to the SCN, the same will be in violation of the directions mentioned in the NCLT Order, which has clearly approved the Resolution Plan (including the relevant sections, as aforesaid).*

Paragraph wise response to the SCN

15. *With respect to the observations in paragraphs 9, 10, 11(b) and 13 of the SCN read with Reference Sheet No. 15 annexed to the SCN, we repeat, reiterate and confirm all that has been stated herein above and deny everything contrary thereto or inconsistent therewith. It is denied that the Noticee No. 10 has at all violated any provisions of the Regulation 8 of LODR Regulations read with clause 1(C) of the SEBI Circular. It is further submitted that-*
16. *The e-mail ids of the Noticee No. 10 as mentioned in Annexure 5 of SCN were not valid at the relevant point in time. Pursuant to the Resolution Plan, the said e-mail id was not being used, controlled or operated by the Noticee No.10*
17. *Annexure 4 (reference pages 24 to 27) to the SCN clearly records that the Noticee No. 10 responded to its CRA (Brickwork Ratings India Private Limited) and provided the requisite details. The Annexure specifically states as follows: "Various email dated 07 Oct, 2019, 09 Oct 2019 and 14 Oct 2019 to seek the information were mailed to company and debenture trustee and company cooperated in submitting the information and rating of NCD's was withdrawn on 18 Oct 2019." In fact, the CRA has issued a*

letter dated October 18, 2019 to withdrawing its credit rating to the NCDs of the Noticee No. 10. Therefore, admittedly, there is no case against the Noticee No. 10 as alleged under the SCN.

18. Pursuant to the NCLT Order, the continuation of the proceedings initiated against the Noticee No. 10 pursuant to the SCN will contravene the provisions of the Resolution Plan and therefore be in contravention of the NCLT Order and the relied upon judgments of the Hon'ble Supreme Court of India, Rajasthan High Court and Securities Appellate Tribunal. Therefore, the allegations in the SCN are not sustainable against the Noticee No. 10 and the SCN is liable to be set aside.

52. I note that Noticee No. 10 was one of the 12 companies identified by RBI, in its directive dated June 13, 2017 against which the lenders were instructed to commence insolvency proceedings under the provisions of the Insolvency and Bankruptcy Code. From that day, this information was in public domain and within a fortnight the subject circular was issued.

53. I note that State Bank of India filed a petition before the Hon'ble National Company Law Tribunal (NCLT) for the commencement of the corporate insolvency resolution process (CIRP) of Noticee No. 10, which was admitted on July 18, 2017. Further, the Noticee has stated that resolution plan was approved by Hon'ble NCLT vide its order dated July 24, 2018. I also note that NCDs have already been extinguished from the records of depositories and delisted from BSE. More pertinently, I note from the website of the CRA Brickwork Ratings that the rating was in "Default" category since September, 2016. I do not find it appropriate to proceed against Noticee No. 10 for violation of the circular dated June 30, 2017, as by then, it was in the Default "D" category. I am therefore, inclined to drop the allegations in the SCN against the Noticee without the levy of any penalty. The SCN issued against the Noticee stands disposed of without the levy of any penalty.

VIII. Noticee No. 11: ESS DEE Aluminum Limited

54. Noticee No. 11 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 11 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.
55. Authorized Representative of the Noticee availed the opportunity of personal hearing on July 26, 2022 and April 18, 2023. During the course of hearing, he submitted that the CIRP was initiated against the Noticee No.11 in February 2020. Subsequently, since the resolution failed, liquidation process was commenced vide an order dated October 08, 2021 passed by the Hon'ble NCLT, Kolkata Bench.
56. Further, Noticee submitted reply vide response dated May 22, 2023. In the said response, it was submitted that the current Authorized Representatives of the Noticee were unaware of the omissions in compliances made by the suspended Board of Directors of the Corporate Debtor. Therefore, it was rendered incapable in providing a reasonable explanation due to want of knowledge pertaining to the conduct of the suspended Directors and the communications between SEBI and the Directors.
57. I note that CARE vide its press release dated March 30, 2017 assigned the rating CARE "D"; with remarks "*Issuer not cooperating*", to the NCDs of Noticee No.11 and mentioned the following:
"CARE has been seeking information from ESS DEE Aluminum Ltd (EADL), to monitor the rating(s) vide e-mail communications vide e-mail communications dated March 10, 2017, March 14, 2017, March 18, 2017, March 20, 2017 and numerous phone calls. However, despite our repeated requests, the company has not provided the requisite information for

monitoring the ratings. In line with the extant SEBI guidelines, CARE has reviewed the rating on the basis of the publicly available information which however, in CARE's opinion is not sufficient to arrive at a fair rating. The ratings on ESS DEE Aluminum Ltd bank facilities and instruments will now be denoted as CARE D/CARE D; ISSUER NOT COOPERATING. The rating takes into account the ongoing delays in debt servicing owing to the strained liquidity position. Users of these ratings (including investors, lenders and the public at large) are hence requested to exercise caution while using the above rating(s)."

58. In view of the above, I note that CRA has taken the necessary action for assigning/downgrading the rating pursuant to delay/default in payment obligation with respect to interest/principal of NCDs of the Noticee, and further, CRA has also disseminated the rating action by issuing press releases in this regard. The information regarding default and/or "D" Rating was already in public domain before the issuance of circular. Therefore, SEBI Circular dated June 30, 2017 cannot be made applicable to the Noticee going by the rationale of the circular expanded in paragraphs 15 to 26.

59. I have also taken note that CIRP proceedings have been initiated against Noticee No. 11 vide order of the Hon'ble NCLT dated June 18, 2018 and February 14, 2020. Further the Hon'ble NCLT vide order dated October 08, 2021 directed for Liquidation of Noticee No. 11. In the reply dated May 22, 2023 filed by Liquidator- Mrs. Deepika Bhugra Prasad, it was submitted that subsequent to the initiation of Liquidation process, she was able to sell the Noticee No. 11 as a going concern as Shakhambari Ispat & Power Ltd. emerged as highest bidder in the auction. Sale of Noticee No. 11 as a going concern was approved by the Hon'ble NCLT, Kolkata bench vide its order dated February 24, 2023.

60. In the case of Noticee No. 11, I note that it was placed in Default category, from March 2017 itself. The question of violation of circular dated June 30, 2017 does not arise,

in such scenario. I am therefore, inclined to drop the proceedings against Noticee No. 11 without levying any penalty. The SCN issued to Noticee No.11 is disposed of without the levy of any penalty.

IX. Noticee No. 12: Essar Steel India Limited

61. Noticee No. 12 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that Noticee No. 12 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

62. I note that Mr. Satish Kumar Gupta, IRP of Noticee No. 12 vide letter dated December 26, 2022 filed reply as under:-

1. *Essar Steel India Limited was admitted into insolvency under Insolvency and Bankruptcy Code, 2016 and thereafter upon approval of the resolution plan of Successful Resolution Applicant, Arcelor Mittal India Private Limited ("AMIPL") for Essar Steel India Limited ("ESIL") on 15 November 2019 by the Hon'ble Supreme Court of India in 'Committee of Creditors of Essar Steel India Limited Through Authorised Signatory V/s Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019]', the role / tenure of the resolution professional ("RP") of ESIL came to an end and the RP of ESIL became functus officio. Thus, the undersigned, as ex-RP of ESIL, is not liable for any compliance as alleged in your letter. Essar Steel India Limited has been taken over by AMIPL and renamed as "ArcelorMittal Nippon Steel India Limited" (AMNSIL).*

AMNSIL, vide letter dated January 25, 2023 submitted the following:

Background and current status of the Noticee No. 12

2. *On account of financial stress and failure to satisfy various financial repayment obligations, insolvency proceedings were initiated by certain banks against ESIL before the Hon'ble National Law Tribunal, Ahmedabad Bench (the "NCLT") under the IBC. The Hon'ble NCLT pursuant to an order dated August 2, 2017 admitted the insolvency proceedings against ESIL leading to the commencement of the corporate insolvency resolution process under the IBC.*

3. *In compliance of the SC Judgment, AMIPL implemented its resolution plan and acquired ESIL. The implementation of the resolution plan was completed in December 2019.*
4. *As a part of the IBC process, ArcelorMittal India Private Limited ("AMIPL") expressed interest in acquiring ESIL and submitted a resolution plan. The Hon'ble NCLT pursuant to an order dated March 8, 2019 approved the resolution plan submitted by AMIPL. Such approval was subsequently confirmed by the Hon'ble National Company Law Appellate Tribunal (the "NCLAT") pursuant to an order dated July 4, 2019 and thereafter by the Hon'ble Supreme Court of India (the "Supreme Court") pursuant to its judgment dated November 15, 2019 (the "SC Judgment").*

Brief facts in relation to the listed securities

5. *AMNSIL states that certain nonconvertible debentures ("NCDs") were issued by ESIL in 2011. These NCDs were privately placed and subscribed by and allotted to Axis Bank alone. No retail investors were allotted any NCDs or involved in the transaction at all. The tenure of the NCDs was for a period of seven (7) years and they were to be redeemed in four equal instalments beginning from June 13, 2015 to June 13, 2018, subject to exercise of the put/call option. Around September 2016, Axis Bank sold the outstanding 3, 120 NCDs to Edelweiss Asset Reconstruction Company Limited ("Edelweiss").*
6. *Pursuant to the implementation of AMIPL's resolution plan on December 16, 2019, AMIPL paid for and acquired the NCDs. AMNSIL submits that the NCDs in question were assigned from Axis Bank to Edelweiss and ultimately to AMIPL. The dues payable to Edelweiss pursuant to their claims as admitted under the IBC have been paid and Edelweiss has issued a no-dues certificate dated December 16, 2019. Further, these NCDs were delisted from the BSE Limited with effect from April 1, 2019.*

Submissions of Noticee No. 12

- A. *The SCN is liable to be withdrawn in accordance with the "clean slate" principle in the SC Judgment and in compliance with Sections 31(1) and 32A of the IBC*
7. *ESL was admitted to insolvency by the Hon'ble NCLT on August 2, 2017. The resolution plan was approved by the Hon'ble NCLT under Section 31 of the IBC on March 8, 2019; subsequently confirmed by the Hon'ble NCLAT on July 4, 2019 and finally confirmed by the Hon'ble Supreme Court on November 15, 2019.*
8. *At the time of approving the resolution plan for ESL, the Hon'ble Supreme Court emphasized on the 'fresh slate' principle and observed that:
"107. ...A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully takes over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove."*

9. In light of the above, AMNSIL submits that the SEBI is under a legal duty to comply with the SC Judgment, which is binding on all local and governmental authorities, including the SEBI. To supplement the submission, AMNSIL relies on Section 31(1) of the IBC which reads as follows:

"31. Approval of resolution plan. -

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. ..."

10. In support of the above submissions, AMNSIL places reliance on the order dated July 29, 2021 issued by the SEBI in the matter of Dewan Housing Finance Corporation Limited (the case, "DHFL" case, and the order, "DHFL Order"). The DHFL case related to violations of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. In the DHFL case, the SEBI had relied on the SC Judgment and disposed of the matter without any adverse orders, while observing that:

"13. In light of the above, I am of the view that once a resolution plan has been approved. it becomes obligatory on all creditors including the Central Government, State Government and Local Authorities under Section 31 of the IBC and no proceedings can be initiated or proceeded against the corporate debtor. Therefore, the present proceedings cannot be continued against the Noticee, since the resolution plan in respect of the Noticee has already been approved by the Hon 'ble NCLT, vide order dated June 07, 2021, under Section 31 of the IBC.(Emphasis supplied)

AMNSIL submits that the SEBI is bound by its own precedent and accordingly, there is no reason why a similar view should not be taken by the SEBI in the present case.

11. Further, AMNSIL submits that no proceedings or prosecution against it can be initiated for any offences alleged to have been committed prior to approval of the resolution plan by ESIL. Section 32A of the IBC expressly provides that a corporate debtor shall not be prosecuted for an offence committed prior to the corporate insolvency resolution process, from the date on which a resolution plan is approved by the Adjudicating Authority, as long as the resolution plan results in a change in the management or control of the corporate debtor. Section 32A of the IBC further clarifies that if a prosecution is instituted during the corporate insolvency resolution process against a corporate debtor, it shall stand discharged from the date of the approval of the resolution plan. It is relevant to note that under Section 24 of the SEBI Act, any contravention of or an attempt to contravene the provisions of the SEBI Act or any regulations thereunder constitutes an "offence".

12. Pursuant to the implementation of the resolution plan submitted by AMIPL, the ownership and management of Noticee No. 12 has changed completely. Consequently, the new persons in ownership, management and control of Noticee No. 12 were in no manner privy to the dealings of ESIL including the noncompliance alleged in the SCN. In fact, the Report of the Insolvency Law Committee (February, 2020) also recognized that prospective resolution applicants may be apprehensive of being held liable for offences that they were unable to detect due to information asymmetry and therefore place their bids at a lower amount. This drawback was sought to be cured by the introduction and implementation of Section 32A of the IBC, and the continuation of the present proceedings under the SCN would result in the frustration of the steps taken by the legislature.
- B. The alleged violation has not resulted in ESIL making any disproportionate gains or gaining any unfair advantage nor has it prejudicially affected the interest of any investors in the securities market
13. Without prejudice to the aforesaid, as stated hereinabove, AMNSIL submits that the offences alleged in the SCN relate to the non-disclosure of information pertaining to the NCDs issued by ESIL in 2011 which in any event were delisted from the BSE with effect from April 1, 2019, i.e., before AMNSIL took over the management and control of ESIL on December 16, 2019. No retail investors were involved in these NCDs at any stage.
14. In light of the above, AMNSIL submits that:
- (a) The SCN is liable to be withdrawn in accordance with the "clean slate" principle and in compliance with Sections 31(1) and 32A of the IBC;
 - (b) The SEBI has, in the past, in the DHFL case dismissed the allegations on the basis that the new entity cannot be penalized for the sins of the previous entity;
 - (c) The principles of natural justice require the SCN to be withdrawn;
 - (d) The SCN proposes to penalise an innocent party which has no connection with the entity at the relevant time; and
 - (e) There is not even an allegation that any gains or unfair advantage has been derived by Noticee No. 12 as a result of the alleged violation.

Further, vide letter dated 20.02.2023, the Noticee placed reliance on Hon'ble SAT order dated 01.07.2022 passed in the matter of ArcelorMittal Nippon Steel India Limited quashing the SEBI order dated 28.03.2022 and stated that Hon'ble SAT while relying on the submissions of Noticee held that controversy was squarely by the decision of Hon'ble Supreme Court in Essar Steel India Limited CoC vs. Satish Kumar Gupta and accordingly the appeal was allowed. Copy of SAT order dated 01.07.2022 was provided with the reply.

63. I take note of the fact that Noticee No. 12 was admitted to insolvency by the Hon'ble NCLT on August 02, 2017. As per the Press release dated April 06, 2017 issued by CARE, the NCDs were in "Default" category. Considering the fact that the rating was in "Default" category prior to the date of circular, I am inclined to drop the allegations

in the SCN against Noticee No. 12 without levying any penalty. The SCN issued to Noticee No.12 stands disposed of without the levy of any penalty.

X. Noticee No. 13: Punj Lloyd Limited

64. Noticee No. 13 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 13 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

65. I note that Noticee No. 13, vide letter dated May 26, 2022 and email dated June 14, 2022 filed its reply to the SCN. Extract of the Reply filed by Noticee is reproduced below:

1. *Following NCDs, issued by Punj Lloyd Limited ("PLL/ Company") were listed on BSE and principal amount of the NCDs along with interest due thereon from time to time was duly paid to the Debenture holders until December, 2014. However, with effect from January, 2015, there was default in payment of principal amount along with interest due thereon.*

ISIN No.	Date of Allotment	Amounts (In Cr.)	Rate (%)	Mode of Issue	Date of Redemption	Status
INE701B07010	02/01/2009	150.00	12.00	Demat	02/01/2019	Not Redeemed
INE701607077	15/10/2010	300.00	10.50	Demat	15/10/2015	Not Redeemed

2. *In terms of the relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and the directions issued by SEBI from time to time the Company has been making the relevant disclosure to the Debenture Trustee (IDBI Trusteeship Services Ltd.) and submitting the NDS to its CRA (CARE Ratings Limited). The copy of last confirmation received from the Debenture Trustee on October 31, 2018 and the NDS dated November 1, 2018, sent to CRA is enclosed.*

3. *The Hon'ble National Company Law Tribunal ("NCLT"), Principal Bench, New Delhi, vide its order dated March 8, 2019 commenced Corporate Insolvency Resolution Process ("CIRP") in the Company. In the 27th Meeting of the Committee of Creditors ("CoC") held on March 30, 2021, the Resolution Professional ("RP") informed the Hon'ble NCLT that the Resolution Plan which was put to E-vote under CIRP of the Company has not been approved by the CoC. The CoC has recommended liquidation of the Company as a going concern and they will also simultaneously consider a scheme of arrangement under Section 230 of Companies Act, 2013, if any is presented. Thereafter, the RP of the Company had filed necessary application with Hon'ble National Company Law Tribunal, Principal Bench, New Delhi (NCLT) to seek further directions in the matter.*
 4. *Further, Noticee No. 13 vide email dated 14.06.2022 informed that Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, (NCLT) vide its order dated May 27, 2022 ("Liquidation Order") has directed for liquidation of the Corporate Debtor, namely Punj Lloyd Ltd. 'as a going concern' with further directions as mentioned in the order itself. By virtue of the Liquidation Order, the Corporate Insolvency Resolution Process of Punj Lloyd Limited has completed and a fresh liquidation process have been initiated with effect from May 27, 2022. Further, vide the same order, Mr. Ashwini Mehar have been appointed as the Liquidator of the Corporate Debtor.*
 5. *Noticee No. 13, vide email dated 22.02.2023 informed that the Liquidator has received two Bids in October 2022 and same is under the process of evaluation of the Bids. Hon'ble NCLT vide order dated January 31, 2023 has extended the period of Liquidation on going concern basis uptill March 23, 2023.*
66. I note that Noticee No. 13, has stated, *inter alia*, that principal amount of the NCDs along with interest was duly paid to debentures holders until December 2014. However, with effect from January 2015, there was default in payment of principal amount along with interest due thereon. It is noted from the website of CRA (www.carerating.com) that CRA had assigned "D" (default) rating to NCDs of Punj Lloyd Ltd. in 2015. Therefore, the circular does not technically apply to it as the rating cannot be downgraded any further. I also note from the reply of the Noticee that the Liquidation order has been passed against the Noticee by Hon'ble NCLT, Principal Bench, New Delhi, (NCLT) on May 27, 2022. Thus, as explained in paragraphs 15 to 26, Noticee No. 13 falls outside the scope of the said circular dated June 30, 2017. Therefore, I am inclined to drop the proceedings against Noticee No. 13. The SCN issued to Noticee No.13 is disposed of without the levy of any penalty.

XI. Noticee No. 15: Educomp Solutions Limited

67. Noticee No. 15 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 15 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.
68. I note that the SCN was attempted to be served through digitally signed email on May 20, 2022. However, since the delivery of email failed, attempts were made to serve the SCN through alternative mode of service. SCN was served through SEBI Northern Regional Office on January 16, 2023. However, no reply to SCN was received from Noticee No. 15.
69. CARE, vide its press release dated March 31, 2017, assigned the rating CARE “D”; with remarks “*Issuer not cooperating*”, to the NCDs of Noticee No.15 and mentioned the following:
- “CARE has been seeking information from Educomp Solutions Limited (ESL) to monitor the ratings vide e-mail communications/letters dated January 25, 2017, January 30, 2017, February 06, 2017, February 13, 2017, February 21, 2017, February 27, 2017, March 06, 2017, March 14, 2017, March 20, 2017 and March 21, 2017 and numerous phone calls. However, despite our repeated requests, the company has not provided the requisite information for monitoring the ratings. In line with the extant SEBI guidelines, CARE has reviewed the rating on the basis of the publicly available information which however, in CARE’s opinion is not sufficient to arrive at a fair rating. Further, ESL has not paid the surveillance fees for the rating exercise as agreed to in its Rating Agreement. The ratings on ESL’s bank facilities and NCDs will now be denoted as CARE D/CARE D; ISSUER NOT COOPERATING. Users of this rating (including investors, lenders and the public at large) are hence requested to exercise caution while using the above ratings.”*

70. In view of the above, I note that CRA has taken the necessary action for assigning/downgrading the rating pursuant to delay/default in payment obligation with respect to interest/principal of NCDs of Noticee No. 15 in March, 2017. CRA has also disseminated the rating action by issuing press releases in this regard. The information regarding default and/or "D" Rating was already in public domain before the issuance of circular. Therefore, SEBI Circular dated June 30, 2017 cannot be made applicable to the Noticee going by the objective and rationale of the circular dated June 30, 2017 as expanded in paragraphs 15 to 26. Hence, I am inclined to drop the allegations in the SCN against Noticee No. 15. The SCN issued to Noticee No.15 stands disposed of without the levy of any penalty.

XII. Mandhana Industries Limited (Now known as G B Global Limited) - Noticee No. 16

71. Noticee No. 16 is one of the Noticees, in respect of which, the DTs/CRA's stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRA's/DTs, it was alleged in the SCN that the Noticee No. 16 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

72. I note that IRP of Noticee No. 16 vide letter dated June 01, 2022 filed its reply to the SCN. Extract of the said reply is given below:

1. *On 29 September 2017, the Company was admitted into corporate insolvency resolution process ("CIRP 1") by an order passed by the Hon'ble National Company Law Tribunal ("NCLT") on an application filed by Bank of Baroda under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code" / "IBC") and moratorium was imposed in terms of Section 14 of the Code. I was initially appointed as the Interim Resolution Professional ("IRP") of*

the Company and subsequently confirmed as its RP by the committee of creditors (“CoC”) of the Company.

2. During CIRP 1, a resolution plan submitted by Formation Textiles LLC (“FTL”) for the Company was approved by NCLT on 30 November 2018, pursuant to which I demitted office as RP of the Company and the management control of the Company shifted to FTL who continued to be in control and management of the Company till 8 January 2020.
3. However, since FTL failed to implement its resolution plan, the NCLT passed an order on 5 December 2019 directing that the CIRP of the Company be restored and the possession of the Company be handed over to the CoC and the erstwhile RP (“CIRP 2”). I was handed over the custody and possession of the Company on 8 January 2020.
4. During CIRP 2, a resolution plan submitted for the Company by Dev Land & Housing Private Limited (“DLH”) was approved by order dated 19 May 2021 passed by the NCLT. Pursuant to the order dated 19 May 2021, I demitted office as the RP of the Company and the management control of the Company was handed over to DLH.
5. I note that as per Reference Sheet No. 21 (in respect of the Company), the last NDS was made in December 2015 which is much prior to the commencement of CIRP 1 which happened in September 2017, pursuant to which I was appointed as the RP. Hence, I have no comments in respect of non-submission of NDS during the period when the erstwhile management of the Company was in control of its affairs of the Company.
6. Pertinently, when the Company got admitted into CIRP 1, the non-convertible debentures (“NCDs”) of the Company, in respect of which NDS was required to be submitted, were already in default. Notably, the NCDs were held by 5 (Five) lenders (“NCD Holders”) who submitted their claim forms with me. The said claims were admitted by me and the NCD Holders were made part of the COC of the Company. Further, the name of the NCD Holders along with the admitted claims (being the amounts in default) were published as part of the list of creditors, and such list was published and made publicly available as per the requirement of the Code and the related regulations.
7. Given the above, we bona fide believed that monthly submission of NDS were not required to be made to the CRA, as all concerned parties and in fact the public was well aware of the Company being admitted into CIRP owing to its payment defaults (including defaults in respect of the NCDs). It is our belief that the purpose of the disclosure of NDS is to inform the NCD Holders, CRA and the public that there is a default in payment of these instruments. As already mentioned, in the present case, the public, including the NCD holders, had already been informed about the CIRP of the Company by way of public announcement, website publication and disclosures to the stock exchanges. Hence, there was no misinformation or loss which could be said to be occasioned to any person as a result of the non-submission of NDS to the CRA.
8. In fact, during the CIRP, the RP had informed the CRA (CARE Ratings), that the Company is under CIRP, which resulted from defaults in payments to its creditors. A copy of the letter informing the CRA of CIRP of the Company is marked as Annexure A. Further, the Company had also written to the rating agency seeking clarification as to whether the disclosures were required to be made by the Company which was already undergoing CIRP under the IBC owing to payment defaults. However, we did not receive the necessary clarification from the rating agency. By July 2018 the resolution plan of FTL had already been approved by the CoC and the same was already sub-judice before the NCLT and the Company was on the cusp of approval of a resolution plan which

contemplated restructuring of the debt of the Company and extinguishment of all past liabilities. Further communication with the rating agency was inconclusive.

9. *Given the aforesaid facts and the peculiar nature of companies undergoing CIRP, the monthly reporting in a mechanical manner would not serve any purpose and was in fact an unnecessary cost for an already distressed company. Given the facts of the present case as mentioned above, no real purpose would have been served by making these disclosures in a mechanical way and which was an added cost for an already distressed company undergoing insolvency resolution to the knowledge of all concerned including the CRA. Other than the rating agency (which charges substantial fees for such disclosures), no other party could be said to benefit from any such disclosure. It may also be noted that both the resolution plans approved for the Company provide for extinguishment of all past liabilities, including penalties. In a catena of cases, including Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v Satish Kumar Gupta and Others, 2019 SCC OnLine SC 1478 and Ghanashyam Mishra & Sons Pvt. Ltd. v Edelweiss Asset Reconstruction Company Ltd. & Ors., (2021) 9 SCC 657 has stressed that pursuant to approval of resolution plan by NCLT, the resolution applicant (which is DLH in the present case) must be allowed to take over and run the corporate debtor (being the Company in this case) on a fresh/ clean slate, without the burden of past liabilities.*

73. It is noted from the CARE website that the rating of NCDs of Noticee No. 16, was “CARE C” in July 2016 which was later revised to “CARE D” on February 03, 2017, i.e. prior to the circular dated June 30, 2017. I also note from the reply dated June 01, 2022 that CIRP was initiated against the Noticee No. 16 vide NCLT order dated September 29, 2017 and moratorium under section 14 of IBC was imposed. In the circumstances, I am inclined to accept the submissions of Noticee No. 16 and drop the proceedings initiated vide the SCN dated May 19, 2022 without the levy of any penalty. The SCN issued to Noticee No.16 is disposed of without the levy of any penalty.

XIII. Noticee No. 17: Reliance Communications Limited

74. Noticee No. 17 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 17 failed to submit NDS which is in violation of provisions of Regulation

8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

75. I note that Noticee No. 17 vide letter dated June 30, 2022 filed its reply to the SCN.

Extract of the Reply filed by Noticee is reproduced below:

1. *As disclosed earlier to the stock exchanges and SEBI, RCOM is presently undergoing the corporate insolvency resolution process ("CIRP") in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code"), vide order of the Hon'ble National Company Law Tribunal, Mumbai bench ("NCLT") dated May 15, 2018 in this regard. Further, on account of a subsequent stay being imposed by the Hon'ble National Company Law Appellate Tribunal on May 30, 2018 which was subsequently vacated on April 30, 2019, the CIRP of RCOM had resumed on May 7, 2019 and the erstwhile interim resolution professional of RCOM issued public announcement(s) dated May 7, 2019 ("Public Announcement") seeking claims from the creditors of RCOM as on May 7, 2019 ("Cut-Off Date").*
2. *Accordingly, all dues against RCOM in respect of the period prior to initiation of CIR Process, were required to be submitted as claims, which would be dealt with in accordance with the provisions of the resolution plan to be approved by the NCLT under Section 31 of the Code or under liquidation, in accordance with the provisions of the Code. A resolution plan in respect of RCOM has already received requisite voting approval of the committee of creditors of RCOM, and is presently pending approval of the Hon'ble NCLT under Section 31 of the Code.*
3. *On account of the aforesaid circumstances and RCOM being under CIRP, it is implicit that RCOM is unable to honour its debt service obligations and hence, it is not possible for RCOM to submit requisite NDS/information regarding its debt service obligations for such period. It is worthwhile to note that all updates regarding the status of the CIRP of RCOM have duly been apprised to the stock exchanges.*
4. *Despite the above status, RCOM has been receiving emails from time to time from its credit rating agency i.e. CARE Ratings for the submission of NDS. For your reference, please find below an excerpt of the responses being issued by RCOM to the credit rating agency with respect to such request received from it for the submission of NDS:*

This' is with reference to trailing mail received from CARE Rulings with regards to No Default Statement (NDS) for the month of May 2022 by Reliance Communications Limited ("RCOM") and Reliance Communications Infrastructure Limited ("RCIL").

In this regard, we hereby submit that both RCOM and RCIL are under Corporate Insolvency Resolution Process ("CIR Process") in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code").

The Resolution Professional of RCOM & RCIL had issued the public announcement seeking submission of claims from the creditors of the Company. Accordingly, all dues against RCOM & RCIL in respect of the period prior to initiation of CIR Process, were required to be submitted as claims (including by the lenders of the both the Company) which would be dealt with in accordance with the provisions of the resolution plan to be approved by the NCLT under Section 31 of the Code or under liquidation, in accordance with the provisions of the Code.

On account of the aforesaid circumstances, it is implicit that RCOM & RCIL are currently under CIR Process and are unable to honour its debt service obligations from 27 February, 2017 and hence we are not able to issue NDS as required by CARE Ratings. Further as RCOM is a Listed entity, all the events in respect thereof were duly disclosed to the stock exchanges and accordingly as per our point of view, the objective sought to be achieved by submission of separate NDSs in the prescribed formats under the SEBI circular dated June 30, 2017 is considered to be satisfied through submission of this email,"

5. *In furtherance to the above, considering the repeated receipt of system generated emails pertaining to the submission of NDS, RCOM also requested the credit rating agency to take note of the ongoing factual position in respect of RCOM's CIRP and requested that such mails not be sent. Vide e-mail dated March 05, 2022, the credit rating agency explained that the mails were automated in nature, and requested RCOM to ignore the same. The mail received from the credit rating agency read as follows:*

"Dear Sir.

As discussed, the NDS seeking mails are system generated and we are unable to stop these. However, your reply on the same has been duly noted.

Request you to ignore the NDS seeking system generated mails, going forward."

Notwithstanding such response, RCOM has been diligently responding to every demand for submission of NDS raised through these automated emails.

6. *Considering all the above facts and the ongoing CIRP of RCOM, we request your good office to provide exemption to RCOM during CIRP period from complying with applicable regulatory guidelines relating to credit rating. Further, considering that RCOM is already under financial stress and struggling to survive as going concern in its ongoing CIRP, we request you not to levy any penalty/fine or other disciplinary action against RCOM which may impact its financial position at such time and cause further impediment to it.*

7. *It may be further noted, that since RCOM is undergoing CIRP under the Code, in terms of Section 14 of the Code, a moratorium has been declared and is presently subsisting in relation to RCOM, prohibiting, inter alia, the institution of suits or continuation of pending suits or proceedings against the RCOM, including the execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority, and any recovery/enforcement action against RCOM. The moratorium shall remain effective until the completion of the CIRP. For your ready reference, the relevant extract of Section 14(1) of the Code is reproduced hereunder:*

"14. (1) Subject to the provisions of sub-sections (2) and (3), on the Insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the, following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

8. *In terms of the foregoing, we request your good office to note that on account of the aforesaid moratorium and specifically Section 14(1)(a) therein, no proceedings can be initiated or continued during the ongoing CIRP against RCOM, including penalty*

proceedings under the Act. Therefore, we request you to not initiate any such proceedings.

9. *As per Section 238 of the Code, the provisions of the Code shall have an overriding effect, notwithstanding anything inconsistent contained in any other law for the time being in force, including the Act. Further, as per Section 233 of the Code, no suit, prosecution or other legal proceedings shall lie against the insolvency professional (being the RP, in the instant case) for anything done or intended to be done in good faith under the Code or rules and regulations made thereunder.*

76. I note from the reply of Noticee No. 17 that Moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 has been declared vide order dated May 15, 2018, passed by the Hon'ble NCLT, Mumbai Bench. In terms of replies of CARE Ratings, last NDS was received on September, 2016. The Press Release of CARE dated May 30, 2017 shows that the rating was already in "Default" category. I note that in the case of Noticee No. 17, default happened prior to the circular dated June 30, 2017, and the rating was at "CARE D". The information that the Noticee had defaulted on loans was in public domain and the rating downgrade to Category "D" had happened prior to the circular, I am inclined to drop the allegations against Noticee No.17. The SCN issued to Noticee No. 17 is therefore disposed of without the levy of any penalty.

XIV. Noticee No. 18: Empee Distilleries Limited

77. Noticee No. 18 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that Noticee No. 18 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

78. SCN was attempted to be served through digitally signed email on May 20, 2022. However, SCN could not be served through email. SCN was sent to IRP CA V.Venkata Sivakumar. Vide letter dated December 15, 2022, IRP CA V.Venkata Sivakumar informed that he worked as IRP for only one month during 2018 and he informed the contact details of new IRP Mr. Rajendran. Thereafter, SCN was sent to new IRP viz. 'S. Rajendran & Associates' on email id viz. 'cs.srajendran.associates@gmail.com' on January 10, 2023 and same was successfully delivered.
79. It is noted from the reply of CARE Ratings dated March 17, 2020 that the Noticee had last filed NDS in September 2016. CARE, vide press release dated April 11, 2017 rated the bank facilities of Noticee No. 18 as "CARE D" i.e. default category which indicate financial distress of the Noticee No. 18. In the same press release, NCDs were rated as "CARE B Negative". Once the entity had stopped filing NDS, it signifies that there is trouble with its financials and the monitoring of CRAs should have tightened. As the press release of CARE downgraded the Bank facilities as "Default" Category, prior to the June 30, 2017 and therefore the said circular does not technically apply to the Noticee. I hereby dispose of the allegations in the SCN against Noticee No. 18 without the levy of any penalty.

XV. Noticee No. 19: Ginni Filaments Limited

80. Noticee No. 19 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 19 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

81. I note from the SCN that Noticee No.19 was identified in the category of “issuers under insolvency proceedings”. However, the Hon’ble NCLT vide order dated December 03, 2018 rejected the application filed by one of the operational creditors of Noticee No. 19 viz. M/s Winsome Yarns Ltd. for initiation of CIRP.

82. Noticee No. 19 vide letter dated June 01, 2022 filed its reply to SCN. Extract of the same is reproduced below:

1. *The Company is submitting the No Default Statement(NDS) to M/s Care Ratings Limited on monthly basis and has annexed a letter received from the credit rating agency regarding its confirmation of filing No Default Statement done by the Company as Annexure-A.*
2. *Further, the Company would like to inform that it had intimated to M/s Crisil Limited regarding discontinuation of the rating service in its letter dated April 12, 2019 and October 01, 2019 along with No Objection Certificate received from M/S State Bank of India dated April 06, 2019 respectively.*
3. *The Company is complying with the provision of Regulation 8 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 by furnishing the No default Statement with M/s Care Ratings Limited (credit rating agency) on Monthly Basis and therefore no set of actions should be taken against the Company.*

83. I note that the Hon’ble NCLT vide its order dated December 03, 2018 has rejected the application filed by one of its operational creditor viz. M/s Winsome Yarns Limited for initiation of CIRP proceedings against Noticee No. 19. Therefore, no insolvency proceedings are pending against the Noticee No. 19 in connection with said order passed by Hon’ble NCLT.

84. I note that Noticee No. 19 has provided a copy of letter dated May 31, 2022 from CARE Ratings Limited showing that it had submitted NDS to CARE Ratings Ltd. during August 03, 2021 to April 30, 2022 on monthly basis. I note that this period falls

outside the examination period alleged in the SCN and does not have any bearing on the allegations levelled in the SCN.

85. Further, I also note from the copy of letter dated April 12, 2019 which was sent by the Noticee to CRISIL Limited that the Noticee had informed regarding discontinuation of rating services from CRISIL Limited. The fact of discontinuation of rating service from CRISIL Limited was reiterated vide its letter dated October 01, 2019. CRISIL has also confirmed that it has withdrawn the rating w.e.f. from March 2020.
86. However, I note that the Noticee's replies do not address the issue of non-submission of NDS to the CRA specifically as on May 2019 and during June 2019 to November 2020. Further, I note that the Noticee was in the CRISIL BB- INC category since 10th of March, 2018. The provision in Regulation 8 of SEBI (LODR) Regulations mandates that every listed entity shall co-operate with and submit correct and adequate information to the intermediaries registered with SEBI. Therefore, I note that the Noticee No. 19 violated the provisions of Regulation 8 of SEBI (LODR) Regulation read with Clause 1(C) of Circular dated June 30, 2017 by not submitting the NDS to CRAs. There is a breach of the provisions of circular dated June 30, 2017 and Noticee No. 19 is liable for suitable monetary penalty.

XVI. Noticee No. 20: Vardhman Industries Limited

87. Noticee No. 20 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 20 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

88. I note that Mr. Manoj Maheshwari, vide letter dated December 24, 2022 informed that he was appointed as IRP in respect of Noticee No. 20 for a period of 30 days only vide order of the Hon'ble NCLT dated November 16, 2017. Mr. Maheshwari also informed that due to ill health, he demitted the office of IRP and Mr. Ashok Kumar Gulla was appointed as Resolution professional for Vardhman Industries Limited vide NCLT order dated 17.01.2018. Thereafter, copy of SCN dated May 19, 2022 was forwarded to Mr. Ashok Kumar Gulla, vide letter dated January 10, 2023.
89. Mr. Ashok Kumar Gulla, vide letter dated January 17, 2023 replied that Vardhman Industries Limited was admitted to CIRP vide order of Hon'ble NCLT dated November 16, 2017. In the CIRP process, the resolution plan submitted by JSW Steel Limited was approved by Hon'ble NCLT vide order dated December 19, 2018 and further modification approved by Hon'ble NCLAT, New Delhi vide its order dated December 11, 2019. The resolution plan of JSW Steel Limited was implemented and the process of CIRP was completed on December 31, 2019 and the role of resolution professional came to an end on December 11, 2019 and further his role as part of Monitoring Committee constituted for supervision and implementation of the Resolution Plan also came to an end on December 31, 2019.
90. I note from the reply received from Mr. Ashok Kumar Gulla that Noticee No. 20 was admitted to CIRP vide NCLT order dated November 16, 2019. The resolution plan submitted by JSW Steel Limited was approved by Hon'ble NCLT vide order dated December 19, 2018 and CIRP has been completed on December 31, 2019. I also note that CRISIL has assigned "CRISIL D" rating on May 25, 2017. Therefore, the information about default was in public domain and there was no scope of further downgrade of rating. In fact, CRISIL revised the rating of the Noticee from CRISIL BB+/INC given on February 20, 2017 to CRISIL D/ INC in May, 2017 which is prior to the issuance of the SEBI Circular. CRISIL has also stated that the debt issue was on private placement. In view of the above, I do not find it appropriate to levy any penalty.

The SCN dated May 19, 2022 accordingly stands disposed of without imposition of penalty.

XVII. Noticee No. 22: Usher Agro Limited

91. Noticee No. 22 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that the Noticee No. 22 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

92. I note that Liquidator –Mr. Krishna Chamadia in respect of Noticee No. 22 in his reply dated June 06, 2022 submitted the following:

1. *On 28 March 2018, Usher Agro Limited (UAL) entered into the corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016 (IBC) and subsequently, on March 7, 2019, the Hon'ble Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) ordered the commencement of liquidation proceedings for UAL, and appointed Krishna Chamadia (IP Registration no. IBBI Reg. No.: IBBI/IPA-001/IPP00694/2017-18/11220) as the Liquidator for the Company.*
2. *Once liquidation of a company commences under the IBC, the Liquidator, being a professional appointed by the Hon'ble Adjudicating Authority is duty bound under Section 35 of the IBC to take custody and control of all assets of UAL, form a liquidation estate and carry out the process of liquidation strictly in accordance with the IBC and accompanying rules. Under Section 34 of the IBC, on such appointment of liquidator all power of the Board of Directors, Key managerial personnel and the partners of the Corporate Debtors shall cease to effect and shall be vested in the liquidator. Under provision of the IBC, such liquidation order shall be deemed to be notice of discharges to the officers, employee and workmen of the corporate debtors except to the extent of the*

business of the corporate debtor continuing during the liquidation process by the liquidator.

3. *It is reiterated that NCLT had already pronounced a liquidation order in March 2019, much before SEBI had sought information with respect to the compliance with Regulation 8 of SEBI LODR Regulations 2015 read with circular dated June 30, 2017 in May 2019. Considering that UAL was under liquidation and the trading was suspended by stock exchanges pursuant to Liquidation Order, SEBI LODR Regulations 2015 and consequent submission of NDS to CRAs may not apply to UAL.*
4. *Under Section 33(5) of the IBC, no suit or legal proceedings can be instituted against UAL (being a company in liquidation).*

Current Status of UAL

- *All assets of UAL have been publicly auctioned and sale process is completed from Liquidator's end.*
 - *All the proceeds realized out of the sale process has been distributed as per Section 53 (1) of IBC and as such the distributions has only been made to Secured Financial Creditors.*
 - *There are no proceeds left to pay the operational creditors including Government dues.*
 - *Since the Liquidation process is completed, the Liquidator has filed for dissolution of the Company with Hon'ble NCLT, Mumbai on 01 October 2021.*
 - *The GST number of UAL was surrendered and cancelled in January 2022.*
 - *The Company has no place of business / office as all the assets have been liquidated.*
5. *As per Section 238 of the IBC, the provisions of the IBC have overriding effect over all other laws in force. In light of the provisions of the IBC, orders already passed by Hon'ble NCLT, Mumbai and current status of UAL, he is not in a position to provide any further information.*

93. I note that India Rating & Research Private Limited, vide its press release dated August 05, 2016 had assigned "IND D" rating to the NCDs of Usher Agro Ltd. and stated the following:

“The rating is based on UAL’s announcement to undertake a strategic debt restructuring (SDR) programme as the lenders invoked their right of SDR due to the company’s inability to service its debts. The company is facing liquidity issues.”

94. Further, vide press release dated September 01, 2017, rating of NCDs of Noticee No. 22 was affirmed as “IND D” and mentioned the following:

“The rating action reflects the continued decline in the company’s financial performance and delays in debt servicing. The rating has simultaneously been migrated to the non-cooperating category. The issuer did not participate in the surveillance exercise despite continuous requests and follow ups by the agency. Thus, the rating is on the basis of best available information. The rating will now appear as ‘IND D (ISSUER NOT COOPERATING)’ on the agency’s website.”

95. In view of the above, I note that CRA has taken the necessary action for assigning/downgrading the rating pursuant to delay/default in payment obligation with respect to interest/principal of NCDs of the Noticee. CRA has also disseminated the rating action by issuing press releases in this regard. In terms of the press release of India Rating dated August 05, 2016, the information regarding default and/or “D” Rating was in public domain before the issuance of circular. I also note from the reply dated June 06, 2022 that Noticee No. 22 is under liquidation vide Hon’ble NCLT order dated March 07, 2019. SEBI Circular dated June 30, 2017 cannot be made applicable to the Noticee going by the rationale of the circular expanded in paragraphs 15 to 26. In view of the above, I hereby drop the allegations in the SCN against Noticee No.22 without levy of penalty.

XVIII. Noticee No. 23: Sunstream City Private Limited

96. Noticee No. 23 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that Noticee

No. 23 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30, 2017.

97. I note that Noticee No. 23, vide letter dated January 11, 2023 replied that *“we would like to inform you that we have already applied to BSE for delisting of the Deep Discount Bonds (DDBs) vide our application dated June 19, 2021 and hence we have not obtained any credit ratings from any CRA for the said Deep Discount Bonds.”* †
98. AR of the Noticee attended hearing on April 18, 2023 and informed that there was a single subscriber to its debt issue. Post-hearing submissions were made vide letter dated April 21, 2023 wherein it was informed that pursuant to request for early redemption of bonds from Hubtown Limited (subscriber), Deep Discount Bonds (DDBs) were repaid and vide letter dated April 03, 2023, Hubtown Limited confirmed the receipt of redemption amount and full discharge of all obligations in relation to the bonds.
99. In view of the above, I note that there was only one single subscriber to the debt issue and Noticee No. 23 discharged its obligation on the request from subscriber for early redemption. Therefore, I find that non-compliance by Noticee is venial and technical in nature and not liable for penalty. Accordingly, the SCN issued to Noticee No. 23 is hereby disposed of without the levy of penalty.

XIX. Noticee No. 24: Jaypee Infratech Limited

100. Noticee No. 24 is one of the Noticees, in respect of which, the DTs/CRAs stated that insolvency proceedings were initiated, before May 2019 itself. Accordingly, based on the facts disclosed in the reply of CRAs/DTs, it was alleged in the SCN that Noticee No. 24 failed to submit NDS which is in violation of provisions of Regulation 8 of SEBI (LODR) Regulations 2015 read with Clause 1 (C) of the SEBI Circular dated June 30,

2017.

101. Noticee No. 24 filed reply vide letter dated June 08, 2022. Interim Resolution Professional – Mr. Anuj Jain for Jaypee Infratech Limited filed a detailed reply vide letter dated June 13, 2022 through M/s L&L Partners Litigation. Extract of Reply is reproduced below:-

1. *The Company is undergoing Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (Code or IBC), and a moratorium in terms of Section 14 of the Code has been imposed by Hon'ble NCLT, Allahabad Bench (the NCLT) vide Order dated 09.08.2017.*
 - A. *CIRP of the Company/Corporate Debtor and the moratorium under IBC on the initiation and institution of the fresh proceedings*
2. *It is reiterated that the Company is undergoing Corporate Insolvency Resolution Process under IBC in terms of the Order dated 09.08.2017 and Order dated 14.08.2018 passed by the Hon'ble NCLT, Allahabad Bench. Further, vide the aforesaid Orders, Moratorium in accordance with Section 14 of the Code has been announced and the same is continuing qua the Company till date.*
3. *That admittedly SEBI is aware of the order passed by the Hon'ble Supreme Court of India in 'Civil Appeal Diary No(s). 14741/2020' titled 'Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs NBCC (India) Ltd & Ors.' That vide order dated 06.08.2020, the Hon'ble Apex Court transferred all the pending appeals/cases concerning the Company, pending before the Hon'ble NCLAT to itself and directed the IRP to continue to manage the affairs of the Company. Further, the Hon'ble Supreme Court vide Order dated 10.09.2020 has granted the Company protection from any coercive action taken by any person or authority. The said Order specifically records:
"... since the entire resolution plan is pending consideration before this Court, it is appropriate that no coercive action be taken by any person/authority against the Company until further orders on principle underlying Section 14 of the Insolvency and Bankruptcy Code".*

It is pertinent to mention that Reference Sheet No. 29 appended to SCN also records the essence of the aforesaid Order dated 10.09.2020 and despite the same, the Impugned Show Cause Notice has been issued to the Company / Corporate Debtor. (Copies of order dated 06.08.2020 and 10.09.2020 are attached with reply).

4. *The Hon'ble Supreme Court, thereafter, vide its judgement dated 24.03.2021, has directed the Interim Resolution Professional (IRP) to complete the CIRP within the extended time of 45 days from the date of said judgment by inviting fresh Resolution Plans only from the State owned NBCC (India) Ltd. (NBCC) and the Suraksha Group. Accordingly, the IRP had invited the fresh resolution plan and both NBCC and Suraksha Group had submitted their Resolutions Plans. Pursuant to the same, the Committee of Creditors (CoC) approved the Resolution Plan submitted by Suraksha Group dated*

07.06.2021 (read with its addendum) on 23.06.2021, and the same has been submitted to the Hon'ble NCLT Principal Bench Delhi on 07.07.2021 (NCLT Delhi). It may be noted that various stakeholders in the CIRP proceedings have filed their objections to the approved Resolution Plan. At present, the matter is pending before Hon'ble NCLT, Principal Bench, New Delhi for final adjudication. In view of the aforesaid circumstances, the moratorium, imposed by Order dated 09.08.2017 and subsequent orders, in terms of Section 14 of the Code is in operation since 09.08.2017.

5. It is submitted that the Section 14 of the Code regarding moratorium is very clear, which explicitly prohibits institution and / or continuation of proceedings against a Corporate Debtor by any Court or authority. Thus, SEBI being a statutory authority, has no jurisdiction to initiate any proceedings against the Company/ Corporate Debtor for there being bar under Section 14 of the Code.
 6. It is also settled law that once moratorium under the terms of Section 14 of the Code is announced, there is a specific bar on the initiation or continuation of any proceedings before any Court of law, tribunal, arbitration panel or other authority i.e., including SEBI. Reliance is placed on judgement passed by Hon'ble Securities Appellate Tribunal (SAT) in the case of *Monnet Ispat & Energy Ltd. v. SEBI* (Appeal No. 238/2020) and *Dewan Housing Finance Corporation Limited v. SEBI* (Appeal No. 206/2020).
 7. The Hon'ble Supreme Court in the decision of *Innoventive Industries Ltd. v. ICICI Bank Ltd* (2018) 1 SCC 407 has held that once moratorium has been ordered no proceedings under any law, which would include SEBI Act/ Regulations, can be proceeded against the Corporate Debtor. Thus, the issuance of SCN dated 19.05.2022 by SEBI is in explicit violation of the directions of the Hon'ble Supreme Court as well as the Hon'ble Securities Appellate Tribunal and hence, bad in law. (Copy of the judgement attached with reply).
 8. It is also pertinent to mention that IBC is a special statute and by virtue of Section 238 contained therein, the Code overrides all other laws which are inconsistent to that of IBC. Hence, the provisions of Security and Exchange Board of India, Act 1992 (SEBI Act), LODR Regulation and Circular would be overridden by the effect of IBC, which has been completely ignored prior to the issuance of the SCN dated 19.05.2022 and the violations alleged therein. It is stated that apart from the issuance of the SCN itself, no proceedings, including the proceedings and enquiry in the nature as contemplated under the SCN dated 19.05.2022, can be initiated against the Company. Hence, the SCN dated 19.05.2022 issued by SEBI is bad in law, perverse, and without jurisdiction, and hence should be recalled qua the Company on the aforesaid grounds
- B. The Company/Corporate Debtor has substantially complied with the Regulation 8 of the LODR Regulations.
9. The Company vide various emails in response to the enquiries raised by the Credit Rating Agency (CRA) i.e., CARE Ratings Limited, during the period for which the violation has been alleged in the SCN dated 19.05.2022, has time and again provided the necessary information to CRA, of the initiation of the CIRP of the Company and consequent moratorium imposed against the Company in terms of Section 14 of the Code.
 10. It may be noted that the Reference Sheet No. 29, concerning the Company, wrongly records that the Company has only provided information/confirmation of payment obligation only for the period of July 2019 to October 2019 and December 2019. It is stated that the Company, vide various emails, have replied to the enquires made by the

CRA for the period of July 2019 to January 2020 and have informed the CRA of the ongoing CIRP and the consequent moratorium on any recovery/coercive action against the Company. Pertinently, the Company has also shared copy of Order dated 14.08.2018 passed by the NCLT with the said emails/replies. Also, reference sheet merely records that the information received was not in prescribed format. Thus, it is an admitted position that the relevant information was duly provided by the Company. Without prejudice, if at all, the only allegation that remains is thus to see whether the prescribed format was followed or not. In any situation, as per the Company's understanding of the relevant LODR Regulations, there is no penalty prescribed for not adhering to a prescribed format. Hence, the enquiries made by the CRA were appropriately replied via emails sharing the requisite information. (Copies of emails attached with reply). It is further submitted in this regard that despite receipt of emails from the Company, the CRA never raised any objections or pointed out any defaults by the Company over the information furnished, hence there being a deemed approval of necessary compliances.

11. Further, pursuant to the initiation of the CIRP and consequent imposition of moratorium in terms of Section 14 of the Code, there can be no default post insolvency commencement date on the part of the Company. Under CIRP, the claims of all the Financial Creditors as well as the Operational Creditors, and others, are collated by the Resolution Professional, and the same are subject resolution pursuant to approval of a resolution plan by the CoC and the Adjudicating Authority or the Liquidation of the Corporate Debtor. Hence, during the pendency of the CIRP, on account of the imposed Moratorium, the Corporate Debtor/Company is not required to service any debt obligation/claims of the Financial Creditor, or the Operational Creditor incurred prior to the initiation of CIRP. In such circumstances, the status of any debt obligation/default pertaining to debt/claims prior to the CIRP remains unchanged. With regard to the Company, the CIRP was initiated vide Order dated 09.08.2017 passed by the NCLT, Allahabad Bench and the same is still continuing, as submitted above. In such circumstances, the status of the Company / Corporate debtor with respect to the debt obligations has remained constant and un-changed since 09.08.2017 which CRA has always been aware of and is also the undisputed position.

C. The provisions of the Circular dated 30.06.2017 would not be applicable on the Corporate Debtor during CIRP under IBC.

12. Without prejudice to the submissions made in the foregoing paragraphs, it is stated that the Circular dated 30.06.2017, of which violation has been alleged in the SCN dated 19.05.2022, is not applicable to the Corporate Debtor during CIRP under IBC, even though complied with by the Company.

13. It is submitted that upon a bare reading of the above provisions of the Circular dated 30.06.2017, it is clear that the above provisions are applicable with respect to an issuer for the purpose of detecting future / likely default/delays in servicing of debt obligations. Further, as per above provisions, 'No Default Statement' (NDS) is required to be submitted by the concerned issuer to enable timely recognition of the default by CRAs. In the instant case, CIRP has been initiated against the Company and consequently moratorium in terms of Section 14 of the Code has been imposed since 09.08.2017 and the same is continuing. In view of the ongoing CIRP, the claims of Financial Creditor(s) and the Operational Creditor(s) and other claims, of the Company at the time of the

insolvency commencement date under IBC, has been collated / crystallised. Hence, on account of the ongoing CIRP, the Company under IBC is not required to service any debt obligations/claims of the Financial Creditor or the Operational Creditor, during the CIRP. In such circumstances, when there can be no default by the Company during the CIRP under IBC for there being a moratorium, hence the applicability of the aforesaid requirements of NDS under the Circular dated 30.06.2017 has no applicability during such period, as vide Section 238 of IBC, the aforesaid provisions shall be overridden.

102. I note from the reply dated June 13, 2022 that Noticee No. 24 is undergoing Corporate Insolvency Resolution Process under IBC in terms of the Order dated August 09, 2017 and Order dated August 14, 2018 passed by the Hon'ble NCLT, Allahabad Bench and Moratorium in accordance with Section 14 of the Insolvency and Bankruptcy Code has been announced in respect of the Noticee.
103. The Noticee is one among the 12 large corporate debtors that were initially identified and directed by RBI, in June 2017, to be proceeded against under the provisions of Insolvency and Bankruptcy Code, which was a wide spread news in the financial circles then. In other words, the default of the company was in public domain prior to the issuance of the SEBI circular in June 30, 2017. The Noticee No. 24 had become a NPA by that time. Thus, in my opinion, the Noticee falls outside the scope of applicability of the said circular as for such a company, the exercise of filing a NDS in a stipulated format becomes redundant and the violation, if any, is merely technical and venial. I hereby drop the allegations contained in the SCN against Noticee No.24, without levy of any penalty.

XX. Noticee No. 25: Reliance Infrastructure Limited

104. It was alleged in the SCN on the basis of information provided by CRA that Noticee No. 25 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with Clause 1 (A) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 25	Reliance Infrastructure Limited	CARE	<p>On the basis of information provided by CRA, it is observed that the company has not submitted the NDS to the CRA as on May 20, 2019.</p> <p>Further, CRA vide email dated December 07, 2020 has informed that post July 01, 2020, the issuer is cooperating.</p> <p>Status: Not Complied for period prior to June 2019</p>

105. Noticee No. 25 filed an application under SEBI (Settlement proceedings) Regulations, 2018 on July 26, 2022. Vide email dated May 30, 2023, Noticee No. 25 informed that settlement application has been rejected by SEBI on May 22, 2023 and requested for 3 weeks' time to file reply to SCN. Request for personal hearing was also made by Noticee No. 25. Therefore, pursuant to rejection of settlement application of Noticee No. 25, Adjudication proceedings, which were kept in abeyance, resumed.

106. Authorized Representative of the Noticee No. 25 attended the hearing on June 16, 2022 and July 06, 2022. Noticee No. 25, vide letter dated June 19, 2023 filed reply to SCN.

107. Relevant extract of reply of Noticee No. 25 is given below:

1. *Though the Noticee was required to submit NDS, the same could not be submitted on account of oversight due to certain difficulties being faced by the Noticee including stress, the sale of major business undertaking to Adani Transmission Limited and the consequent instability caused due to personnel in the organization having left, resulting in certain structural changes / changes in roles, etc. This affected timely compliance and also resulted in missing the submission of NDS.*
2. *Taking into consideration the compliance by the Noticee, the Noticee is listed as an entity that has partially complied. The SCN does not categorize it under noticees who have defaulted in payment/interest, or not complied. Further, the SCN does not allege that there was any willful default on part of the Noticee.*
3. *The non-submission of NDS prior to July 2019 was for reasons beyond the control of the Noticee and not a deliberate and willful non-compliance (as correctly recorded in the SCN which does not allege the same) as mentioned above. The Noticee humbly submits*

that due to the aforementioned facts and circumstances, the Noticee missed the submission of NDS. It is in light of the above that it is submitted that a lenient and considerate view be taken by SEBI as such lapse/delayed compliance was due to circumstances beyond the control of the Company.

- 4. In light of the fact that admittedly there was no deliberate intention of non-compliance as no such charge or allegation is made in the SCN coupled with the above-mentioned precedents, the Noticee submits that the proceedings qua the Noticee be disposed of without any penalty.*
- 5. It is submitted that the non-submission of the NDS was merely a technical and venial violation which does not necessitate taking of any harsh action of imposing a penalty on the Noticee. It is submitted that the Noticee has been regular in complying with all regulatory requirements including filing of disclosures under various SEBI regulations and that the unintentional technical error on account of non-submission of NDS, has neither impacted general investor fraternity, nor resulted in any unwarranted gain and/or benefit to the Noticee. Non submission of NDS was a mere technical lapse which did not create any prejudice to any investor/s and there have been no complaints from any investor on this count. No unfair gain/advantage was also gained by the Noticee by virtue of such default. It is settled law, that no penalty ought to be levied in case of technical and venial breaches.*
- 6. Noticee No. 25 have placed reliance on the judgements of the Hon'ble Supreme Court in the matter of Hindustan Steel Ltd vs State of Orissa and the Hon'ble SAT in the matters of Reliance Industries Ltd vs SEBI, Cabot International vs SEBI and P. G. Electroplast Ltd vs SEBI.*

108. I note from the reply that the Noticee No. 25 admittedly failed to submit NDS, for the period prior to June 2019. The Noticee was rated "CARE A+", according to the press release dated April 14, 2017 published by the CRA. Subsequently it was rated as Default Category ("CARE D INC") on January 23, 2020, after gradual steps of rating down- grade that were carried out by the CRA on various occasions. I am ready to consider that after the Noticee has been categorized as Default category in January 2020, any non-compliance with NDS filings may not have any significance. From CARE's email dated March 17, 2020, it is seen that the rating during May 2019 is "CARE B stable, INC" and CARE A (4) INC and that the last NDS was received in April 2018. CARE vide email dated 7th December 2020, stated that the Company has been submitting NDS and information on NCDs for the period June 01, 2019 to November 30, 2020. In view of CARE's assertion that the last NDS received was that of April 2018 and that NDS for Inspection Period II has been submitted by the Noticee,

I am limiting the period of consideration of filing of NDS from May 2018 to May 2019, i.e. a period of 13 months. The fact that Noticee No. 25 was categorized as “INC” in May 2019 shows that it failed to co-operate with the CRA thereby violating the provisions of Regulation 8 of SEBI (LODR) Regulations. Based on the available records, it is seen that the issuer has not filed NDS from May 2018 to May 2019 and by January 2020, the rating touched the rock bottom of “D” category.

109. In the circumstances discussed above, I find that Noticee No. 25 violated the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) of Circular dated June 30, 2017 by not submitting the NDS to CRAs, as stated above and is liable for suitable penalty.

XXI. Noticee No. 26: Mysore Paper Mills Limited

110. It was alleged in the SCN that Noticee No. 26 failed to comply with the provisions of Regulation 8 of SEBI (LODR) Regulations read with clause 1 (C) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 26	The Mysore Paper Mills Limited	CARE	No information available w.r.t. non-submission of NDS as of May 20, 2019. CRA vide email dated December 07, 2020 has further informed that the issuer has submitted the NDS from June 01, 2019 to November 30, 2020. Further, CRA has stated that the company has been submitting the NDS and payment confirmation on NCD. Status: Not Complied for period prior to May 2019

111. Noticee No. 26, vide email dated 30.06.2022 submitted that “Mysore Paper Mills Limited is a Government of Karnataka Company and had issued Non-convertible debenture bonds of amounting Rupees 35 crore, 50 crore another 50 crore and 40 crore at differential coupon

rate which have been guaranteed by Government of Karnataka for payment of principal and interest thereon. The company has already redeemed debentures bonds of Rs.35 crore, Rs.50 crore and Rs.50 crore along with interest upto June 2022 and at present Rs.10 crore of principal amount of Rs.40 crore debentures issued is due during June 2023. There are NO defaults in redeeming the principal and payment of interest as the Government of Karnataka has funded the said payment on time.

The submission of NDS prior to May 2019 was done earlier by our Chief Finance Officer who expired due to Covid-19 during October 2020 and according the information available, he had furnished the NDS for the said period to credit rating agencies and trustees for the bond holders in prescribed format. However, the NDS submitted to credit rating agencies are forwarded/enclosed herewith. In view of this, we request you to kindly drop the proceedings initiated in this regard”

112. With respect to the allegation in the SCN, I note that Noticee No. 26 provided the copies of NDS for the months of July 2017, October 2017, November 2017 and December 2017 submitted to CRAs namely CARE and India Rating:
113. I note from the information provided by Noticee No. 26 that it could not furnish the details of NDS submitted by it to CRAs for the period alleged in the SCN i.e. prior to May 2019. The CRA has confirmed that for the period June 2019 to November 2020, the Noticee has submitted NDS and the payment confirmation on Non-convertible bonds. It is seen from CARE Press release dated June 15, 2022 that it has withdrawn the ratings assigned to the Non-Convertible Bonds of the Noticee with immediate effect as the company has repaid the NCBs in full and there is no amount outstanding under the issue as on date. Therefore, at this point of time, I am inclined to view the non-compliance for the first spell of inspection period as merely technical and venial. Accordingly, I hereby drop the proceedings initiated against Noticee No.26 vide the SCN dated 19 May, 2022, without levy of any penalty.

XXII. Noticee No. 27: Mayanagri World One Private Limited

114. It was alleged in the SCN that Noticee No. 27 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (C) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 27	Mayanagri World One Private Limited	CARE	<p>Till date, no information has been received from the company regarding the non-submission of NDS as of May 20, 2019.</p> <p>Further, CRA vide email dated December 07, 2020 has informed that issuer has submitted the NDS to the CRA from June 01, 2019 to November 30, 2019 and rating was withdrawn in December, 2019.</p> <p>On the basis of information provided by CRA, it is observed that issuer has regularly submitted the NDS till the rating was withdrawn. Hence, the issuer is in compliance till the period when CARE was CRA.</p>

115. Noticee No. 27, vide letter dated March 20, 2023 replied that “It is an unlisted company and had applied for rating of its secured Non-convertible Debentures (NCDs) to CARE and the NCDs were given rating by CARE on January 25, 2019. It had duly submitted the NDS/information to CARE till the month of November 2019. In the month of December 2019, it had applied to CARE for withdrawal of rating and the rating was withdrawn on December 26, 2019.

116. I have perused CARE’s letter dated December 26, 2019 provided by Noticee No. 27 which states that “At the request of the company vide email dated December 03, 2019, we hereby withdraw the outstanding rating (s) of ‘CARE B+; Stable’ assigned to the proposed Non-Convertible debentures (NCDs) of your company with immediate effect.”

117. Further, I note that as per CARE's email dated March 17, 2020, the Noticee did not place the NCDs and subsequently, rating was withdrawn on December 25, 2019.

118. I note from material available on record that CARE had assigned 'CARE B+' rating on January 25, 2019 to the proposed NCDs of Noticee No. 27. However, Noticee No. 27 did not place NCDs and therefore, the rating was withdrawn by CARE on December 26, 2019. Since the NCDs were not issued by Noticee No. 27, no adverse finding can be given against the Noticee No. 27. Accordingly, I hereby drop the allegations in the SCN against the Noticee No. 27, without the levy of any penalty.

XXIII. Noticee No. 28: Nish Developers Private Limited

119. It was alleged in the SCN that Noticee No. 27 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 28	Nish Developers Private Limited	CRISIL	<p>Vide email dated May 26, 2020 and December 03, 2020 issuer has informed that it is regularly submitting no default confirmation to CRA. The issuer has provided the acknowledgement of ICRA for month of April 2020 only. The issuer has not provided any details about submission of NDS/information as on May 20, 2019.</p> <p>Further, vide email dated December 16, 2020, CRA has informed that the issuer has submitted the NDS from June 01, 2019 to November 30, 2020.</p> <p>On the basis of information provided by CRA, it is observed that after May, 2019 the issuer has started to submit the NDS and information to the CRA on regular basis.</p> <p>Status: Not Complied for period prior to May 2019</p>

120. The Noticee No. 28 viz. Nish Developers Private Limited, vide email dated May 23, 2022 filed reply to the SCN. Extract of the Reply is reproduced below:

“Prior to May 2019, NDS to be submitted to Particular officer/ Analyst by mail, we had submitted same by mail to CRA (ICRA) regularly and they have reviewed rating annually and upgraded time to time, last assigned Rating was (ICRA) BBB+.”

121. Additional reply was filed vide email dated July 05, 2022 stating that it had submitted monthly NDS from the date of initial rating (Nov. 2017) to till May 2022 and an email dated June 29, 2022 was provided as attachment as proof in support of its claim.

122. From the perusal of email dated June 29, 2022, it was noted that said email was sent by Mr. Shreekiran Rao, Vice President & Sector head –Corporate Ratings ICRA, to Mr. N K Saraf (Finance controller- Nish Developers Private Limited) wherein Mr. Shreekiran Rao stated that *“We confirm that we have received the monthly NDS’ from Nish Developers Private Limited - from the date of its initial rating (Nov 2017) till May 2022.”*

123. I note that Noticee No. 28 provided a copy of an email dated June 29, 2022 wherein ICRA Ltd. confirmed that it has received the monthly NDS’ from Nish Developers Private Limited from the date of initial rating (Nov. 2017) till May 2022. This being a matter of inspection, I am inclined to accept the assertion of ICRA, in the capacity of a registered CRA that it has received the monthly NDS throughout the life of the debt instrument so as to extend the benefit to Noticee No. 28 while adjudicating the issue of non-compliance. Thus, I am inclined to drop the allegations contained in the SCN against the Noticee without levy of any penalty.

XXIV. Noticee No. 29: Reliance Power Limited

124. It was alleged in the SCN that Noticee No. 29 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (C) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 29	Reliance Power Limited	ICRA	<p>The issuer has not provided any details about submission of NDS as on May 20, 2019.</p> <p>Further, vide email dated December 28, 2020, CRA has informed that the issuer has submitted the NDS from June 01, 2019 to November 30, 2020.</p> <p>On the basis of information provided by CRA, it is observed that after May, 2019 the issuer has been submitting the NDS and information to the CRA on regular basis.</p> <p>Status: Not Complied for period prior to May 2019</p>

125. Noticee No. 29 filed an application under SEBI (Settlement proceedings) Regulations, 2018 on July 26, 2022. Vide email dated May 30, 2023, Noticee No. 29 informed that settlement application has been rejected by SEBI on May 22, 2023 and requested for 3 weeks' time to file reply to SCN. Request for personal hearing was also made by Noticee No. 29. Therefore, pursuant to rejection of settlement application of Noticee no. 25, Adjudication proceedings, which were kept in abeyance, resumed.

126. Authorized Representative of the Noticee No. 29 attended the hearing on June 16, 2022 and July 06, 2022. Noticee No. 29, vide letter dated June 19, 2023, filed reply to SCN. Relevant extract of reply of Noticee No. 29 is given below:

1. *It is submitted that the alleged non-compliances were in fact a result of adverse circumstances the Company was facing with during the relevant period, and were due to situations beyond the control of the Noticee such as loss of manpower etc. It is the Noticee's humble request to kindly take note of the special circumstances and the mitigating factors in the matter and take a lenient view owing to the same.*
2. *Though the Noticee was required to submit NDS, the same could not be submitted on account of oversight due to certain difficulties being faced by the Noticee including but not limited to stress and a churn in personnel of the Company, who were responsible for providing such NDS at the relevant time. This affected timely compliance and also resulted in missing the submission of NDS.*

3. *Taking into consideration the compliance by the Noticee, the Noticee is listed as an entity that has partially complied. The SCN does not categorize it under noticees who have defaulted in payment/interest, or not complied. Further, the SCN does not allege that there was a willful default on part of the Noticee.*
 4. *The non-submission of NDS was for reasons beyond the control of the Noticee and not a deliberate and willful non-compliance (as correctly recorded in the SCN which does not allege the same). As mentioned above, it is submitted that on account of certain difficulties being faced by the Noticee including but not limited to stress and a churn in personnel of the Company. The Noticee humbly submits that due to the aforementioned facts and circumstances, the Noticee missed the submission of NDS. It is in light of the above that it is submitted that a lenient and considerate view be taken by SEBI as such lapse/delayed compliance was due to circumstances beyond the control of the Company.*
 5. *In light of the fact that admittedly there was no deliberate intention of non-compliance as no such charge or allegation is made in the SCN coupled with the above-mentioned precedents, the Noticee submits that the proceedings qua the Noticee be disposed of without any penalty.*
 6. *It is submitted that the non-submission of the NDS was merely a technical and venial violation which does not necessitate taking of any harsh action of imposing a penalty on the Noticee. It is submitted that the Noticee has been regular in complying with all regulatory requirements including filing of disclosures under various SEBI regulations and that the unintentional technical error on account of non-submission of NDS, has neither impacted the general investor fraternity, nor resulted in any unwarranted gain and/or benefit to the Noticee. Non submission of NDS was a mere technical lapse which did not cause any prejudice to any investor/s and there have been no complaints from any investor on this count. No unfair gain/advantage was also gained by the Noticee by virtue of such default. It is settled law, that no penalty ought to be levied in case of technical and venial breaches.*
 7. *It is prayed that no penalty under Section 15A(b) of the SEBI Act be imposed on the Noticee, as the alleged violations are not deliberate, and are only technical and venial in nature.*
 8. *Noticee No. 29 has placed reliance on the judgements of the Hon'ble Supreme Court in the matter of Hindustan Steel Ltd vs State of Orissa and the Hon'ble SAT in the matters of Reliance Industries Ltd vs SEBI, Cabot International vs SEBI and P. G. Electroplast Ltd vs SEBI.*
127. I note from the reply that the Noticee No. 29 admittedly did not submit NDS, for the period prior to May 2019. ICRA vide email dated May 18, 2020 and 28 December,

2020 stated that the Noticee was in INC Category since November 2018 and continued to be so till June 2019. This would imply that the Noticee failed to comply with the obligation in Regulation 8 of SEBI LODR Regulations to co-operate with the registered intermediary and submit correct and adequate information and the requirement in the SEBI circular June 30, 2017. The period of non-compliance spans from July 2017 to June 2019.

128. Incidentally, I note that Noticee Nos. 25 and 29 (both represented by same Authorized Representative), have commonly contended that the SCN has not categorized them under the default category as part of their defence. The reply reads as: *“Taking into consideration the compliance by the Noticee, the Noticee is listed as an entity that has partially complied. The SCN does not categorise it under noticees who have defaulted in payment/interest or not complied. Further, the SCN does not allege that there was any willful default on part of the Noticee.”* In my view, the said Noticees are in no manner comparable with the Noticees who were under the category of “Issuers already in Default”. On the other hand, the said Noticees have admitted that *“the alleged non-compliances were in fact a result of adverse circumstances the Company was facing during the relevant period and were due to situations beyond the control of the Noticee such as loss of manpower etc... Though the Noticee was required to submit NDS, the same could not be submitted on account of oversight due to certain difficulties being faced by the Noticee including but not limited to stress and a churn in personnel of the Company, who were responsible for providing such NDS at the relevant time.”* From the replies of the said Noticees, the conclusion that one can arrive at, is that if the disclosures of the “stress” were made at the appropriate time, the rating would have factored in the stress. However, that was not done which shows willful non-compliance with the requirement to file monthly NDS as well as the material event based disclosure, arising out of the “adverse circumstances”. Hence, the said Noticees placing reliance on the categorization made by SEBI as “Partially Compliant” in the SCN cannot be of any avail, in this regard.

129. In this connection, it is relevant to state that during the examination, SEBI had categorized the entities who had failed to comply with the NDS requirements into 4 categories viz. a) Issuers already in default, b) Issuers under the insolvency proceedings, c) Issuers who are partially compliant; and d) Issuers who have not complied. It is clarified that the entities that were shown under the heading “Issuers already in default of payment/interest” are those entities whose default were available in public domain - through NCLT orders/ DRT proceedings/ where the DT has disclosed default in reply to SEBI or in its website / default was disclosed through stock exchange. The categorization in the SCN followed the pattern in the examination report. If a Noticee or its DT has not made any disclosure about its default, then it may not be possible for SEBI to recognize the default. However, a Noticee who has not filed NDS to CRA cannot contend that it has not committed default and therefore its name has not been shown under that specific category. Simply stated, the SCN does not show the Noticee under the default category because it had not disclosed any default. In any case, the present adjudication has not proceeded on the basis of such categorization, as many other factors have been taken into consideration, to assess liability of each Noticee. From the admitted facts and other records, I note that the Noticee has failed to file NDS for 2 years, as stated above.

130. Thus, I find that the Noticee No. 29 violated the provisions of Regulation 8 of SEBI (LODR) Regulations read with clause 1 (C) of Circular dated June 30, 2017 for the period July 2017 to June 2019 and is liable for suitable penalty.

XXV. Noticee No.30: Paranjape Schemes (Construction) Limited

131. It was alleged in the SCN that Noticee No. 30 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) and 1 (C) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 30	Paranjape Schemes (Construction) Limited	CRISIL	<p>Vide email dated June 19, 2020, the issuer has informed that they have submitted the NDS to all concerned agencies. However, the company has not provided any comments on non-submission of NDS/information as of May 20, 2019. Further, DT has informed that Insolvency proceeding was initiated vide NCLT order dated June 11, 2019.</p> <p>Further, vide email dated December 16, 2020, CRA has informed that the issuer has submitted the confirmation of payment obligation and NDS from June 01, 2019 to November 30, 2020.</p> <p>Status: Not Complied for period prior to May 2019</p>

132. Vide email dated April 17, 2023, Noticee No. 30, stated that *“We are in search and find out all the information including No Default Statement along with the copy of emails (acknowledgements) and any other supporting documents. Hence, need some time to submit the same so we request you to adjourn the hearing for at least 20-30 days”*. Vide email dated April 25, 2023, Noticee No. 30 filed its reply as under:

1. *We found that No Default Statement (“NDS”) certificates were submitted through emails time to time on relevant period i.e. prior to May, 2019 with “Brickwork Rating India Private Limited” (Brickwork). However, we are tracing and trying to recovering record and will submit the same to you once recovered.*
2. *We have also approached CRISIL for their confirmation on submission of NDS with them for the period till we were availing services and to recover the data. The Company was withdrawn the services from CRISIL and asked them to confirm the same and their response is awaited and is in process.*
3. *We were availing credit rating services from Brickwork and submitted NDS on time, As we had informed that earlier team is no longer associated with the Company, Hence, unable to get acknowledgements and recovering/fetching the data from our system. We are enclosing copy of NDS for your ready reference for the said period from July, 2018 to May, 2019 which we submitted to Brickwork.*
4. *The Company has made timely payment of interest and not defaulted in making the payment of interest / principal etc. and we can submit the details of payment of interest etc made during said period.*

5. *We also asked our IT Team to recover the information available in our record and will submit the same.*
6. *In the light of aforesaid facts, we humbly request you not to levy any kind of fine or penal interest or take any such actions.*
7. *We request you please condone the delay for submission because we were awaiting the reply of CRISIL for submission the same with the reply.*
8. *We are in search our records and will find out all the information including NDS along with the copy of emails and other supporting documents but need some more time, hence, we request you to please grant us at least 15-20 days to bring full facts of the matter before you.*

133. I note that Noticee No. 30 has provided copies of NDS for the period July 2018 to September 2019 sent to Brickwork Ratings India Pvt Ltd.

134. Noticee No. 30 vide email dated May 04, 2023 informed that CRISIL Limited has confirmed receipt of NDS for June 2017 to December 2017. To support this, CRISIL's email dated May 04, 2023 with attachments of relevant records was also forwarded by the Noticee.

135. From the perusal of information provided with email dated May 04, 2023 received from CRISIL Limited, it was noted that copies of NDS for June - 2017 to December 2017, May 2020 and November 2020 were provided. The CRA in a separate email dated December 16, 2020 has informed that the Noticee has submitted the confirmation of payment obligation and NDS from June 01, 2019 to November 30, 2020. To supplement the CRA's replies, the Noticee has produced the copies of NDS filings for the period July 2018 to September 2019. Thus, I find that the Noticee has not been able to produce the NDS for the months of January to June of 2018.

136. Therefore, I find that Noticee No. 30 has violated the provisions of Regulation 8 of SEBI (LODR) Regulation 2015 read with clause 1 (A) and 1(C) of Circular dated June 30, 2017 for the period stated above and is liable for an appropriate penalty.

XXVI. Noticee No. 32: PVP Ventures Limited

137. It was alleged in the SCN that Noticee No. 32 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulations 2015 read with Clauses 1 (A) and 1 (C) of Circular dated June 30, 2017 and following information was provided with SCN:

Noticee No. 32	PVP Ventures Limited	Brickwork Rating	<p>Vide email dated June 02, 2020, Issuer has stated that they have submitted NDS Statements upto April, 2020. However, the issuer has provided the acknowledgement of CRA for only the month of April, 2020. The issuer has not provided any details about submission of NDS/information to CRA as of May 20, 2019 and from June 01, 2019 to November 30, 2020.</p> <p>Further, CRA vide email dated December 07, 2020 has informed that the NDS submission is irregular. For the said period, the company has not submitted NDS for 5 months <i>i.e.</i> Jul-19, Aug-19, Aug-20, Oct-20 and Nov-20. The company has shared NDS for Sep 2020 with a partial default statement. The company has not submitted information/confirmation of payment obligation.</p> <p>On the basis of information provided by the issuer and CRA, it is observed that the company has not submitted the NDS and information for certain month during June 01, 2019 to November 30, 2020 to the CRA.</p> <p>Status: Not Complied as on May 20, 2019 and 5 months <i>i.e.</i> Jul-19, Aug-19, Aug-20, Oct-20 and Nov-20.</p>
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138. The Noticee No. 32 viz. PVP Ventures Limited, vide letter dated June 01, 2022 filed reply to the SCN. Additional reply was filed vide letter dated June 16, 2022. Extract of the said replies is reproduced below:

a. As a result, of Covid-19 and team transition, submission of NDS for the month of July

2019, August 2019, August 2020, October 2020 and November 2020 had been missed out inadvertently. During the transition period, there was some gaps in knowledge transfer and inadvertently, it missed to file "No default statement" for certain months.

b. It has submitted NDS during the period June 2019 to November 30, 2020, except those stated in SCN and for March 2020.

c. Now, it has submitted the NDS for the month of July 2019, August 2019, March 2020, August 2020, October 2020 and November 2020.

d. One of step-down subsidiary of PVP Ventures Ltd. for which it had provided corporate guarantee to Canara Bank, has become Non-performing Asset, thus the burden of repayment fell upon it. To overcome, the current situation, it had decided to sell land parcel and monetize the asset and searching of a buyer for a long time, since the transaction being huge in nature, only now it has identified a suitable person. However, the deal is in its initial stage, it will take around 6-9 months to complete. On its completion, it will be in a better position to settle the dues of Canara Bank and redeem the debentures, with the remaining proceeds it will again purchase a fresh land parcel to run the business.

139. I have perused the copy of email dated June 01, 2022 submitted by Noticee No. 32 and note that the Noticee sent this email to Brickwork Rating whereby Partial Default Statements for the Months of July 2019, August 2019, March 2020, August 2020, October 2020 and November 2020 were provided to the CRA.

140. I further note that the Noticee No. 32 provided the copies of emails received from Brickwork Rating acknowledging the receipt of NDS submitted by it, for the previous month. The said acknowledgment emails were dated 16.07.2019 , 01.10.2019, 03.02.2020 05.03.2020, 06.05.2020, 08.06.2020, 15.07.2020, 08.08.2020, and 01.10.2020.

141. Noticee No. 32 provided the copies of emails dated December 03, 2019 whereby it had sent the Partial Default Statement for the month of October 2019 and November 2019 to CRA. Partial Default Statement for the month of December 2019 was provided to rating agency vide email dated January 02, 2020. Copies of the said

emails were forwarded along with the attachments. I also take note of the fact that as per the press release dated July 06, 2018, the CRA had downgraded the rating from “BWR BB” to Default “BWR D” Category. The non-filing of NDS after the rating is downgraded to D category can be viewed leniently. However, I find that the Noticee has failed to file NDS for the period July 2017 to June 2018, which would attract penalty. To sum up, I find that Noticee No. 32 has violated the provisions of Regulation 8 of SEBI (LODR) Regulation 2015 read with clause 1 (A) and 1(C) of Circular dated June 30, 2017 for intermittent months and is liable for suitable penalty.

XXVII. Noticee No. 33: Mcnally Bharat Engg. Co. Limited

142. It was alleged in the SCN that Noticee No. 33 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with 1 (A) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 33	Mcnally Bharat Engg Co Limited	CARE	<p>Till date, no information has been received from received from the issuer.</p> <p>On the basis of information provided CRA, it is observed that the company has not submitted the NDS to the CRA as on May 20, 2019 and June 01, 2019 to November 30, 2020.</p> <p>Status : Not Complied</p> <p>Non-Compliance with provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) of Circular dated June 30, 2017.</p>

143. The Noticee vide letter dated June 02, 2022 filed its reply to the SCN, which has been reproduced below:

- a. The Company was in default with respect to its loan repayments and the Lenders had declared the accounts of the Company as Non-Performing Assets (NPA) in April 2019.*
- b. The Company has been submitting from time to time on quarterly basis with the stock*

exchanges the amount of loan default under SEBI Circular No. SEBI/ HO/ CFD/ CMD1/ CIR/ P/ 2019/ 140 dated November 21, 2019 and also informed to the Credit Rating Agency for withdrawal of rating as the Company was already in default since April, 2019. No Objection Certificate on withdrawal of Credit Rating by CARE Rating Ltd. by lenders were also provided to the Credit Rating Agency.

*c. The Hon'ble National Company Law Tribunal (NCLT), Kolkata Bench, vide its order dated **29th April, 2022**, has initiated Corporate Insolvency Resolution Process and accordingly appointed Mr. Anuj Jain (Registration number IB B I/PA-001/IP-P 00142/2017-2018/10306) as interim Resolution professional (IRP) and the necessary disclosure in this respect has already been submitted to the stock exchanges. A copy of NCLT Order is enclosed for your reference.*

144. I note from the SCN that the CRA had stated that the Noticee had not submitted the NDS to the CRA as on May 20, 2019 and for the period June 01, 2019 to November 30, 2020.

145. I note from the Press release dated September 14, 2016 issued by CARE that the Non-Convertible Cumulative Redeemable Preference Share were rated in default "CARE D" category. It continued to be in the same category subsequently too. The last NDS was filed on July 03, 2016. The Noticee has thus been placed in Default category from September 2016 which is much prior to the date of SEBI circular dated 30 June, 2017. As stated in the part of this order dealing with the "Scope and applicability of the SEBI Circular June 30, 2017", the Noticee's case does not fall within the scope of the circular. Hence, I am inclined to drop the proceedings initiated vide SCN dated May 19, 2022 without the levy of any penalty.

XXVIII. Noticee No. 34: Incredible Realcon Private Limited

146. It was alleged in the SCN that Noticee No. 34 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with 1 (A) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 34	Incredible Realcon Private Limited	CARE	<p>Till date, no information has been received from the issuer</p> <p>On the basis of information provided CRA, it is observed that the company has not submitted the NDS to the CRA as of May 20, 2019 and from June 01, 2019 to November 30, 2020.</p> <p>Status : Not Complied</p>

147. Noticee No. 34 vide letter dated December 29, 2022 filed reply to SCN and submitted that-

1. *“Incredible Realcon Private Limited” ceases to exist and has been amalgamated with IREO Private Limited with Appointed date of 01.01.2018, vide Hon’ble NCLT order dated 07.08.2019. That precisely might have been reason for non-submission as the concerned persons, who were handling the matter are no more associated with the company since long owing to adverse financial condition of the company and that is why were not in position to submit the desired information & documents with CRAs on regular basis.*
2. *The aberration as mentioned above has now since been made good as the resultant company has already submitted the required documents/reports with M/s Care Ratings Limited, the rating agency in our case, from May 2019 till date as per the format received and prescribed by them on 29th December 2022, Acknowledgement copy whereof has been enclosed herewith for your kind perusal purposes. At the same time, we assure your good self of filing the same on regular basis to CRAs henceforth in timely manner.*
3. *Erstwhile M/s Incredible Realcon Private Limited (IRPL), being closely held company, had issued 6000, 13.90%, unsecured, redeemable, Non-convertible Debentures to 3 strategic investors namely Standard Chartered Bank, DB International (Asia) Ltd. and Deutsche Investments India Private Limited, which were listed with Bombay Stock Exchange since 18th October 2017 under F Group Debt Segment and said IRPL subsequently amalgamated with IREO Private Limited vide NCLT order dated August 7th, 2019 on company’s petition No CAA-05 (PB) 2019. Further, except the above mentioned one time borrowing, the erstwhile company has not borrowed anything from any other agency or*

source, which might have been requiring further rating from any authorized agency in India in terms of prevailing statutory norms etc.

148. Further, Noticee No. 34, vide letter dated April 13, 2023 filed additional reply and submitted that all pending NDS till December 2022, have been filed with CARE Ratings Limited in the format approved by the CRA vide its letter dated December 27, 2022. Noticee No. 34 also submitted that it has been submitting the NDS from January 2023 onwards till date on monthly basis to CRAs as per statutory requirements.
149. I note from records of Hon'ble NCLT, New Delhi Bench, vide order dated August 07, 2019, approved the scheme of amalgamation between Incredible Realcon Private Limited and IREO Private Limited by. Pursuant to the said Order, the transferor company, Incredible Realcon Private Limited, stood dissolved. It was submitted by the Noticee that the default in filing the statements was on this account. It was also submitted that the transferee company, IREO Private Limited, started filing NDS on monthly basis w.e.f. January 2023 and had also taken appropriate remedial measures by filing composite NDS for the past period.
150. In this regard, it is noted from the Order of the Hon'ble NCLT dated August 07, 2019, that it was specifically provided that all the duties and liabilities of the transferor company shall stand transferred to the transferee company. The relevant portion of the NCLT Order is extracted below:

"27. THIS TRIBUNAL DO FURTHER ORDER

1.

2.

*3. That **all the liabilities and duties of the Transferor Company**, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and **become the liabilities and duties of the transferee company;** and"*

151. Given the above, I note that pursuant to the amalgamation, the obligation to file NDS

stood transferred to IREO Private Limited. As stated earlier, there was failure to submit the NDS as of May 20, 2019 and the monthly statements for the period June 2019 to November 2020 was also not filed. In view of the above, I note that IREO Private Limited failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) and 1 (C) of Circular dated June 30, 2017, for the entire Inspection Period I and partly for the Inspection Period II, and is liable for suitable penalty.

XXIX. Noticee No. 35: Gammon India Limited

152. It was alleged in the SCN that Noticee No. 35 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with 1 (A) of Circular dated June 30, 2017 and following information was provided with SCN:

Noticee No.	Name of company	Name of CRA	Comments
Noticee No. 35	Gammon India Limited	CARE	<p>Till date, no information has been received from received from the issuer.</p> <p>On the basis of information provided CRA, it is observed that the company has not submitted the NDS to the CRA as on May 20, 2019 and from June 01, 2019 to November 30, 2020.</p> <p>Status : Not Complied</p> <p>Non-Compliance with provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) of Circular dated June 30, 2017.</p>

153. I note that the Noticee vide letter dated June 09, 2022 filed its reply to the SCN.

Extract of the said reply is reproduced below:

a. Gammon India Limited ("The Company" or "GIL") had issued Non —Convertible Debentures ('NCD') in various series the last being in the year 2010. The entire series of NCD's amounted to Rs. 324 crore and various corporate financial institutions had

subscribed to the issue. The said NCD's were issued for a period of 10 years from the date of allotment. The NCD holders appointed Axis Trustee as their debenture trustee with first charge on specific plant and machinery.

- b. In the year 2013, the CDR EG cell of the Reserve Bank of India (RBI) approved a restructuring package for the Company pursuant to which the Company was admitted to the Corporate Debt Restructuring ('CDR'). Accordingly, the existing loans were restructured and the Master Restructuring Agreement ('MRA') dated 24th September, 2013 was executed between the Company and all the existing secured lenders. The CDR Lenders agreed that the Security shall be created in favour of a Security Trustee which will be held by the Security Trustee in trust and for the benefit of the Lenders. Accordingly, a Security Trustee Agreement dated 24th September, 2013 was executed wherein IDBI Trusteeship Services Limited ('ITSL') was appointed to act as Security Trustee for the benefit of the Lenders and to hold the security created pursuant to the Security Documents.*
- c. Pursuant to invocation of SDR in the year 2015, as a debt resolution plan the two main operating businesses of Gammon India Limited were demerged to two different entities. Pursuant to the transfer of the business a part of the debt including Rs. 15 cr (approx.) NCD's were also transferred to the demerged entities.*
- d. Further since the company defaulted in servicing the financial facilities availed from the banks/financial institutions the company was declared NPA from June 2017 onwards.*
- e. Considering all the above, CARE declared the Company for a 'D' Rating. Furthermore, due to all the above facts including but not limited to that CARE declared a 'D' rating the Company did not submit a 'No Default Statement' to the CRA/DT.*

154. I note from the SCN that the CRA had stated that the Noticee had not submitted the NDS to the CRA as on May 20, 2019 and for the period June 01, 2019 to November 30, 2020.

155. However, I note from the reply of the Noticee No. 35 that RBI has approved a restructuring package for the Noticee No. 35 pursuant to which the Company was admitted to the Corporate Debt Restructuring, as early as in 2013. Accordingly, the existing loans were restructured and the Master Restructuring Agreement dated 24th September, 2013 was executed between the Company and all the existing secured lenders and the invocation of the debt happened in 2015.

156. I also note from the reply of Noticee No. 35 that it had defaulted in servicing the financial facilities availed from bank/financial institutions and the company was declared NPA from June 2017 onwards. I note from website of CARE that CARE had

assigned “CARE D” rating to the NCDs of Noticee on April 20, 2016 which was re-affirmed on April 17, 2017 i.e. before the date of issuance of circular. The information relating to “Default” was in public domain. Hence, for the reasons stated in the Paragraph E titled “*Scope and applicability of SEBI Circular dated June 30, 2017*”, I do not find this to be a fit case to impose penalty. I hereby drop the action initiated against the Noticee, vide the SCN dated May 19, 2022.

XXX. Noticee No. 37: Lotus Greens Constructions Private Limited

157. It was alleged in the SCN that Noticee No. 37 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with 1 (A) and 1 (C) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 37	Lotus Greens Constructions Private Limited	CRISIL	<p>Till date, no information has been received from the issuer.</p> <p>On the basis of information provided CRA, it is observed that the company has not submitted the information to the CRA as of May 20, 2019 and from June 01, 2019 to November 30, 2020.</p> <p>Status : Not Complied</p>

158. Noticee No. 37 vide letter dated December 15, 2022 submitted that the company ‘Lotus Greens Constructions Private Limited’ is “Unlisted” whereas Regulation 8 of SEBI LODR Regulations 2015 applies to Listed Entity, therefore, it is not covered under the SCN. This preliminary objection is not acceptable since the expression “listed entity” under the SEBI (LODR) Regulations, includes entities which have listed designated securities in a recognized stock exchange. Even a private company that opts to list its securities in a recognized stock exchange will be bound by the disclosure obligations laid down under Regulation 8 of the LODR Regulations.

159. Authorized Representative of the Noticee, Ms. Jyoti Gupta, during the course of

hearing held on April 18, 2023 submitted that resolution for delisting was passed on April 05, 2019 and approval for delisting of its debt issue was received on April 29, 2021. Noticee No. 37 was granted an opportunity to file additional reply, if any, on or before April 21, 2023. Noticee No. 37, filed additional reply vide letter dated April 20, 2023.

160. I note from the submissions of Noticee No. 37 that it had applied for delisting and resolution to this effect was passed on April 05, 2019. Further, during the course of hearing, AR of the Noticee No. 37 informed that approval for delisting of its debt securities was received on April 29, 2021. In the circumstances of the debt securities having been delisted prior to the issue of SCN, I find that the allegations of non-filing of NDS contained in the SCN against the Noticee, is venial and technical in nature. I am therefore inclined to drop the charges against the Noticee without the levy of any penalty.

XXXI. Noticee No. 40: Hindustan Cleanenergy Limited

161. It was alleged in the SCN that Noticee No. 40 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1(A) and 1(C) of Circular dated June 30, 2017 and following information was provided with SCN:

No.	Name of company	Name of CRA	Comments
Noticee No. 40	Hindustan Clean energy Limited	India Rating	<p>Vide email dated June 03, 2020, the issuer has informed that they have submitted the NDS and information to CRA from July 2017 to June 2019, which were inadvertently not submitted.</p> <p>The company has further stated that they shall ensure timely submission of NDS.</p> <p>Further, vide email dated December 07, 2020, CRA has also informed that the issuer has not submitted the information and NDS from June 01, 2019 to November 30, 2020.</p>

			<p>On the basis of information provided by the issuer and CRA, it is observed that the company has not submitted the information and NDS to the CRA as of May 20, 2019 and from June 01, 2019 to November 30, 2020.</p> <p>Status : Not Complied</p>
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162. Noticee No. 40 viz. Hindustan Cleanenergy Limited, vide letter dated May 26, 2022 filed reply to the SCN. Additional reply was filed on June 22, 2022. Extract of the Reply is reproduced below:

- a. *There was no default in payment of monthly interest to the debenture holders and the payment confirmations for the same were duly sent to BSE Limited on monthly basis. Further, the intimation of timely payment of interest was provided to India Ratings and Research Private Limited as and when requested by them. Pursuant to the email received from SEBI dated 26th May, 2020 for submission of NDS to the credit rating agency, the same was submitted for the months from July, 2017 to June, 2019.*
- b. *It is also brought to the notice that interest and principal of the medium term loan availed by the Company from Yes Bank Limited, has been repaid in full by the Company and the loan account with Yes Bank Limited stands "closed".*

163. Noticee No. 40, vide its reply dated June 22, 2022, reiterated the submission made in its earlier reply. Noticee No. 40 provided the copies of letters sent to BSE Limited on monthly basis from May 2020 to May 2022 in respect of payment of interest.

164. Noticee No. 40 submitted that pursuant to the email received from SEBI dated May 26, 2020 for submission of NDS to the credit rating agency, the same was submitted for the months from July, 2017 to June, 2019. The Noticee No. 40, vide its reply dated May 26, 2022 has provided copy of email dated June 03, 2020 sent to India Ratings and Research Pvt. Ltd. which read as:

“Please find attached the NDS Certificates from the month of July 2017 to June 2019 which was not submitted earlier inadvertently. Please take on record and acknowledge the receipt of the same”.

165. Noticee No. 40, vide letter dated June 22, 2022, has provided copies of emails sent to India Ratings and Research Pvt. Ltd. in respect of payment status (Principal/Interest). The dates of emails sent to CRA by Noticee No. 40 read as 02.06.2020, 30.06.2020, 31.08.2020, 14.10.2020, 30.10.2020, 01.12.2020, 01.02.2021, 31.03.2021 and 31.03.2022.
166. Noticee No. 40 also provided copies of letter sent to BSE Limited certifying that the company has made the payment of interest obligations in respect of NCD which is due in respective months. Copies of letters dated 30.05.2020, 30.06.2020, 29.07.2020, 29.08.2020, 30.09.2020, 30.10.2020 and 27.11.2020 have been provided by the Noticee No. 40.
167. In the facts and circumstances of the case, I find that the Noticee has filed a combined NDS for the first inspection period i.e. from July 2017 to June 2019, which cannot be viewed as compliance with the circular. The circular mandates monthly disclosure and not a single composite disclosure for the entire period. Similarly, filing NDS with stock exchange cannot be a substitute for the obligation to file the same with CRAs. In the second spell which is June 2019 to November 2020, it is seen that the Noticee has filed NDS for the months of May 2020 to November 2020 except for the month of July 2020. In view of the above, I note that Noticee No. 40 failed to comply with the provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) and 1 (C) of Circular dated June 30, 2017, for the entire Inspection Period I and partly for the Inspection Period II, and is liable for suitable penalty.

XXXII. Noticee No. 41: RHC Holding Private Limited

168. It was alleged in the SCN that Noticee No. 41 failed to comply with the provisions of

Regulation 8 of SEBI LODR Regulation 2015 read with 1 (A) of Circular dated June 30, 2017 and following information was provided with SCN:

Noticee No.	Name of company	Name of CRA	Comments
Noticee No. 41	RHC Holding Private Limited	India Rating	<p>Till date, no information has been received from the issuer.</p> <p>On the basis of information provided CRA, it is observed that the company has not submitted the information and NDS to the CRA as of May 20, 2019 and from June 01, 2019 to November 30, 2020.</p> <p>Status : Not Complied</p> <p>Non-Compliance with provisions of Regulation 8 of SEBI LODR Regulation 2015 read with clause 1 (A) and 1 (C) of Circular dated June 30, 2017.</p>

169. SCN was attempted to be delivered to the Noticee No. 21 through digitally signed email on May 20, 2022. However, same could not be delivered at the email id available on record. Therefore, alternate delivery of SCN was successfully done by affixing the SCN at the premises of the Noticee No. 21 as per the "Affixture" report available on record.

170. India Rating & Research Private Limited vide its press release dated July 14, 2017 have assigned "IND D" to the NCDs issued by Noticee No. 41 and made the following remarks:

"The downgrade reflects a default by RHC in servicing its coupon obligations on its non-convertible debentures. The obligations were due on 27 June 2017. Post the default, RHC has been given a new future date in July 2017 to make the payment. The outstanding principal amount stands at INR 2 billion for this issue. The downgrade of the ratings on other debt instruments reflects an impaired debt servicing capability due to a stretched liquidity position."

171. I note that press release was issued by CRA on July 14, 2017 i.e. after the date (June

30, 2017) of circular downgrading the rating of the Noticee to Default D Category. However, I am considering the fact that NDS was required to be submitted on a monthly basis; and in the case of Noticee No. 41, press release was issued on July 14, 2017 i.e. before the completion of a month's period from the date of the circular. Hence, I do not find it to be a fit case to apply the June 30, 2017 circular to the Noticee. Thus, the SCN dated May 19, 2022 is hereby disposed of without the levy of penalty.

H. CONCLUSION:

172. The subject matter of the adjudication essentially pertains to the requirement of listed entities who have issued debt securities or other entities who have chosen to list their debt securities, to file No Default Statement (NDS) to the Credit Rating Agencies. Regulation 8 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 mandates that a listed entity shall co-operate with and submit correct and adequate information to the intermediaries registered with SEBI, which includes registered CRAs. The information is required to be submitted within timelines specified under the Act, Regulations and circulars. On June 30, 2017, SEBI issued the subject circular on "Monitoring and Review of Ratings by Credit Rating Agencies (CRAs)", whereby the CRAs were instructed to obtain the NDS statements from issuer companies on a monthly basis. An issuer-company is expected to furnish the same to its CRA, confirming that it had not delayed on any payment of interest/principal in the previous month on the first working day of the next month. The CRAs were mandated to constantly monitor the ratings that they had assigned to the Issuers by obtaining the declarations in a specific format. The Circular has been discussed at length in the earlier part of this order.
173. The facts and circumstances pertaining to each of the above Noticee has been considered separately. Out of the 32 Noticees named herein, I have held seven Noticees (Noticee Nos. 19, 25, 29, 30, 32, 34 and 40) to have committed the breach of the provisions of Regulation 8 of SEBI LODR Regulations read with the Circular

dated June 30, 2017, which have an impact on the market and are therefore liable for penalty.

174. As regards the quantum of penalty to be imposed, I note that Section 15A(b) of SEBI Act, which provides for a penalty for failure to furnish information will apply, as indicated in the SCN. The requirement to furnish information according to section 15A should flow from any provision under the SEBI Act, or rules or regulations. In the instant case, it is alleged that the provisions in Regulation 8 of the SEBI (LODR) Regulations read with the provisions of the June 2017 circular, have not been complied. The said provision mandates a penalty of not less than One lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
175. The period of non-compliance of each of the Noticee held liable for penalty herein, varies from case to case. The market cap of the Noticees also are in wide contrast and not comparable. The debt size of the issuers during the relevant period for which the rating has been obtained from CRAs, as gathered from the websites of CRAs, are available and could serve as a plausible parameter, to assess the impact of the non-compliance, from the investors' perspective. The non-filing of NDS may have resulted in certain benefits to those issuers such as continuance or extensions of bank accommodations on loans or reduced cost of borrowings etc. It is an undisputable inference that the issuers could have gained such benefits by avoiding filing of NDS to CRAs, during times of financial stress. Simply put, the Noticees can choose not to file NDS during such stressful periods and dodge the CRAs from downgrading the debt securities based on the disclosures. The impact of a downgrade in rating, or the loss caused to the investors, had the true and adequate disclosures of the financial position been made at the right time, cannot be practically quantified. I also note that SEBI's instant inspection/examination was limited to examination of filings of NDS by issuer companies and did not extend to identification of instances of actual defaults in repayment or suppression of material fact. Thus, from an overall perspective of the

facts and figures available, I have proceeded to adopt factors such as debt size; willful default to file NDS; and non-production of relevant disclosures to peg the penalty.

176. When I look at the debt size, I find that Noticee No.19 has raised a miniscule debt of a size of Rs.8.6 Crores. However, as Noticee No.19 is held to be non-compliant with the relevant provisions of law, it is liable for a penalty. In my view, such penalty for Noticee No.19 shall be the minimum penalty stipulated under section 15A(b) which is Rs.1 Lakh. Noticee Nos. 25, 29 and 34, on the other hand have raised huge debts, which exceed Rs. 500 crores and in my view, maximum penalty would be leviable. The penalty on other Noticees also need to hold some proportion to the debt size. Accordingly, the penalties on the remaining entities have been quantified and levied as shown in the table under Paragraph No. 177. In my view, the said penalties are commensurate with the violation and also relatable in quantum to that of the other co-noticees.

I. ORDER

177. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticees and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose penalty on the aforesaid six Noticees under Section 15A(b) of SEBI Act, 1992 as shown in the table hereunder:

Noticee No.	Name	*Issue size (of NCDs) in Rs.	Penalty (in Rs.)
Noticee No. 19	Ginni Filaments Limited	8.60 Crore	1 Lakh
Noticee No. 25	Reliance Infrastructure Limited	703 Crore	1 Crore
Noticee No. 29	Reliance Power Limited	795 Crore	1 Crore
Noticee No. 30	Paranjpe Schemes (Construction) Limited	175 Crore	20 Lakh
Noticee No. 32	PVP Ventures Limited	111.77 Crore	14 Lakh
Noticee No.34	Incredible Realcon Private Limited	600 Cr	1 Crore
Noticee No. 40	Hindustan Cleanenergy Limited	44.70 Crore	5 Lakh

*As per website of CRAs

178. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

179. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

DATE: JUNE 19, 2024

GEETHA G.

PLACE: MUMBAI

ADJUDICATING OFFICER