BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD OF INDIA [ADJUDICATION ORDER NO. : Order/GR/RK/2020-21/9849]

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

In respect of

Sinew Developers Pvt. Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India ("**SEBI**") received a letter dated September 19, 2019 from Vistara ITCL (India) Ltd. ('**Vistara**'), a SEBI registered Debenture Trustee in which Vistara had provided a list of companies from which it had not received till that date the Half Yearly Communication ('**HYC'**) as per Regulation 52(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, ('**LODR Regulations**') for the half year ended March 31, 2019. The aforesaid list of companies included Sinew Developers Pvt. Ltd. ('**Noticee/Company**'). In view of the aforesaid information, SEBI conducted an examination and had observed *prima facie* violation of Regulations 52(1), 52(4) and 52(5) of LODR Regulations by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer ('**AO**') vide order dated June 10, 2020, under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter, "**SEBI Act**") and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, **Rules**) to enquire into and adjudge under

Section 15A(b) the alleged violations of Regulations 52(1), 52(4) and 52(5) of LODR Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated August 28, 2020 (hereinafter, "**SCN**") was issued by the AO to the Noticee under Rule 4 of the Rules, calling it to show cause as to why an inquiry should not be held against it and penalty be not imposed on it under Section 15A(b) of the SEBI Act for the violations as specified in the SCN and reproduced herein below:

(a) Failure to submit financial results of the company for the half year ended March 31, 2019 to the exchange, which is not in compliance of Regulation 52(1) of the LODR Regulations.

(b) Failure to disclose the line items as specified under the Regulation 52(4) of LODR Regulations to the exchange.

(c) Failure to submit the certificate signed by the Debenture Trustee taking note of the contents prescribed under Regulation 52(4) of LODR Regulations to the exchange, thereby non-compliance with Regulation 52(5) of LODR Regulations.

4. In response to this, the Noticee vide its email dated September 07, 2020 requested for inspection of all the documents that would undermine the charges against the Noticee. In this regard, vide email dated September 11, 2020, the Noticee was informed that all the relied upon information and documents to substantiate the allegations in respect of the Noticee, have already been provided to the Noticee along with the SCN and there are no other information and records being relied upon in respect of the Noticee in the present matter.

5. Further, vide the said email, the Noticee was asked to submit its reply to the SCN latest by September 21, 2020 and also an opportunity of personal hearing was provided to the Noticee on September 24, 2020. However, the Noticee vide its email dated September 18, 2020 again requested to undertake an inspection of documents relied upon by the undersigned.

6. In this regard, vide email dated September 24, 2020, the Noticee was informed that its request for inspection of documents has been rejected by the undersigned as all relevant and relied upon documents have already been provided to it. Further, vide the said email, another opportunity of personal hearing was provided to the Noticee October 06, 2020, which was rescheduled on October 13, 2020 on the request of the Noticee.

7. Subsequently, the Noticee vide its email dated October 10, 2020 submitted its reply to the SCN, which is summarized as below:

   a. *"The SCN is based upon various documents and these documents are not inspected by us and without the inspection of these documents, we would be seriously prejudiced and handicapped in preparing an effective reply. The Hon'ble Supreme Court in Kothari Filaments V/s. CCE 2009(2) SCC 192 has indicated that non supply of documents would violate principles of natural justice and vitiate adjudication.*

   b. *The debentures issued by the Company were by way of a private placement and this was not a public issue of debentures that could have been subscribed by the public at large. While the Series-A debentures were listed, Ammon at all relevant times was and continues to be the debenture holder for the Series A and C Debentures;*

   c. *At all relevant times, the Company was controlled by the debenture holder and this was part of the debenture subscription agreement entered into between the Company, Ammon and the promoters pursuant to which Ammon acquired the rights ordinarily reserved for a shareholder. Ammon had special rights conferred on it in respect of certain matters (hereinafter "Reserved Matters") under a debenture subscription agreement that inter-alia include: (a) the right to appoint a majority of directors on the Board of the Company; (b) affirmative voting rights on reserved matters that pertinently extended to approval of accounts; and (c) special quorum requirements for conducting a meeting of the Board i.e. the presence of at least one nominee director of Ammon, was necessary for a valid quorum to be constituted. The terms on which Ammon subscribed to the debentures including the special rights are publicly disclosed and available in the Information Memorandum/ shelf disclosure documents filed with the BSE Ltd;*

d. *The Articles of the Company were also amended to incorporate the terms of the debenture subscription agreement and provided that the Company shall not take any action in relation to the Reserved Matters, unless they are approved by a nominee director of the debenture holder prior to being taken up at the Board meeting and, thereafter, approved at the Board meeting of the Company, where the nominees of the debenture holder are in a majority;*

e. *The record shows that owing to disputes between the Company, Ammon and the promoters which are sub-judice and pending before the Hon'ble Delhi High Court, no Board meeting has been convened, owing to Ammon's nominees refusing to provide their consent –since their presence is necessary for a valid quorum to be constituted, let alone for approving the accounts of the Company. Attempts of the Company Secretary to convene a meeting of the Board was thwarted. This has resulted in the Company being unable to table the accounts at the general meeting, for the financial year 2017-18 onwards;*

f. *The failure to obtain approval of the accounts for the financial year 2017-18 has had a cascading effect, on the accounts for the subsequent financial year i.e. 2018-19 i.e. for the year ended March 31, 2019 – which too have not been tabled before the Board and consequently, the shareholders, for want of consent from the nominee directors of Ammon;*

g. *It is well settled that unless the financial statements of the company are approved by the Board of Directors and thereafter placed before the shareholders for their approval, the information contained in unapproved financial statements of the company has no legal sanctity;*

h. *Regulation 52(1) of the LODR Regulations, requires a listed entity to "prepare and submit un-audited or audited financial results on a half yearly basis" within 45 days. Obviously, the financial results – whether audited or unaudited would have to first be approved and taken on record by the Board of Directors and signed by the managing director or executive director. This is made abundantly clear by Regulation 52(2(b) of the LODR Regulations;*

i. *Admittedly, the financial results of the Company for the financial year 2017-18 onwards have not been approved by the Board of Directors let alone the shareholders, owing to the failure by the*

debenture holder to provide their consent to convene a Board meeting. Therefore, the obligation to make disclosures of the financial statements are conditional upon their being approved at a meeting of the Board;

j. Consequently, when no Board meeting has been convened and held, owing to the failure of the debenture holder to act reasonably, the Company cannot be held liable for alleged failure to file the half yearly financial results. A similar issue was considered by the Hon'ble Supreme Court in State of Andhra Pradesh & Another v. Andhra Provincial Potteries Ltd. (1973) 2 SCC 786 where the issue before the Court was whether directors can be penalized for failure to file the financial statements with the Registrar of Companies, when an annual general meeting of the shareholders was not convened to approve the financial statements. The Hon'ble Supreme Court upheld the view expressed by the Hon'ble Andhra Pradesh High Court that the obligation to file the financial statements with the Registrar of Companies, under Section 220 of the Companies Act, 1956, can arise only after the annual general meeting is convened and the financial statements are placed before them and not otherwise. Similarly, the obligation to disclose financial statements under Regulation 52(1) of the LODR Regulations can arise only where they are approved by the Board of Directors and the shareholders, as the case may be;

k. Moreover, it is well settled that the law does not compel the performance of an act which has become impossible i.e. in the instant case owing to Ammon's conduct in not consenting to a meeting to approve the accounts. Reference is made to the judgement of the Hon'ble Supreme Court in Jaswal Neco Limited v Commissioner of Customs (20150 17 SCC 769) where the Hon'ble Supreme Court held that difficulties or impossibilities that prevented compliance with statutory obligations, would excuse such a person from penalties;

l. The disclosures in question under the LODR Regulations are aimed at protecting the interests of the debenture holders, who are beneficiaries of these provisions, by providing them, with information on the financial position of the issuer, to enable them to make an informed decision. However, when the beneficiary or protectee of the law is itself is in charge of the issuer and has been responsible for thwarting compliance and has not approved the financial results – it is a vital facet that ought to

weigh with SEBI, in excusing any alleged non-compliance. It would be erroneous for SEBI to take the view that every infraction, no matter how genuine, warrants penal intervention. The Hon'ble Securities Appellate Tribunal in Piramal Enterprises v SEBI (Appeal No. 466 of 2016, Order dated May 15, 2019) has categorically held that imposition of penalty is not the ultimate purpose of the SEBI Act and substituted the penalty with a warning, when the alleged violation was venial and technical.

m. The SCN is based upon various documents and these documents are not inspected by us and without the inspection of these documents, we would be seriously prejudiced and handicapped in preparing an effective reply. The Hon'ble Supreme Court in Kothari Filaments V/s. CCE 2009(2) SCC 192 has indicated that non supply of documents would violate principles of natural justice and vitiate adjudication.

n. Later on, a board meeting of Company was called and to be convened on 30th November 2018 for approving the audited financial statements for the year 2017-2018, however, the nominee directors of Ammon on the Board of Company deliberately neither confirmed nor attended such meeting due to which the audited financial statements could not be approved. Since the Board Meeting was not held and consequently Ammons directors did not approve the financials for the year 2017-2018 and consequently the AGM could not be held and due this the audited financials were not available for filing. A copy of the correspondence addressed by the Company Secretary to Ammon calling for the board meeting is annexed hereto and marked as Annexure-Q. Due to this very reason the half yearly communication and audited financials for financial years 2018 was not submitted.

o. By and under two emails dated 6th December 2018 and 20th December 2018 addressed by Rakesh Shah, a nominee director of Ammon to the Company Secretary of Company, Ammon has sought to allege, inter-alia, that the board meeting was not properly convened by the Company Secretary as an afterthought to cover up their failure to attend the board meeting on 30th November 2018.

p. Thereafter, on several occasions, the Company Secretary of Company requested that Board Meetings should be convened as several compliances were required. However, the nominee directors did not

make themselves available for Board meeting. Due to this omission on part of Ammon and its nominee directors, a situate of impasse has been created.

q. *In view of the aforesaid it is clear that due to the abject non-cooperation from the nominee directors of Ammon/ Xander since 2015 which led to delays in completion of the Project and consequently led to disruption in the management of the Company. The Company despite holding the board meetings, several resolutions including approval and filing of financials of the Company have not been passed and could not be carried further.*

r. *Further, from the aforesaid it is evident that that no losses have been caused to the investor nor has any disproportionate gain or unfair advantage derived to the Company as a result of any purported defaults.*

8. Subsequently, hearing in the matter was conducted on October 13, 2020. The said hearing was attended by the Authorized Representatives (**'AR'**) of the Noticee in which they reiterated their submissions made vide its earlier replies and as per the request of the Noticee, additional time of one week was provided to the Noticee to make additional submissions in the matter (if any).

9. The Noticee vide its letter dated October 19, 2020 made further submissions in the matter which is summarized as below:

i. *The disclosures under Regulation 52 of the LODR Regulations of the financial results and other information - are aimed at protecting the interests of the debenture holders, who are beneficiaries of these provisions, by providing them, with information on the financial position of the issuer, to enable them to make an informed decision;*

ii. *In the present case, admittedly – there were only two debenture holders – Ammon and KUDPL. The NCDs were fully subscribed by these two entities and were not transferred to any other entity and were not available to the public for purchase. Ammon, the beneficiary or protectee of the law is itself is in charge of the issuer and has been responsible for thwarting compliance and has not approved the financial results.*

It would inequitable and contrary to the spirit of these provisions, for the Noticee to be held liable, in such a case;

iii. *The Hon'ble Securities Appellate Tribunal in National Highway Authority of India vs SEBI (Appeal No. 232 of 2020 Order dated August 27, 2020 @ Page No. 516-531), involving a similar charge of non-disclosure of financial results under Regulation 52(1) of the LODR Regulations, for two financial years for which SEBI imposed a penalty of Rs 7 lakhs, substituted the penalty with a warning. The Hon'ble SAT took into account the extraordinary circumstances that excused non-compliance. While the Hon'ble SAT also stated that its judgement ought not to be treated as a precedent, it would be open to the Learned Adjudicating Officer to take into account the extraordinary facts in the present case as well, and drop these proceedings with a warning;*

iv. *Regulation 52(1) of the LODR Regulations, requires a listed entity to "prepare and submit un-audited or audited financial results on a half yearly basis" within 45 days. The financial results – whether audited or unaudited, would have to first be approved and taken on record by the Board of Directors and signed by the managing director or executive director (See Regulation 52(2)(b) of the LODR Regulations). The obligation to disclose financial statements under Regulation 52(1) of the LODR Regulations can arise only when they are approved by the Board of Directors and the shareholders, as the case may be. The obligation is therefore conditional;*

v. *When a meeting of the shareholders or the Board, as the case may be, is not convened and the financial statements are not approved, no penalty can be imposed for failure to file the financial results (See Para 6 and 7 of the Hon'ble Supreme Court's judgement in State of Andhra Pradesh & Another v. Andhra Provincial Potteries Ltd. (1973) 2 SCC 786 @ Page No. 532-538);*

vi. *It is well settled that the law does not compel the performance of an act which has become impossible. In the instant case, the failure to file financial results is attributable to the debenture holder's conduct in not approving the financial statements, despite the bona-fide conduct of the officers of the Company and the promoter. The Hon'ble Supreme Court in Jaswal Neco Limited v Commissioner of Customs (2015 17*

SCC 769 @ Page No. 539-558) held that difficulties or impossibilities that prevented compliance with statutory obligations, would excuse such a person from penalties (See Para 37);

vii. *Lastly, no useful purpose would be served by imposing a penalty, when the beneficiary of the disclosure provisions in question, itself is in charge of the affairs of the issuer, had access to the information in question and has prevented compliance. A mandatory penalty regardless of circumstances would be unconstitutional and not in accordance with SEBI Act. The Hon'ble Securities Appellate Tribunal in Piramal Enterprises v SEBI (Appeal No. 466 of 2016, Order dated May 15, 2019 @ Page No. 559-589) categorically held that imposition of penalty is not the ultimate purpose of the SEBI Act and substituted the penalty with a warning, when the alleged violation was venial and technical (See Paras 24-26).*

10. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

ISSUES FOR CONSIDERATION AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are:

a. Whether the Noticee has violated the provisions of Regulation 52(1), 52(4) and 52(5) of the LODR Regulations?
b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act?
c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

12. Before moving forward, it is pertinent to refer to the relevant provisions of LODR Regulations, which reads as under:

Regulation 52(1)

"The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty-five days from the end of the half year to the recognised stock exchange(s).

Provided that in case of entities which have listed their equity shares and debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees on the same day the information is submitted to stock exchanges."

Regulation 52(4)

"The *listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:*

(a) credit rating and change in credit rating (if any);

(b) asset cover available, in case of non-convertible debt securities;

(c) debt-equity ratio;

(d) previous due date for the payment of interest / dividend for non-convertible redeemable preference shares / repayment of principal of non-convertible preference shares / non-convertible debt securities and whether the same has been paid or not; and,

(e) next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest / dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India.

Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators."

Regulation 52(5)

"The listed entity shall within seven working days from the date of submission of the information required under sub-regulation (4), submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents"

Prior to May 07, 2019, the aforesaid sub-regulation 5 of Regulation 52 of SEBI (LODR) Regulations, 2015 read as "While submitting the information required under sub-regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents".

FINDINGS

13. Before going into the merits of the case, I would like to deal with the preliminary contention raised by the Noticee with regard to supply and inspection of documents. The Noticee has contended that it had sought the entire record relating to the investigation carried out by SEBI, including the complete Investigation Report and all documents/emails referred to in such Investigation Report. The Noticee has further contended that they should have been permitted to undertake an inspection of documents including those relied upon by the undersigned. In this regard, the Noticee has quoted the judgements of the Hon'ble Supreme

Court in the matter of *Pricewaterhouse v Securities and Exchange Board of India*. In the present matter, the said SCN *inter-alia* contains the allegation that the Noticee being a listed entity has failed to make required disclosures under Regulations 52(1), 52(4) and 52(5) of LODR Regulations. I note that the allegations against the Noticee are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticee as enclosures to the SCN. I note that in the present proceeding reliance is being placed on only those documents, which have been provided to the Noticee. Further, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter of *Shruti Vora vs. SEBI* had made the following observations:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required *to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".*

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be *made available for inspection to the person whose conduct was in question and hat said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".*

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents *upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon*

the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

14. Further, the Hon'ble SAT in the matter of *Anant R Sathe Vs SEBI (Appeal No. 150 of 2020)* vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".

15. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticee, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticee.

16. The first issue for consideration is whether the Noticee has violated Regulation 52(1), 52(4) and 52(5) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

17. It may be noted that Regulation 52(1) of SEBI (LODR) Regulations provides for submission of the financial results within forty-five days from the end of the half year. Further, Regulation 52(4) provides for disclosure of certain line items along with the half yearly / annual financial results, while Regulation 52(5) provides for submission of a Certificate signed by the Debenture Trustee taking note of the contents prescribed under Regulation 52(4).

18. From the fact of the case, I observe that in pursuance of the reference of Vistra, SEBI sought information from Exchanges (NSE and BSE) regarding the compliance status of the Noticee with respect to Regulation 52(1), 52(4) and 52(5) of LODR Regulations for the half year ended March 31, 2019. From the submissions of the BSE vide its email dated October 07, 2019 and March 11, 2020, it was observed that the company has not complied with provisions of Regulation 52(1), 52(4) and 52(5) of SEBI (LODR) Regulations, 2015.

19. The Noticee in its reply has submitted that at all relevant times, the Company was controlled by the debenture holder of the company, and this was part of the debenture subscription agreement entered into between the Company, its promoters and Debenture holder of the company ('**Ammon**'), pursuant to which Ammon acquired the rights ordinarily reserved for a shareholder. The Noticee further submitted that Ammon had special rights conferred on it in respect of certain matters (hereinafter "**Reserved Matters**") under the said agreement that inter-alia included: (a) the right to appoint a majority of directors on the Board of the Company; (b) affirmative voting rights on reserved matters that pertinently extended to approval of accounts; and (c) special quorum requirements for conducting a meeting of the Board i.e. the presence of at least one nominee director of Ammon, was necessary for a valid quorum to be constituted etc.

20. Further, the Noticee submitted that they had failed to make relevant disclosures as the financial results of the Company for the financial year 2017-18 onwards have not been approved by the Board of Directors, owing to the failure by the debenture holder of the company to provide its consent to convene a Board meeting. Therefore, the Noticee had contended that as the Board meeting could not be convened owing to the failure of the debenture holder to act reasonably, the Company cannot be held liable for alleged failure to file the half yearly financial results.

21. In this regard, I note that the aforementioned rights on Reserved Matters including right to appoint majority of directors on the Board of the company, convening the Board meeting etc. was given to Ammon by the company and its promoters themselves after entering into aforesaid agreement. Hence, I note that the procedural difficulties faced by the company in convening of Board meeting and filing the said disclosures due to non-cooperation by debenture holder of the company is their internal matter which does not absolve the Noticee from filing the said disclosures under LODR Regulations. In this regard, I further note that a listed entity is required to comply with the relevant Regulations/directions issued by SEBI from time to time. In the instant matter, the provision of said Regulation does not give any relaxation from complying with the same for any procedural challenges like this. Therefore, I do not accept this contention of the Noticee.

22. The Noticee has further contended that there are only two debenture holders from whom the funds have been raised by them, and no losses have been caused to the investor nor has any disproportionate gain or unfair advantage derived to the Company as a result of any purported defaults which were venial and technical in nature. In this context, I note that it is crucial to mention here that financial statements are important because they contain significant information about a company's financial health. They are the barometer of a company's operations. Investors depend on the truth and fairness in the financial statements to make informed decisions. Moreover, it is not only investors, but a lot of stakeholders like operational creditors and lending institutions like banks that need to gauge the profitability and track record before opening up lines of credit to a company. Further, in this regard I place reliance on Hon'ble SAT's judgement dated October 14, 2014 in the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014), in which Hon'ble SAT observed that "……. *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures." (Emphasis supplied).*

23. Further, timely disclosure of relevant information by listed companies is essential for maintaining transparency about the affairs of the Company which helps in eliminating information asymmetry. Moreover, correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. In this context, I would like to rely on observation of Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI* (*Appeal No. 209 of 2014 order dated August 11, 2014*) wherein it was held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*."

24. Further, from the submissions of the Noticee, I observe that the Noticee has admitted that it had failed to make the aforesaid disclosures on time and hence the Noitcee had not denied the fact that it has violated the provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations.

25. Based on the aforesaid findings, I conclude that the Noticee has violated the provisions of Regulations 52(1), 52(4) and 52(5) of LODR Regulations.

26. I further note that Hon'ble Supreme Court of India, in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} held that *"In our view, the penalty is attracted as soon as* contravention *of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

27. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulations 52(1), 52(4) and 52(5) of the LODR Regulations. The provisions of Section 15A (b) of the SEBI Act, 1992 read as under:

SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –

If any person, who is required under this Act or any rules or Regulations made there under-

(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, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".*

28. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under: -

Factors to be taken into account by the adjudicating officer.

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

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

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

(c) *the repetitive nature of the default.*

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

29. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee is available on record. However, the facts of the case clearly bring out the default made by the Noticee. I note that the Noticee failed to make timely disclosures thereby violated Regulation 52(1), 52(4) and 52(5) of the LODR Regulations.

ORDER

30. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Rules, I hereby impose a penalty of **Rs 3,00,000/-** (Rupees Three lacs only) on the Noticee viz. Sinew Developers Pvt. Ltd. in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

31. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR 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.

32. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department -DRA-3), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 –A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount	

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated 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.

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

Date : December 16, 2020 **G Ramar**

Place : Mumbai **Adjudicating Officer**