BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: EAD-2/SS/SK/2018-19/2550-2556]

UNDER SECTION 15-I OF THE SEBI ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

1	**Cinema Capital Advisory Private Limited**	Cinema Capital, 102-103, 1st Floor, Building A/4, Lok Nirman Towers Dr. Ambedkar Road, Khar (West) Mumbai 400 052.
2	**Mr. Samir Gupta**	
3	**Mr. Shashanka Ashokkumar Ghosh**	
4	**Mr. Binay Chandra Mandal**	
5	**Cinema Capital Contributory Company Private Limited**	
6	**Mrs. Urmila Ghosh**	
7	**Mr. Amrit Lal Suri**	

In the matter of Cinema Capital Venture Fund

1. Securities and Exchange Board of India ("SEBI") conducted an inspection of books of accounts and other records of M/s Cinema Capital Venture Fund (hereinafter referred to as "CCVF" or "the Fund") to look into the investor complaints received, to verify compliance with regulatory requirements prescribed in SEBI (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as "VCF Regulations"), to verify compliance with KYC requirements and AML/CFT guidelines issued from time to time. The inspection was conducted on October 21, 2016 and the period covered under inspection was from April 01, 2015 till October 21, 2016. The observations made during the course of inspection were communicated to the fund vide SEBI letter No. IMD/DoF-I/IA/AS/OW/7535/2017 dated March 31, 2017. The fund had submitted its comments/ explanations on the aforesaid observations of the inspection vide its letter dated April 21, 2017.

2. SEBI did not find comments/explanation of the Noticees satisfactory with regard to the following:-

   (a) The tenure of CCVF, as permitted under the private placement memorandum ('PPM'), expired on November 14, 2015 and CCVF informed SEBI of its decision to initiate liquidation proceedings as per VCF Regulations vide its letter dated March 07, 2016. However, as submitted by CCVF vide email dated July 11, 2017, it was observed that CCVF had failed to liquidate the assets of its scheme

and distribute the proceeds accruing to the investors in the scheme after satisfying all the liabilities within 3 months from the date of intimation of winding up as stipulated under VCF Regulations i.e. March 07, 2016.

(b) CCVF had failed to wind up the operations of the scheme when the period of the scheme as per the PPM was over. Thus, CCVF had extended the tenure of the scheme beyond the time limit allowed under the PPM.

(c) The investment objective as stated in the PPM by the fund allowed the fund to make investments in the ventures related to 'media and entertainment industry'. In this regard, the fund in its PPM mentioned the following:

"Portfolio Companies for this purpose would include a company, enterprise or venture in the Media and Entertainment industry which is in the business of Filmed entertainment and related segments (which have been outlined below) and in which the funds of CCVF are invested."

However, it was observed that one of the portfolio companies of the fund i.e. Waterfront films Private Ltd made investments in a company named Junobo Hotels Private Limited which is related to hotel industry amounting to ₹6,02,85,230/-. Thus, CCVF, its manager and trustee have failed to invest in accordance with the investment objective as stated in the PPM by the fund.

3. Thus, after taking into consideration the aforementioned observations and CCVF's response thereto, it has been alleged that:

(a) For the violation as mentioned at para 2 (a) above, Cinema Capital Advisory Private Limited and its directors Mr. Samir Gupta, Mr. Shashanka Ashokkumar Ghosh and Mr. Binay Chandra Mandal, Cinema Capital Contributory Company Private Limited and its directors Mrs. Urmila Ghosh and Mr. Amrit Lal Suri (hereinafter referred to "Noticee No. 1 to 7", respectively or collectively referred to as "the Noticees") have not complied with the provisions of Regulation 24 (2) of the VCF Regulations read with Clauses 5.1.1 and 5.1.3 of the Trust Deed dated April 09, 2008 and Clauses 8.1 and 2.1 of the Advisory Service Agreement dated April 10, 2008 and April 01, 2010, respectively. The said provisions read as under:

VCF Regulations

Effect of winding-up.

24. *(1)* …

(2) Within three months from the date of intimation under sub-regulation (3) of regulation 23, the assets of the scheme shall be liquidated, and the proceeds accruing to investors in the scheme distributed to them after satisfying all liabilities.

Trust Deed dated April 09, 2008

5.1.1 *Trustees shall delegate its powers to the Advisory Firm as appropriate to enable the Advisory Firm to manage the Trust Fund in accordance with the provisions of this Indenture, Information Memorandum, the Advisory Services Agreement and the Regulations.*

5.1.3 *The Trustees shall at all times exercise due diligence in carrying out its duties and protecting the interests of the Contributors.*

Advisory Service Agreement dated April 10, 2008

8.1 *In carrying out its duties and exercising its powers hereunder, the Advisor shall exercise reasonable skill and care and use its best judgement as is expected of a professional advisor and shall at all times act in good faith and in what it honestly believes to be in the best interest of the Trust.*

Amended Advisory Service Agreement dated April 01, 2010

2.1 *In consideration of receipt of Service Fee by the Advisor from the Trustees on behalf of Trust Fund, the Advisor hereby accepts its appointment as investment manager and agrees to be responsible for the day-to-day management of the Trust Fund and to provide managerial and administrative services, including without limitation, identifying investment opportunities and appraising, negotiating terms of investments and making investment decision in accordance with the provisions of this Agreement, the information Memorandum and the Contribution Agreement, subject to the provisions of the Trust Deed, and administrative services relating to the contributors and related agreements.*

(b) For the violation as mentioned at para 2 (b) above, the Noticees have not complied with provisions of Regulation 23 (1) (a) of the VCF Regulations The said provisions read as under:

VCF Regulations

Winding-up.

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

(a) when the period of the scheme, if any, mentioned in the placement memorandum is over;

(c) For the violation as mentioned at para 2 (c) above, the Noticees have not complied with provisions of Regulation 16 of the VCF Regulations read with Clauses 5.1.1 of the Trust Deed dated April 09,

2008 and Clauses 2.1 of the Advisory Service Agreement dated April 01, 2010. The said provisions read as under:

VCF Regulations

Placement memorandum or subscription agreement.

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

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

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

(2) The Venture Capital Fund shall file with the Board for information, the copy of the placement memorandum or the copy of the contribution or subscription agreement entered with the investors along with a report of money actually collected from the investor.

Trust Deed dated April 09, 2008

5.1.1 *Trustees shall delegate its powers to the Advisory Firm as appropriate to enable the Advisory Firm to manage the Trust Fund in accordance with the provisions of this Indenture, Information Memorandum, the Advisory Services Agreement and the Regulations.*

Amended Advisory Service Agreement dated April 01, 2010

2.1 *In consideration of receipt of Service Fee by the Advisor from the Trustees on behalf of Trust Fund, the Advisor hereby accepts its appointment as investment manager and agrees to be responsible for the day-to-day management of the Trust Fund and to provide managerial and administrative services, including without limitation, identifying investment opportunities and appraising, negotiating terms of investments and making investment decision in accordance with the provisions of this Agreement, the information Memorandum and the Contribution Agreement, subject to the provisions of the Trust Deed, and administrative services relating to the contributors and related agreements.*

4. In view of the above, the Competent Authority at SEBI felt satisfied that there are sufficient grounds to adjudicate upon the aforesaid alleged violations by the Noticees and appointed the undersigned as Adjudicating Officer under Section 15-I (1) and (2) of the SEBI, Act, 1992 (hereinafter referred to as 'SEBI Act') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge the alleged violations and charges as aforesaid as intimated vide *communication-order* dated

October 19, 2018. As per terms of reference as advised by the *communication-order* dated October 19, 2018, the allegations are to be inquired into and adjudicated under Section 15HB of the SEBI Act.

5. Accordingly, the notice to show cause no. EAD/SS-SKS/OW/32583/2018 dated November 28, 2018 (hereinafter referred to as 'the SCN') was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules read with Section 15I of the SEBI Act, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act as charged in this case.

6. The SCN sent *via* speed post was duly served at the last known address of Noticee No. 1 to 4 at Vasant Vihar, New Delhi. However, in case of Noticee No. 5 to 7, the SCN sent *via* speed post returned undelivered while attempting to deliver at their last known address at Karol Bagh, New Delhi. Subsequently, in order to conclude the proceedings in terms of Rule 4 (3) of the Adjudication Rules, a notice of hearing dated January 03, 2019, was duly served upon the Noticees at their alternate address as available in the website of MCA and the Fund. After seeking further time, the Noticees availed the opportunity of hearing on February 21, 2019 when they also filed their written reply dated February 20, 2019. During the hearing, Shri. Somasekhar Sundaresan, Advocate, Ms. Yugandhara Khanwilkar, Legal Counsel, Mr. Abhishek M Kale, Legal Counsel, Mr. Chaudhary Aman R S, Legal Counsel and Mr. Samir Gupta, Noticee No. 2, appeared on behalf of the Noticees and explained the contents of the written reply dated February 20, 2019 and supplemented supporting case laws in support of their contention and requested for 7 days' time to submit additional written submissions with regard to the charges leveled against the Noticees. Vide letter dated February 28, 2019, the Noticees submitted their additional written submissions. The replies/submissions of the Noticees are summarized as follows:

   A) With regard to the allegation that the fund had failed to liquidate the assets of its scheme and distribute the proceeds accruing to the investors in the scheme after satisfying all the liabilities within 3 months from the date of intimation of winding up as stipulated under VCF Regulations i.e. March 07, 2016, the Noticees have submitted that:

      (i) The primary object of the Fund was to carry on activity of domestic venture capital fund for the purpose of making available venture capital assistance to Portfolio Companies, *"primarily operating"* within the investment focus of the fund i.e. the industry and its related segments and which have sound business model, possess an established track record or demonstrate talent/potential to make significant contribution in the industry.

(ii) The Fund invested in the following four Venture Capital Undertakings ("VCUs") and/or Portfolio Companies ("Portfolio Companies"), which were operating in the business of production and distribution of films and creating tie ups with reputed and well established local as well as international media and entertainment companies, to make investments in the Industry:

a) Sunshine Pictures Pvt. Ltd. ("**Sunshine**")
b) Kinesis Films Pvt. Ltd. ("**Kinesis**")
c) Stellar Films Pvt. Ltd. ("**Stellar**")
d) Waterfront Films Pvt. Ltd. ("**Waterfront**")

(iii) The Fund had built a strong India wide network in the Industry, through its investment in the aforesaid VCUs. These VCUs had collaborated with, (i) leading distributors in various states, viz. Marudhar Entertainment Pvt. Ltd. ("Marudhar") for distribution of films in Central Provinces, Rajasthan and Central India; (ii) major players in the business of film production, distribution and exhibition of films such as Shree Ashtavinayak Cine Vision Ltd.; and (iii) reputed domestic and international players in the business of film production and distribution such as Arbaaz Khan Productions Pvt. Ltd.,Film Kraft, Ajay Devgan Films, Freeway Entertainment Kft. and Gem Entertainment Kft and acquired distribution rights of various films and was also the exclusive India distributor of Lionsgate (one of the world's largest International film studios).

(iv) The Investments made by these VCUs in various projects are provided. The same demonstrates that it has actively pursued the activities for which funds were raised and made all sincere efforts to make investments in the chosen Portfolio Companies operating in the field of investment stated in the Information Memorandum ("IM") after due consideration of potential risks/benefits associated with each.

(v) The documentation governing the Fund and its communication of the nature of activity involved also made it clear to its contributories, the complexities involved in the exit by the Fund from the investments that would be made by the Fund. Amongst others, some options for an exit from the investments by the Fund were articulated in the offer document issued by the Fund to its proposed contributories. The Fund had issued the offer document setting out the Exit Options are as follows:

a) Sale to Strategic Buyer;
b) Sale to Financial Buyer; and

c) IPO Route (Domestic and International)

(vi) The above mentioned exit options could not be achieved till the end of the term of the Fund and the Fund had to embark upon the liquidation of assets in accordance with the VCF Regulations.

(vii) Due to the recessionary trend and slowdown in the Industry major players such as PVR Pictures exited the industry. Major studios like Disney-UTV, Balaji Motion Pictures announced a slowdown or partial exit from the local Film Production business. Considering the industry trend and the fact that the term of the Fund was nearing closure, the Fund entered into negotiations with Tantrik Capital LLP, a Nevada based media and entertainment focused investment banking and financial services advisory LLP ("Tantrik"), for sale of the Fund's investments in the Portfolio Companies, including but not limited to the Fund's 100% stake in Kinesis, 100% stake in Waterfront and 28% stake in Sunshine.

(viii) The Fund engaged E&Y to carry out the valuation of the Funds investment in the aforesaid four Portfolio Companies and provide a fair external valuation of the assets for the Tantrik Capital buyout. Accordingly, E&Y issued its Valuation Report dated September 29, 2015, on the valuation of its investments in the four Portfolio Companies.

(ix) Pursuant to the negotiations and basis of E&Y's valuation report, an offer of USD 25 million was received from Tantrik, which reflected the value of the combined assets of the Fund at that point in time. Thereafter, the Fund and Tantrik had entered into a Non-Binding Letter of Offer dated September 30, 2014 and a subsequent Binding Letter of Offer dated January 14, 2015, recording Tantrik's interest in acquiring the abovementioned assets of the Fund, for a total consideration of USD 25 Million.

(x) The Fund vide its quarterly Newsletter for January 2015 informed its contributories that it has received and accepted an offer an US based investment firm in October 2014 and the new investor was to issue a firm binding offer by January 2015, post its final due diligence. The due diligence and discussion on the commercials had been completed and further negotiations were to conclude by April /May 2015. A copy of the Newsletter for January 2015 is provided.

(xi) Pursuant to the Binding Letter of Offer to acquire assets of the Fund, Tantrik through its representative had sent an email dated September 01, 2015, providing Executive Summary of the transaction involving sale of the Fund's investments into the Portfolio Companies and a

road map to roll up the same into a NASDAQ Dubai listed-co within 6 months thereafter. Since late 2014, Tantrik was assisting the Fund in negotiations with various offshore investors for purchase of the Fund's investments and had executed the Non-Disclosure Agreements with those investors. The Fund through Tantrik and the Advisory Firm's Management team engaged with these international financial and strategic investors/buyers for over 12 months. An offer presentation of CCVF assets was prepared and shared with all these investors.

(xii) Despite of best efforts by the Fund, the negotiations with Tantrik as well as the various different international investors did not materialize, due to primarily the slow down as well as the negative outlook of the Indian media and entertainment industry by both foreign institutional investors as well as strategic buyers during the relevant period, including exit of various entities operating in the India at that time. The Annual industry reports compiled by KPMG in those years also showed a recessionary trend in the Indian film industry, whereas in comparison to other competitive growing film market like the Chinese film industry was growing at 35-50% per annum. The Chinese Film industry became the first choice for international financial and strategic media investment and India became a lower priority.

(xiii) VCUs were also simultaneously engaged in various discussions independently with strategic buyers, such as, Reliance Entertainment and Eros International (for Sunshine), Lionsgate (for Stellar and Kinesis) at various stages between 2013 to 2015. However, due to the domestic and international circumstances, these did not fructify either.

(xiv) On the basis of the valuation of the Portfolio Companies by E&Y, the Management Team of the Advisory Firm and the Advisory Council of the Fund were constantly approaching and engaging with various potential investors in order to exit from its investments. However, due to the recessionary trend in the Industry, the Fund was not able to find buyers for its investments. An offer presentation detailing the assets of the Fund was created to market the assets of the Fund both locally and internationally. During the period 2013 – 2015, and the said offer presentation was shared by the Fund with leading advisory companies like Centrum, KMPG, E&Y, for circulation thereof, to their leading media clients. But, due to the slowdown, strained financial results of the potential buyers itself and negative industry outlook, these efforts did not yield any result. Various *bona fide* efforts were made by the Fund and VCUs for exit from the investments. Despite best efforts and bona fide attempts to exit, market conditions and external factors beyond control of the Fund frustrates exit.

(xv) As the term of the Scheme was getting over, the Fund, in the best interest of its investors/contributories addressed a letter dated October 01, 2015, to all its investors/ contributories appraising them of the following exit options ("Exit option letter") and invited responses from them

a. **Option 1- Disposal of project investments:** In this Option and as per regulation the fund investments were required to be disposed of in the limited time span on as is where basis, liabilities paid off is and net proceeds were to be distributed to the investors as per the terms of offer documents. This Option could have provided an immediate liquid exit to the investors; however, the value would have been significantly diminished. Considering a forced exit during such short time frame, it would have been in the nature of distress sale, resulting in low to negligible realization of Investment and potential value in the VCUs. The market conditions then were not supportive to such sales and anything being put up for sale would have taken additional time ranging from 6-9 months or more. There would have also been added costs of potential third party Liquidator. This Option would have also potentially yield less value from the portfolio companies than their potential worth and could potentially be lower than the NAV by up to 70-90%.

b. **Option 2- In-specie distribution of Project investments (with 75% approval):** Under this Option the assets of the Fund were to be distributed amongst all the investors in proportion of their capital investments, with all investors getting rights on all the assets in proportion to their capital investments. The fund's assets comprises its investments in the equity and debt instruments of the VCUs, which are private limited/closely, held limited companies. Under this option it was informed that the Fund's holding or interest in the VCUs constitute a single individual ownership block, which could be sold by the Fund as a block to third party. It was conveyed that in this option, the distribution was complicated and therefore, as an alternative, the in-specie distribution could have happened by transferring all the shares held by the Fund in the portfolio companies to one VCU, where the Trustee hold 100% of its shareholding;

c. **Option 3 - Extension of Fund Life for another 3 years beyond 5 October 2015 till 5th October 2018 (with 75% approval)** – Under this Option the Fund was seeking consent from all investors, for extension of its term by another 3 years. It was conveyed to the investors that on analyzing the first two options, which would be detrimental to the interest of the investors, the Trustees consented to accept the proposal of extension of Fund's term

on receipt of approval of 75% of investors. It was conveyed to the investors that if the investors approve Option 3, the Investment Advisors would not charge any advisory fees from the Fund during the extended period and the Fund management team would continue its exit discussions with the potential buyers without any Management Fee charged to the Fund/investor and this would remain the top priority to close as early as possible during the extended tenure. It was also informed that the Fund believed Option 3 to be the best option since the discussions initiated with third party buyers were at various stages and required to be concluded without being viewed as a distress scenario on account of expiry of fund tenure in the market.

(xvi) In the Exit option letter, the Fund provided a brief summary and analysis of its performance. It was stated that due to sudden crash in the market occurred in the critical years for the Fund i.e. 2009 and 2010, the growth of the VCUs was severely impacted and all growth predictions stood banished. Moreover, it was informed that 2013-14 had been bad for big market players like Fox Star Studios, Eros and Reliance Entertainment.

(xvii) On October 01, 2015, the Fund informed SEBI that it has placed the abovementioned three options before the investors and have invited responses thereof. A copy of letter dated October 01, 2015, addressed to SEBI is provided.

(xviii) As the Fund did not receive responses from all its investors, it issued two reminder letters dated October 15, 2015 and October 31, 2015, requesting the remaining investors to give their respective responses by October 31, 2015.

(xix) On November 04, 2015, the Fund addressed a letter to SEBI informing that in response to its Exit option letter, it received only 447 responses of the total 1259 investors as at November 04, 2015 and provided the bifurcation thereof.

(xx) In spite of issuance of the reminder letters, only 612 out of 1259 investors responded to the Exit option letter indicating their preferences. Out of the said 612 investors, 239 voted in favor of Option 1 i.e. Disposal/liquidation of Assets, 13 voted in favor of Option 2 i.e. In-specie distribution and 345 voted in favor of Option 3 i.e. Extension of term of Fund life for a further period of three years.

(xxi) The breakup of responses received from the investors was conveyed to the Trustees and the Advisory Council at their meeting held on December 02, 2015. After due consideration of

the advantages and disadvantages attached to each exit option, the Trustees and Advisory Council of the Fund acting in the best interest of its investors and contributories came to a unanimous decision to select Option 3 and after a comprehensive review of all factors including the prevalent market trend, potential value erosion and illiquidity of the assets etc. came to a decision to issue and advisory to implement Option 3 i.e., extension of life of Fund for a period of three years in order to allow some of the Fund's investments to fructify and achieve the Exit options as targeted by the Fund. Due to the nature of the assets and investments in the Industry, the optimum realization (as outline in the offer document and mentioned in paras above) would be of a Strategic nature with either a domestic or international financial or media company buying out all the assets. Keeping this in mind the best option the Trustee Company, Management Team and Advisory Council unanimously agreed that Option 3 would be in the best interest of the investors and the Fund/s investments and for ensuring that the value of the assets does not erode and offered to waive off the management fees for a 3 year period and undertook to put all exit discussions and liquidation plans as top most priority of the Fund.

(xxii) On December 09, 2015, the Fund addressed a letter to SEBI sharing the aforesaid details with respect to the responses received by it from investors in response to the Exit option letter and the decision taken by the Fund to embark on Option 3. It was informed that the decision was taken after reviewing all factors, including the status of the film industry and fallout from the market disclosures of other large film and media industry companies. A copy of letter dated December 09, 2015, addressed to SEBI is provided.

(xxiii) On January 15, 2016, the Fund addressed a letter to SEBI stating that since VCF Regulations are silent on the aspect of extending the tenure of the Fund and to ascertain whether the application of deemed consent is appropriate before the Fund embarks on operationalizing Option 3, the trustees and CCVF and its investment / asset manager on account of abundant caution and as a matter of good corporate governance and practice, the Fund requested SEBI to grant its approval to embark on Option 3. A copy of letter dated January 15, 2016, addressed to SEBI is provided.

(xxiv) On March 07, 2016, the Fund addressed a letter to SEBI informing SEBI that since the time frame provided for liquidation of assets of the Fund, under Regulation 24(2) of the VCF Regulations has lapsed, it would initiate liquidation steps and in view thereof, it has appointed Ernst and Young as third party valuer to assist it with the valuation of the assets as well as

identifying the best possible purchasers / buyers to acquire such assets. A copy of letter dated March 07, 2016, addressed to SEBI is provided.

(xxv) On April 18, 2016, the Fund addressed a letter to its investors informing that the time period stipulated under Regulation 24(2) of the VCF Regulations have passed and it has taken the decision to embark on Option 1. In view thereof, it proposed to engage third party valuer, Ernst and Young, to assist it with the valuation of assets, identifying the best possible purchasers/ buyers of assets. However, the discussions between Ernst and Young and the Fund fell through on account of lack of commercial viability.

(xxvi) On September 02, 2016, the Fund addressed a letter to SEBI intimating that the discussions with Ernst and Young for its engagement as third party valuer had failed and however, the Advisory Firm would remain committed to liquidate the assets and distribute the proceeds to its investors. It also indicated that it was in discussions with other professional agencies who may be able to assist it with the valuation of assets as well as assist it in identifying the best possible purchasers/ buyers to acquire the assets. The Fund continued to engage with top advisory firms like KPMG for devising a Strategic exit for its assets. The Fund's team met and discussed the potential sale of its investments with top prospective buyers like Cinestaan (Mahindra Group's Entertainment Company), Piramal Group etc.

(xxvii) On September 28, 2016, the Fund provided SEBI with an update on the liquidation process of the assets. In this update, it informed SEBI that it had shortlisted RBSA Advisors ("RBSA") for assisting it in the liquidation process and it will be finalizing an Agreement with them by the end of the month. It also informed SEBI that RBSA had indicated a minimum period of four months for liquidation of the assets and undertook that if the assets were not liquidated within four months, it would update SEBI accordingly. A copy of the letter dated September 28, 2016, addressed to SEBI is provided.

(xxviii) On October 19, 2016, the Fund intimated SEBI that the appointment of RBSA had been completed and it would assist the Fund in the liquidation process of assets. On the same date, the Fund also addressed a letter to the investors giving them an Interim Update of the liquidation of assets. In the said update, the Fund stated that in order to expeditiously liquidate the assets, the Fund had been in discussions with Ernst and Young to assist the Fund with the valuation of assets and identifying best possible purchasers for the assets. However, as the discussions with Ernst and Young fell through, it has appointed RBSA to assist the Fund with

the liquidation of assets. A copy of the letter dated October 19, 2016, addressed to SEBI is provided.

(xxix) On March 31, 2017, SEBI addressed an email to the Fund enquiring about the status of liquidation of assets acquired under the Scheme. In response thereto, the Fund informed SEBI as follows and a copy of the response is provided:

a) Waterfront had received an offer from Original Entertainment Pvt. Ltd. ("Original") for buying back the remake rights of the Film "Rambo". Original is also ready and willing to reimburse Waterfront of the costs incurred by it for remaking the said Film. A fairness opinion from RBSA on the transaction value of the remake rights of the Film "Rambo" was provided by RBSA.

b) Kinesis has licensed 13 Hollywood movies to Vista India Digital Media Inc. ("Vista")

c) The Trustees and RBSA have jointly decided that a newspaper advertisement inviting Expression of Interest ("EOI") for the assets of the Fund acquired under the Scheme which remain unsold as on date be released as an initiative to liquidate the assets.

d) All the investments/ assets of the Fund are into the Film and Entertainment Sector and such assets are primarily intangible in nature. Most of the years during the term of the Scheme, the industry faced deterioration or slowdown in the growth rate.

(xxx) On March 31, 2017, SEBI carried out an inspection of the books of accounts and other records of the Fund and *inter-alia* made following observation – *"The Fund had allegedly not taken any "serious" endeavors towards liquidating its investments and distribution of the proceeds to the contributories. By not liquidating the investments within 3 months after winding up the scheme and intimating the same to SEBI, CCVF has prima-facie failed to comply with Regulation 24(2) of the VCF Regulations."* From the plain reading of the said observation, it would become clear that the observations made are untenable and ambiguous in respect of the alleged absence of *"serious endeavors"* in itself a vague and subjective charge.

(xxxi) On April 21, 2017, the Fund submitted the following reply in response to the aforesaid observations made by SEBI:

a) There is not lapse on its part in its efforts to liquidate the investments. Despite its best efforts, it has not been able to liquidate a major chunk of its investments due to the current deteriorating market trend of the Film and Entertainment Industry, the recessionary trend in the Industry and the sheer nature of the assets being illiquid.

b) As the tenure of the Scheme drew to an end, in the best interest of its investors, it issued an exit option letter to its investors giving them the opportunity to choose whether they want to distribute the proceeds of the liquidation of the assets, or in-specie distribution of the assets or extension of the life of the Fund for a further period of three years. Exit letter also highlighted the potential difficulty and the potential of a major loss of value of the assets if they go for liquidation/winding up so that investors can make an informed decision.

c) It has been making constant efforts to engage with potential investors for sale of its assets and however, due to global market crisis and recessionary trend, the discussions have either remained inconclusive or have fell through.

d) In order to liquidate the Fund expeditiously, it was in discussions with Ernst and Young to appoint them as third-party valuers for valuation of the assets and for identifying best possible purchasers for the assets. However, the discussions with Ernst and Young fell through owing to commercial viability issues. Thereby, it has engaged RBSA to assist it in the liquidation process.

e) As a step forward, it has also decided to issue public notice in newspapers inviting Expression of Interest ("EOI") for its assets. Copy of the public notices issued in newspapers Business Standard and Financial Express for sale of its assets is provided.

(xxxii) On July 06, 2017, SEBI addressed an email enquiring about the status of liquidation of assets acquired under the Scheme. In response thereto, the Fund has informed SEBI as follows:

a) The fund had commenced its liquidation process and RBSA is assisting the Fund in identifying the best possible purchasers to acquire the assets of the Fund.

b) The Media and Entertainment Industry had gone through a severe decline for the last few years during the term of the Fund and most of the years during the term of the Fund, it witnessed deterioration or a slowdown in the growth rate of the industry.

c) EOI was published in two newspapers i.e., Business Standard and Financial Express on April 25, 2017 to invite the best possible purchasers to acquire the assets of the Fund. Subsequently, the same advertisement/ public notice was published on the website of "Tender Tiger". The detailed request for proposal including the list of assets was also put on its website and of RBSA. The last date of receiving the EOI was May 11, 2017. However, RBSA did not receive any response or interest from any party or investor.

d) It was trying to sell its 28% equity interest in Sunshine Pictures Private Limited ("Sunshine") to industry leaders like Eros International and Reliance Entertainment

privately. This asset was also part of the abovementioned public notice released in Business Standard and Financial Express, however, RBSA also did not receive any interest from any party or investor for this asset either.

(xxxiii) On September 29, 2017, the Fund intimated SEBI that their agent Karvy Computershare Pvt. Ltd. ("Karvy") was in the process of updating the bank account details of all its 1259 investors/ contributories and upon receipt of all necessary information from the Investors it would update its database and update SEBI of the same. Once the database of the contributories is updated, the Fund would undertake distribution of the proceeds of the Liquidated Assets. A copy of the letter dated September 29, 2017 addressed to SEBI is provided. The Fund had repeatedly attempted to obtain the updated bank account details of all its investors/ contributories and had repeatedly corresponded with its agent Karvy in this regard.

(xxxiv) The Fund was in negotiations with the promoters of Sunshine to buy-back the shares held by it in Sunshine. After prolonged discussions, an Exit Agreement dated October 19, 2018, was entered into between Sunshine, the Fund, Mr. Vipul Amrutlal Shah and Ms. Shefali V. Shah, whereby Mr. Vipul Amrutlal Shah and Ms. Shefali Shah purchased the shares of the Fund in Sunshine for a total consideration of Rs.2,84,00,000/- (Rupees Two Crores Eighty Four Lakhs only). A copy of the Exit Agreement is provided.

(xxxv) Pending receipt of the updated bank account details of all its investors/ contributories from Karvy, the proceeds received from the liquidation of investments in Sunshine, transfer of remake rights in Rambo and sale of distribution rights in 13 films by Kinesis, have been kept by the Fund in a no lien account. A part of these proceeds is being used by the Fund to meet the expenses towards meeting statutory obligations, nominal administrative charges and legal proceedings of the Fund and its assets pending before different courts/ forums.

(xxxvi) In order to ensure that the investments of the Fund are liquidated, it has been proactively pursuing the ongoing litigations and arbitration proceedings pending against it in respect of "Double Hungama", "Dolly Ki Doli" and "Sher". The said litigations have been one of the main reasons causing delay in liquidation of the Fund's assets. Due to the prolonged hearings, the recovery of about INR 12 Crore (inclusive of interest) is pending. Through its Advisory Firm, it has been taking all the steps to liquidate these assets at the earliest.

(xxxvii) Thus, it can be seen that the Fund has taken every effort for liquidation of the assets. Due to deterioration and slowdown in the growth rate of the Industry, the efforts of the Fund towards liquidation of the assets have not materialized. The engagement Closure Report issued by RBSA sets out in detail the efforts taken by the Fund for liquidating the assets. A copy of the RBS Closure Report is provided. Further, despite the agreement between the Fund and the Advisory Firm has expired, the Advisory Firm with all bona fides agreed to remain committed to liquidation the assets of the Fund.

B) With reference to the allegation that CCVF had failed to wind up the operations of the scheme and extended the tenure of the scheme beyond the time limit allowed under the PPM, the Noticees have submitted that:

(i) In view of the circumstances explained above, the Fund had informed its contributories that extension of the term would enable it to do its best to get more time to realize value and minimize the potential of losses in the Industry conditions then.

(ii) The VCF Regulations are silent on the aspect of extending the tenure of the Fund and as such, an informed decision was taken by the Fund, considering the status of the Industry and fallout of large film and media industry companies to liquidate the assets.

C) With reference to the allegation that CCVF, its manager and trustee have failed to invest in accordance with the investment objective as stated in the PPM by the fund, the Noticees have submitted that:

(i) Waterfront is a company that focuses on international collaborations as also on making value enhancing investments in the entertainment services segment, to build a media corridor between Hollywood and Bollywood.

(ii) Waterfront made the decision to invest in Junobo the operating company for Soho House as a force multiplier for its international film production and distribution business as well as adding value to its domestic film industry relationships with the top tier of film producers and film makers who would become potential members. Though this investment would provide an exclusive access to such a high level of exclusive film talent, Waterfront and the other Fund Companies aimed to target more co-productions and distribution relationships with the film industry leaders locally and internationally.

(iii) Soho House is a chain of members only institution across the globe for film makers, film writers, fashionistas and other persons in the Industry. It has grown into a community of like-minded individuals connected with the Industry all over the world. Soho House has opened its first ever opening in Asia with Soho House, Mumbai, with Junobo Hotels Pvt. Ltd. operating the same.

(iv) The Fund has invested a sum of INR 6,02,85,230/- for acquiring stake in Junobo which owns and operates the Mumbai Franchise of Soho House. Junobo operates Soho House, Mumbai, which is an institution that caters to reputed people from the film Industry. Soho House Mumbai is also a platform for creative minds in the Industry and investment in Junobo is well within the scope of the IM and the Scheme. Additionally, the Investment in Junobo has been made by Waterfront, one of the VCUs of the Fund incorporated to make investments focused on international brands connected with the Industry.

(v) The fact that Soho House, Mumbai is connected to the Industry is clear from the business plan of Junobo which describes it as "a meeting place - for both work and play - for leaders from the Film, arts, entertainment, media and fashion industries in India and around the world. Mumbai is a home to "Bollywood - the largest movie production center in the world" and targets leaders in the areas of music, television, fashion and arts. Accordingly, Soho House finds Mumbai as the perfect place to have its operations from. A copy of the business plan of Soho House, Mumbai issued by Junobo is provided.

(vi) The Membership Committee of Soho House consists of key people predominantly connected to the Filmed Entertainment and Media Industry. Soho House Mumbai hosts events and activities which are connected to the Industry, such as film screenings, photo shoots, launch events of films and music albums, award ceremonies, Talk shows, music performances, talk shows, etc. It is pertinent that the launch event of Soho House Mumbai was done along with the launch of the iconic 20th Mumbai Film Festival on 25th October 2018 and was attended by a bevy of Bollywood and international stars.

(vii) After much delay, Soho House Mumbai has commenced its operations in the year 2018 and opened its doors for members. Pursuant thereto, Waterfront called for EOI from intending purchasers for sale of Waterfront's investment in Junobo. In response, it received a non-binding offer from an investor to purchase Waterfront's shareholding in Junobo for a

consideration that is about 50% of the original investment by Waterfront. The Fund through Waterfront shall take necessary steps to exit from its investment in Junobo.

D) The case laws relied upon by the Noticees in support of their contentions are as under:

Sr. No.	Case law	Citation and Reference
1.	*In Re: Presidential Poll*	(1974) 2 SCC 33 Paras 13-15
2.	*State of Rajasthan and Anr. v. Shamsher Singh*	1985 Supp SCC 416 Paras 10-11
3.	*Raj Kumar Dey and Ors. v. Tarapada Dey and Ors.*	(1987) 4 SCC 398 Paras 6-7
4.	*Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.*	(2005) 4 SCC 530 Para 29
5.	*State of Madhya Pradesh v. Narmada Bachao Andolan and Anr.*	(2011) 7 SCC 639 Paras 39-40
6.	*Indore Development Authority v. Shailendra (Dead) through its legal representatives*	(2018) 3 SCC 412 Paras 155-165
7.	*M/s. Jholei Baba Agency v. State Bank of India*	AIR 2009 Ori 109: 2008 SCC Online Ori 61 Paras 27-31

E) In light of the above, it is clear that:

(i) The SCN is clearly one that has merely adopted the inspection findings, which are not appropriate in their content and findings.

(ii) The industry in which the Fund invests is inherently risky and illiquid and it would not at all be unfair to expect that exits would be a challenge.

(iii) Every single unit holder was clearly made aware of the nature of the risks involved, and in particular, the potential absence of liquidity and the possible struggle to effect a full exit.

(iv) Various options were consciously considered, assiduously pursued and an informed decision to seek extension was taken – there was nothing arbitrary, negligent or any failure to exercise due skill care and diligence in dealing with the Fund.

(v) Serious efforts were made to liquidate and exit – there is no question of there having been no serious effort involved.

(vi) Investments by the investee companies in which a VCF has invested would not be covered by the regulatory framework governing venture capital funds. It is unfair and arbitrary to impute to an investee company, the regulatory requirements applicable to the venture fund.

(vii) Every sincere effort had been made to invest in accordance with objectives of the Fund and to exit as envisaged. When despite best efforts, the closure could not be achieved, it would

follow that it would not become a matter for regulatory punishment - it is settled law that punishment is not to be inflicted merely on the ground that the power to punish exists but can only be imposed when there is a wanton wrongdoing with an intention and state of mind to violate the law.

(viii) It is a well-settled principle of law that the law cannot force the conduct of something that is incapable of being performed. The best efforts and assiduous endeavors to wind up and close the Fund and provide exits are articulated in the preceding paragraphs. Therefore, to inflict penalty on the basis that despite best efforts the Fund could not be wound up, would be unfair, prejudicial and in fact in conflict with the objective of orderly development of securities markets.

7. I have carefully considered the allegations, the replies/submissions of the Noticees and the relevant material available on record. In this case, admittedly, Cinema Capital Advisory Private Limited (Noticee No. 1) is the Advisory Firm of the Fund having Noticee No. 2 to 4 as its directors and Cinema Capital Contributory Company Private Limited (Noticee No. 5) is the Corporate Trustee of the Fund having Noticee No. 6 to 7 as its directors. Before dealing with specific charges, it is deemed appropriate to examine the scope of charging provisions and consequential penalty provisions of section 15HB of the SEBI Act which reads as under:

Penalty for contravention where no separate penalty has been provided.

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

8. From the scheme of the above section, it is clear that Section 15HB of the SEBI Act is a residual provision and it applies when any other penalty provisions of Chapter VIA are not applicable with regard to failures of compliance obligations cast under the SEBI Act, the rules or the regulations or directions issued under the SEBI Act. Thus, the charge with regard to alleged violation of the provisions of the VCF Regulations are within the scope of this section.

9. It is noted that under regulation 16 of the VCF Regulations, the VCF is obligated to issue a placement memorandum; or enter into contribution or subscription agreement with the investors. Such private placement memorandum (PPM); or the contribution/subscription agreement (CA), as the case may be, should specify the terms and condition subject to which the monies are proposed to be raise by the VCF from investors. Thus, the terms and conditions for raising money from the investors have been left to be mentioned in PPM or the CA, as the case may be. Regulation 16(1) relates to the terms and

condition pertaining to raising of money and does not refer to tenure or extension of tenure of the scheme. The period of maturity is specifically stipulated in regulation 17. Regulation 17 prescribes the contents of placement memorandum or the CA including the period of maturity, if any, of the Fund. The use of the word *"namely"* in regulation 17(1) indicates that the items listed in regulation 17(1) must be mentioned in PPM or the CA. This word indicates what is to be included by name and does not intend to include something that is not listed in the VCF Regulations. This proposition is further substantiated by residuary clause listed in regulation 17(1)(l) which provides that any other information, than those listed, can only be specified by the Board. Thus, on harmonious construction of provisions of regulation 16 and 17, it is noted that both complement each other without diluting the effect of provisions of regulation 17. Therefore, if the VCF has contemplated the period of maturity of its scheme it must be mentioned in the PPM or CA, as the case may be. Regulation 23(1) (a) provides expiry of the period of the scheme as one of the ground of winding up of the scheme. This regulation does not deal with period of maturity as an item of content of PPM/CA or the terms and conditions of the scheme. Thus, the period of maturity as a content of PPM/CA is the domain of regulation 17 and not regulation 23. In my view, these provisions are not subservient to the terms and conditions as stipulated in PPM or CA, as the case may be.

10. Coming to the obligation under regulation 24(2), it is noted that this regulation deals with the effect of winding-up of the scheme under regulation 23 and creates obligation to liquidate the assets of the scheme and to distribute the proceeds accruing to the investors in the scheme. This obligation is, thus, consequential to and connected with the obligation with regard to winding-up of the scheme under regulation 23. Thus, where the VCF has resorted to fulfil its obligations under regulation 24(2) on expiry of the scheme under regulation 23(1) (a), both the obligations will be inter-linked. Thus, in this case the first two charges are inter-liked and are dealt with accordingly.

11. In the instant case, it is noted that the tenure of the Fund, as permitted under PPM, expired on November 14, 2015. Before the expiry of the period of the scheme, the Fund started exploring the possibilities of disposal of investments or in-specie distribution of project investments when it gave three options to the investors in its scheme and informed SEBI vide its letter dated October 01, 2015. Thereafter, the Fund had been constantly pursuing with its investors and had been regularly informing SEBI about steps being taken by it. When its request to extend the disclosed period of the scheme was not responded by SEBI, the Fund ultimately decided to wind up the scheme and on March 07, 2016, it informed SEBI that since the time frame provided for liquidation of assets of the Fund under Regulation 24(2) of the VCF Regulations had lapsed, it would initiate liquidation steps and that it had decided to proceed with Option 1 - Disposal of project investments.

12. However, on inspection of the books of accounts of the Fund, SEBI did not find its above endeavors satisfactory and it was *inter-alia* observed by SEBI that – *"The Fund had allegedly not taken any "serious" endeavors towards liquidating its investments and distribution of the proceeds to the contributories. By not liquidating the investments within 3 months after winding up the scheme and intimating the same to SEBI, CCVF has prima-facie failed to comply with Regulation 24(2) of the VCF Regulations."*

13. The explanation given by the Fund in response to the above observations of SEBI was not found satisfactory by the competent authority in SEBI and the instant proceedings came to be initiated. It is noted from the above sequence of events that the Fund had not actively extended the period of maturity of its scheme. This is not a case where the Fund extended the disclosed period of the scheme in deliberate defiance of the provisions of Regulation 23 (1) (a) so as to postpone the dissolution and winding up of the scheme. Per contra, it had taken steps to dissolve the scheme and liquidate the assets on expiry of the period of the scheme. However, it is an admitted position that the Fund has failed to liquidate the assets of the scheme in question and distribute the proceeds accruing to the investors in its scheme as required under regulation 24(2) read with regulation 23(1)(a) till date.

14. The third allegation is that the Fund, its manager and the trustee have failed to invest in accordance with the investment objective as stated in the PPM. In this regard, it has been alleged that the Noticees have not complied with Regulation 16 of the VCF Regulations. I note that as per Regulation 16 (1) of the VCF Regulations, the VCF shall - (a) issue a placement memorandum which shall contain details of the terms and conditions subject to which monies are proposed to be raised from investors; or (b) enter into contribution or subscription agreement with the investors which shall specify the terms and conditions subject to which monies are proposed to be raised. Further, as per Regulation 16 (2) of the VCF Regulations, the VCF shall file with the Board for information, the copy of the placement memorandum or the copy of the contribution or subscription agreement entered with the investors along with a report of money actually collected from the investors. Regulation 16, as it stands, shall not apply to the allegation in this regard as there is nothing to suggest that the Fund had failed to comply with any of the specified obligations under Regulation 16.

15. It is further noted that the investment for acquiring stake in Junobo has been made by Waterfront, one of the VCUs of the Fund incorporated to make investments focused on international brands connected with the industry for a sum of ₹ 6,02,85,230/-. Junobo owns and operates the Mumbai Franchise of Soho House which is an institution that caters to reputed people from the film industry and a platform for creative minds in the industry. The fact that Soho House, Mumbai is connected to the industry is

clear from the business plan of Junobo which is seen as a meeting place - for both work and play - for leaders from the Film, arts, entertainment, media and fashion industries in India and around the world. From these facts, the operations of Junobo can be construed as ancillary and related business to the entertainment industry. In my view, the basis of this allegation is thus, also not on sound footing.

16. It is noted that in view of the express provision of regulation 24(2) read with regulation 23(1)(a), the inability as shown by the Fund cannot be a reason to continue the scheme beyond the period specified in VCF Regulations. The very fact that the competent authority in SEBI was not satisfied with the explanations of the Fund and has felt satisfied to initiate the instant proceedings shows that SEBI has concern over continuance of the scheme beyond the period expressly mentioned in the PPM and for failure in liquidation of assets and distribution of proceeds to the investors. Considering all the facts and circumstances brought before me during inquiry, I am not suggesting that in the strict sense, the Noticees have not failed in their obligation under regulation 24(2) read with regulation 23(1(a). But then, since the failure is linked to penal consequences, one has to look to it in a realistic manner and the consequences arising out of the failure. Further the *'failure'* referred to in section 15HB needs be considered in the light of judicial pronouncements explaining similar situation.

17. It is a settled position that the law is understood to disclaim all intention of compelling to impossibilities and the administration of laws must adopt that general exception in the consideration of all particular cases. In this context, it is relevant to mention the observations of Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2005) 4 SCC 530* that*:*

"38. The Court has to consider and understand the scope of application of the doctrines of "lex non cogit ad impossibilia" (the law does not compel a man to do what he cannot possibly perform); "impossibilium nulla obligatio est" (the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law Nemo Tenetur ad Impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide: Chandra Kishore Jha v. Mahavir Prasad & Ors., AIR 1999 SC 3558; Hira Tikkoo v. Union Territory, Chandigarh & Ors., AIR 2004 SC 3648; and Haryana Urban Development Authority & Anr. v. Dr. Babeswar Kanhar & Anr., AIR 2005 SC 1491).

39. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein….."

18. I further note that while analyzing the maxim *"lex non cogit ad impossibilia",* Hon'ble Supreme Court, in then matter of *State of Rajasthan & Anr. Vs. Shamsher Singh 1985(Supp) Supreme Court Cases 416,* held that in situations involving time imperative, no allowance can be made for lethargic indifference. No allowances can be made for needless procrastination. But, allowances must surely be made for necessary efforts where intricacies and factual ramifications are involved. The judgments relied upon by the Noticees further show that the aforesaid maxims must be understood in the qualified sense that *impotentia* excuses where there is a necessary or invincible disability to perform the mandatory part of the law. Thus, in my view the allowance can be given in this case only if the performance was impossible. Further, though the time imperative may not be strictly enforced, the schemes cannot be allowed to be left open so that the winding up is deferred beyond a reasonable time, much less indefinitely.

19. It is further noted that according to the Noticees, it has taken further steps by executing Exit Agreement dated October 19, 2018, between Sunshine, the Fund, Mr. Vipul Amrutlal Shah and Ms. Shefali V. Shah, whereby Mr. Vipul Amrutlal Shah and Ms. Shefali Shah purchased the shares of the Fund in Sunshine for a total consideration of ₹2,84,00,000/- (Rupees Two Crores Eighty Four Lakhs only).It is observed that the arrangement of updating account details of all its investors was admittedly made during September 2017. However, till date, the bank account details have not been fully updated and the proceeds received from the liquidation of investments in Sunshine, transfer of remake rights in Rambo and sale of distribution rights in 13 films by Kinesis, etc. have been kept by the Fund in a 'no lien account' and the same is being used by the Fund to meet its expenses towards statutory obligations, administrative charges and legal proceedings. These facts show lethargic approach of the Fund towards its obligations with respect to its main mandate of liquidation of the assets of its scheme and distribution of the proceeds accruing to the investors in the scheme.

20. I, therefore, do not find any invincible disability on the part of the Fund to perform its obligations under regulation 24(2) read with regulation 23(1) (a). In my view, therefore, the benefit of maxim *"lex non cogit ad impossibilia"* cannot be given in this case lest the mandatory provisions of regulation 24(2) would be rendered otiose. I, therefore, deem it fit to impose monetary penalty upon the Noticees taking into account the aforesaid mitigating factors.

21. For the purpose of adjudication of quantum of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J of the SEBI Act, which reads as follows:-

> ***15J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investor/+s 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.*

22. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. It has been observed that the Fund has yet not made any distribution of the proceeds to the investors in its scheme. Be that as it may, SEBI has also not chosen to advice/ direct dissolution of the schemes and distribution of proceeds to investors under regulation 23(1) (d). Further, the failure in this case is not by virtue of deliberate defiance and the Fund has been taking efforts but to no avail. Further, the material brought on record shows that this failure as a single instance related to only one scheme of the Fund.

23. Considering the peculiar facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I, hereby impose a monetary penalty on the Noticees under section 15HB of SEBI Act as mentioned against their respective names in the below mentioned table. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

Sr. No.	Name of the Noticee	Amount of Penalty (₹)
1	Cinema Capital Advisory Private Limited	50,000
2	Mr. Samir Gupta	50,000
3	Mr. Shashanka Ashokkumar Ghosh	50,000
4	Mr. Binay Chandra Mandal	50,000
5	Cinema Capital Contributory Company Private Limited	50,000
6	Mrs. Urmila Ghosh	50,000
7	Mr. Amrit Lal Suri	50,000

24. 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 e-payment facility into Bank Account, the details of which are as follows:

Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

25. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in following table should be sent to *"The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

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

26. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: March 29, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer