BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO. Order/JS/VC/2025-26/32145-32147)

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

In respect of

Noticee No.	Name and PAN of the Noticee
1	Forum Synergies India Trust (PAN: AAAAF0945Q) (SEBI Registration No. IN/VCF/08-09/0132)
2	Forum Synergies (India) Fund Managers Private Limited (PAN: AABCF1159M)
3	Vistra ITCL (India) Limited (PAN: AAACI6832K)

In the matter of India Knowledge Manufacturing Fund-I, a scheme of Forum Synergies India Trust

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BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), conducted an examination in the matter of India Knowledge Manufacturing Fund-I, a scheme of Forum Synergies India Trust (Venture Capital Fund) (hereinafter referred to as **"Noticee-1"/ "the Fund"/ "VCF"**). Based on the findings of the examination, SEBI initiated adjudication proceedings against Forum Synergies India Trust (**"Noticee-1"**), Forum Synergies (India) Fund Managers Private Limited (hereinafter referred to as **"Noticee-2"**) and Vistra ITCL (India) Limited (hereinafter referred to as **"Noticee-3"**) [hereinafter together referred to as **"Noticees"**] for violating the provisions of regulation 23(1)(a) read with regulation 23(3) of the SEBI (Venture Capital Fund) Regulations, 1996 (hereinafter referred to as **"VCF Regulations"**) and regulation 24(2) read with regulation 23(3) and regulation 23(1)(a) of VCF Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer vide order dated August 28, 2025, under section 15-I (1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Rules"**) read with section 19 of the SEBI Act, to inquire into and adjudge under the provisions of section 15HB of the SEBI Act read with regulation 39 of the SEBI (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as the **"AIF Regulations"**) for the alleged violations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice Ref. No. SEBI/HO/EAD-2/JS/VC/25977/1-3/2025 dated October 06, 2025 (hereinafter referred to as **"SCN"**) was issued to the Noticees in terms of the provisions of rule 4(1) of the Rules read with section 15-I of the SEBI Act, requesting the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed upon them under section 15HB of the SEBI Act read with regulation 39 of the AIF Regulations for the alleged violations.

4. The allegations levelled against the Noticees in the SCN are as under:

   (a) During examination, it was observed that as per Private Placement Memorandum ("PPM") of the VCF, the term of the scheme was for a period of 07 years from the date of first closing, i.e., November 05, 2010, extendable by 2 years (two periods of 1 year each). As per letter dated January 12, 2023, Noticee-2 initially extended the term of the scheme as per PPM from November 04, 2017 to November 04, 2018 (first extension) and then from November 04, 2018 to November 04, 2019 (second extension) upon receiving the approval of 75% of the investors by value of their investment in the scheme.

   (b) Subsequently, Noticee-2 approached and received super majority consent (more than 75%) from contributors for extension of term of the scheme by three (3) years till November 04, 2022 (third extension) which was beyond the term mentioned in the PPM. According to the PPM, the extended term of the scheme should have ended by November 04, 2019, considering the 2 extensions of 1 year each.

   (c) Further, Noticee-1 once again took an extension of 1 years (fourth extension) from November 04, 2022 to November 04, 2023 citing delays in exits from the last two

investments caused by Covid restrictions. Summary of said extensions of term of the scheme of the Fund are as under:

Table-1

Type of Extension	***Extension Duration***	***Extension Period***	***PPM Amendment Date***
First Extension	*01 year*	*November 04, 2017 to November 04, 2018*	*Not Updated*
Second Extension	*01 years*	*November 04, 2018 to November 04, 2019*	*Not Updated*
Third Extension	*03 years*	*November 04, 2019 to November 04, 2022*	*Not Updated*
Fourth Extension	*01 years*	*November 04, 2022 to November 04, 2023*	*Not Updated*
Total	*06 years*	*-*	*-*

(d) As per regulation 23(1)(a) of VCF Regulations, the scheme of VCF has to be wound up, when the period of the scheme as mentioned in the PPM is over.

Tenure of the scheme

*(e) In letter dated January 12, 2023 to SEBI, the Fund, inter alia, informed that as per the terms of the PPM and other documents in respect of the Fund ('**Fund documents**'), the term of the scheme was 7 (seven) years from the date of the first close with 2 (two) permissible extension of 1 (one) year each.*

(f) The Fund had disclosed in Section II: Executive Summary 'Term of the Investment' section of the PPM (Page 8) and SECTION III: Summary of Principal Terms (Page 15) under clause 'term' that "the term of the Fund shall be 7 years from the date of the First Closing, provided the term of the Fund may be extended by the Trustee for two additional one-year periods upon the recommendation of the Investment Manager and approval of the Super-Majority of the Contributors. However, the Trustee may, subject to the restrictions contained in the Regulations, at any time before the expiry of the term, terminate the Fund upon the written recommendation of the Investment Manager and a Super-Majority of the Contributors in the Fund approving such termination in writing." As per the response of the Fund dated February 22, 2023, the date of the first close was November 05, 2010. Thus, as per conditions of the Fund's PPM, the term of the scheme should have ended on November 04, 2017 and the extended term (of 02 years) should have ended on November 04, 2019. Therefore, it was required to be liquidated by November 04, 2019 (considering the 2 permissible extensions of 1 year each) and the proceeds were required to be distributed within three (03) months from November 04, 2019 as per regulation 24(2) of VCF Regulations. However, the Fund extended the term of the scheme up to November 04, 2023 by taking third extension from November 04, 2019 till November 04, 2022 and fourth extension from November 04, 2022 till November 04, 2023. Hence, the tenure of the scheme now stands at 13 years (07+01+01+03+01). VCF Regulations do not provide for any such extensions of term beyond the term specified in the PPM.

Liquidation Status

(g) Vide email dated June 24, 2025, the Fund submitted details on the liquidation of its investments in scheme as on June 24, 2025. The details are as follows:

Table-2

Sr. No.	Name of the Investee Company	Investment made (In Rupees crore)	Exited till date	Amount outstanding	Overall status (Exited/ Partially exited etc.)	Date of Exit/ In Specie	Delay in winding up the scheme (due date 04/11/2019)
1.	Captronic Systems	8.0	Fully	Nil	Exited	Aug-2022/ Feb-2024	2 Y 10 M
2.	Ampere Vehicles	3.5	Fully	Nil	Exited	Sep - 2018	NA
3.	Achindra Online	6.0	Fully	Nil	Exited	Feb-15	NA
4.	Attero Recycling P Ltd.	15.0	Fully (through In Specie Distribution)	Nil	Exited	Jul-24	4 Y 9 M
5.	Net Avenue Technologies	9.25	Fully (through In Specie Distribution)	Nil	Exited	May-24	4 Y 7 M
6.	Drishti Soft Solutions	25.0	Fully	Nil	Exited	July 2020/ July 2021	1 Y 9 M

(h) As per regulation 23(1) of erstwhile VCF Regulations, scheme of VCF has to be wound up when the period of the scheme mentioned in the PPM is over. Accordingly, the Fund should have ended its tenure on November 04, 2019 as per the terms of the PPM and it was required to be liquidated and proceeds should have been distributed within three months as per regulation 24(2) of VCF Regulations. However, the Fund exited only from 02 out of 06 investments within the prescribed timelines. Thus, the delay in 4 investments was in the range of one year and nine months to four years and nine months, as mentioned in the above table.

(i) In view of the above, it was observed that the Fund failed to wind up the scheme upon completion of its tenure as disclosed in the original PPM. The Fund extended the term of the scheme beyond the permissible limit as stipulated in PPM and VCF Regulations. The Fund and its Investment Manager are responsible for the said act. Therefore, it was alleged that Noticee-1 and Noticee-2 violated the provisions of regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations.

Role of the Trustee

(j) It was observed that the Trustee had advised to the Fund to initiate winding up vide its email dated January 13, 2023. Further, it had provided a copy of letter dated April 27, 2023 sent to Noticee-2 directing it to wind up the scheme. However, the Trustee failed to intimate the Fund to initiate winding up of the scheme when its tenure, including 2 permissible extensions of 1 year each, ended as per terms of the PPM, i.e., by November 04, 2019. Therefore, it was alleged that Noticee-3 violated the provisions of regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations.

5. I note that the SCN issued to the Noticees was duly served upon them. Vide email and letter dated October 27, 2025, Noticees requested for inspection of documents, which was granted to them on November 10, 2025. Thereafter, vide email and letter dated December 04, 2025, Noticee-1 and 2 submitted their reply to the SCN. Vide email/letter dated December 11, 2025, Noticee-3 submitted its reply to the SCN. Vide notice of hearing dated December 11, 2025, an opportunity of hearing was granted to the Noticees on January 02, 2026, however, considering the request of the Noticees, the hearing was re-scheduled to January 12, 2026. On the said date, Authorized Representatives (**"ARs"**) of the Noticees, viz., Mr. Tomu Francis, Advocate, Khaitan & Co, attended through video-conferencing and reiterated the submissions made by the Noticees vide replies dated December 04, 2025 and December 11, 2025. Further, vide e-mail dated January 19, 2026, Noticees filed additional submissions in the matter.

6. Relevant extract of the replies of the Noticees dated December 04, 2025, December 11, 2025 and January 19, 2026 is as under:

Reply of Noticee-1 and 2

(a) Noticees denied the allegations set out in the SCN.

A. Factual Background

(a) Noticee-1 is set up in the nature of a trust and registered with SEBI as a Venture Capital Fund. As per the PPM of Noticee-1, the term of the Scheme was for a period of seven (7) years from the date of first closing, i.e., November 04, 2010, extendable by 2 years (two (2) periods of one (1) year each).

(b) After the completion of the term of the Scheme, Noticee-2, being the Investment Manager of the Fund, had sought and received approval from its investors for extension of the term of the Scheme, post which the tenure of the Scheme was initially extended from November 04, 2017 to November 04, 2018 (first extension) and from November 04, 2018 to November 04, 2019 (second extension). As of that date, the Scheme had four residual portfolio investments in the Fund ("Residual Assets"). At this juncture, it is pertinent to note that the underlying businesses of the Residual Assets were performing well and had excellent prospects for exit. Consequently, the investors to the Scheme approved, by super majority (greater than 75% of the value of investment), multiple extensions of the Scheme's term. Noticee-2 first sought and obtained such consent for the third extension, extending the Scheme till November 04, 2022, citing delays in completing exits from the remaining two portfolio companies. Lastly, in view of the prevailing market conditions on account of Covid-19 pandemic, the Noticee-2 was constrained to seek a final extension from November 04, 2022 to

November 04, 2023 which it yet again obtained by securing super majority (greater than 75% of the value of investment) from the investors. Such extensions were granted in view of the satisfaction the investors had with the performance of the Scheme thus far and since they were convinced of a clear possibility of continuing to achieve good returns.

(c) *Notably, during such extension, Noticee-2 achieved profitable exits in two of the Residual Assets, viz., Drishtisoft Solutions and Captronic Systems, and Noticee-2 distributed the proceeds from the exits to the investors in accordance with the distribution waterfall provided in the PPM of the Fund. With the exits from these two Residual Assets, the total return provided to the investors had been over 125% (One Hundred and Twenty Five Percent) of their capital contribution, with two more Residual Assets awaiting exits.*

(d) *Noticee-2 during the extension of the term had been proactively monitoring the Residual Assets and been working for the Fund on a no-management fee basis. In the best interest of the investors and with the intention to solely work towards providing the investors an exit, Noticee-2 has not been charging any management fee since November 04, 2019 till the final exit from all Residual Assets.*

B. <u>Voluntary Application for Settlement</u>

(a) *Noticees submitted that they acted in compliance with the letter and spirit of the SEBI Act read with the VCF Regulations, out of abundant caution and with the bona fide intent to assuage any potential regulatory concerns on their operations and to avoid protracted litigation, the Noticees filed a suo motu application for settlement on October 16, 2023 with SEBI with two Residual Assets, namely, Net Avenue Technologies Limited and Attero Recycling Private Limited pending liquidation.*

(b) *During the course of the Internal Committee's ("IC") meeting(s) held pursuant to the aforementioned application for settlement, the Ld. Members of the IC directed the Noticees that as a pre-condition for settlement, the Noticees shall rectify the potential non-compliance by winding up the Fund. Noticees were taking every step possible to conclude the liquidation of the pending Residual Assets and intimated the Ld. Members of the IC about the status of liquidation.*

(c) *Noticees submitted that vide their correspondence dated April 12, 2024 they furnished the details of the progress made towards winding up of the Fund. In respect of the two pending Residual Assets, the Noticees submitted the following to SEBI:*

   (i) *Net Avenue Technologies Limited: The company had been listed on the SME platform of the National Stock Exchange of India Limited ("NSE") – NSE Emerge in early December 2023. As per an exemption granted for VCFs and AIFs, the Fund was not subject to lock-in. However, upon submitting Delivery Instructions Slips ("DISs") to Kotak Securities Limited, the Fund's Depository Participant ("DP"), for in specie distribution to Fund's investors, the Noticees were informed that the shares of the Fund have been put under lock-in category. The Noticees also conveyed in the said correspondence that they are working on the said issue with the company, the RTA and the NSE to resolve this procedural issue. It was*

further conveyed that NSE had agreed to release the lock-in and the Noticees were awaiting the un-locking of holdings of the Fund by NSDL to initiate liquidation of the shares.

(ii) *Attero Recycling Private Limited: Noticees intimated SEBI that after the deal with a potential buyer, that was in the signatures state, fell through, the Noticees immediately got the company to start the process of dematerialization. As the Noticees submitted their request for dematerialization of the CCPS to the DP, Noticees learnt that the company had taken CDSL as its depository which resulted in further procedural roadblocks for the Noticees to complete the liquidation process. Noticees also conveyed that they had received the NSDL ISIN and were in the process of getting the Fund's shares dematerialized to initiate the liquidation process.*

(d) *Noticees duly intimated SEBI about their efforts towards timely completion of liquidation of Residual Assets and the unintended delay was on account of reasons beyond the control of the Noticees. They submitted that for reasons which were evidently beyond the control of the Noticees – they were constrained to withdraw their application for settlement vide correspondence dated June 14, 2024, with liberty to re-file in terms of the SEBI (Settlement Proceedings) Regulations, 2018 once the liquidation of all the assets concluded.*

(e) *In view of the above, for the pending Residual Assets, Noticees explored the option for in specie distribution for the investors of the Fund. In May 2024, Noticees managed to exit the investment in Net Avenue Technologies Limited by means of in specie distribution. In similar vein, Noticees managed to exit the investment in Attero Recycling Private Limited in July 2024 by means of in specie distribution.*

(f) *After successfully having exited all Residual Assets despite the procedural bottlenecks in liquidation, the Noticees wound down the Fund and applied for surrendering the registration certificate to SEBI on March 28, 2025. Further, the online application for winding up was lodged on the SEBI portal on April 03, 2025 owing to some technical glitch on the platform.*

(g) *Thus, even prior to initiation of any regulatory action against the Noticees, they had managed to conclude the liquidation process and applied for surrendering their registration certificate to SEBI.*

C. <u>Preliminary Submission</u>

(a) *Issuance of the SCN qua the Noticee is unduly harsh and unwarranted: At the outset, the principal allegation qua the Noticees, i.e., non-winding up of the Scheme within the timelines envisaged under the PPM at this stage is merely academic given that the Noticees have liquidated the Residual Assets as intimated earlier to SEBI vide correspondence dated June 24, 2025.*

(b) *Further, it is pertinent to consider that the Noticees throughout acted in the interest of investors and obtained super majority (greater than 75% of the value of investment) from the investors prior to extending the term of the Scheme. It merits consideration that the Noticees had voluntarily disclosed the factum of extending the Scheme beyond*

the timelines envisaged in the SCN and only acted once the investors granted super majority consent for such extension.

(c) *Noticee submitted that neither the Examination Report nor the SCN have identified a single instance of any undue harm to investors which could be attributed to extending the tenure of the Scheme. Moreover, the extension of the tenure of the Scheme also did not yield in any monetary benefit to the Noticees given that they had not been charging any management fee since November 04, 2019 till the conclusion of the liquidation of all assets of the Scheme in July 2024.*

(d) *Furthermore, there is nothing on record to establish that any of the violations alleged in the SCN were deliberate, mala fide or borne out of any negligence in operations, so as to merit initiation of adjudication proceedings against the Noticees. It is an established position that every irregularity or deficiency noticed during the course of an examination/inspection does not call for initiation of penalty proceedings. Given the aforesaid, issuance of the instant SCN and initiation of adjudication proceedings against the Noticees is not only unduly harsh, excessive and unwarranted but also in departure from SEBI's own established internal policies on this subject, including the Enforcement Manual dated February 24, 2020 (as amended on August 03, 2021) which provides following guidelines while dealing with first time violations:*

"2.1.1. As a matter of policy, the violations that can be remedied by corrective measures or first time violations (other than the cases where there is no ill-gotten gain or fraudulent and unfair trade practice affecting the market integrity or causing widespread losses to investors or money mobilisation by unregistered Collective Investment Scheme (CIS) or Deemed Public Issues (DPI) entities), administrative actions (soft actions) such as issuing administrative warning letters, deficiency/caution letters, advice letters and expedited settlement proceedings (as a newly proposed administrative action) for late filings, delayed compliance, etc. in accordance with the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014

2.1.2 Minor violations by intermediaries observed during inspection may predominantly be dealt with by administrative actions as per the general guidelines in Para 2.1.1. If violations are continued or repeated even after administrative actions, adjudication proceedings may be considered. In the cases where such violations are continued or repeated even after initiation of adjudication/imposition of penalties, the action under enquiry regulations such as suspension or cancellation of certificate of registration, etc. may be considered"

(e) *No administrative actions have been initiated by SEBI in respect of the examination conducted by it and thus the allegations enumerated in the SCN cannot be sustained as the basis for initiation of the proceedings (being an administrative warning and a failure thereafter to rectify the violations) do not exist. In fact, to the contrary, the Examination Report prepared by SEBI in the instant matter which evidently forms the basis of issuance of the SCN records that there are no adverse remarks against the Noticees in SEBI's own database. In any event, there is no allegation in the SCN concerning violation of any administrative actions taken by SEBI, basis which the adjudication proceedings had to be initiated.*

(f) *Cause of action in the instant matter is stale: The alleged violation(s) qua the Noticees, i.e., failure to liquidate the assets of the Scheme have already been rectified, and nothing remains as on date of this reply. It merits consideration that the Noticees have always endeavoured to keep SEBI apprised about their operations and have duly intimated SEBI at every stage. As canvassed in detail above, the delay in timely liquidation of the assets of the Scheme was beyond the control of the Noticees despite their best efforts. The bona fides of Noticees' operations is borne out by the fact that there have been no investor complaints qua the Noticees – a fact recorded in paragraph 4.11 of the Examination Report itself. Being so, the Noticees are bona fide entities that have at all times ascribed great importance to the regulatory framework which governs them while also ensuring that the interest of its investors is safeguarded.*

(g) *Noticees have acted bona fidely and not concealed any material information from either the investors or SEBI at any point in time. In fact, the Noticees have been abundantly transparent in their operations and have even attempted to meaningfully engage with SEBI by means of the settlement framework by filing a suo motu application for settlement even prior to the issuance of the present SCN. Accordingly, the cause of action identified by SEBI in the SCN, i.e., non-winding up of the Scheme is no longer germane given that as of date of this reply – i) the Scheme stands fully liquidated with proceeds being distributed in accordance with the waterfall mechanism envisaged in the PPM ; ii) There have been no adverse impact to the investors or to the securities market on account the impugned extension(s) of the tenure of the Scheme ; iii) There have been no investor complaints to SEBI in respect of the Noticees' operations ; iv) The investors have received good returns on their investment after the successful liquidation of the Residual Assets. In view of the foregoing, the present matter ought to be looked at pragmatically especially in light of the fact that the very cause of action as captured in the SCN qua the Noticees have now become stale. Consequently, no adverse direction ought to be taken against the Noticees for such alleged violation.*

(h) *Object of inspection/examination is remedial and not punitive: It is a settled position of law that the object of conducting examination of an entity is not to impose penalty, but to uncover the truth. In this regard, reference is drawn to the Hon'ble Securities Appellate Tribunal's ("SAT") order in UPSE Securities Limited v. SEBI (Appeal No. 109 of 2011, decided on July 25, 2011) whereby the Hon'ble SAT had ruled in context of inspection as under:*

"5….the object of carrying out inspection of books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/ deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity."

(i) *Further, in the matter of Religare Securities Limited v. SEBI (Appeal No. 23 of 2011, decided on June 16, 2011), the Hon'ble SAT has held that the purpose of this routine*

inspection is to highlight the irregularities in the system followed by the intermediaries and recommend changes therein; the intent should not be to initiate any kind of punitive action. The relevant portion of the Hon'ble SAT's order is set out below for ease of reference:

"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant..."

(j) *Similarly, the Hon'ble SAT in IDBI Trusteeship Services Limited v. SEBI (Appeal No. 186 of 2023, decided on February 22, 2023) has observed that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. The relevant excerpt of the aforesaid decision is reproduced below for facility:*

"We may also point out that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. The purpose of inspection is to advise the entity to cure the lapse that have been found. If any serious lapse is discovered, then penalty action can be taken."

(k) *Accordingly, the SCN ought to be withdrawn on this count alone, as no deficiency or irregularity exists in the instant matter at the Noticees end especially in light of the successful liquidation of assets confirmed to SEBI by the Noticees vide their correspondence dated June 24, 2025. It is significant to consider that the Noticees throughout acted in the interest of investors and eventual delays in the liquidation process were beyond the control of the Noticees. There is nothing on records to suggest, let alone establish, that it was on account of any wrongdoing attributable to the Noticees which caused the delay in liquidation of the Residual Assets.*

D. <u>Submissions on Merits</u>

(a) *Without prejudice to the above, pre-mature winding up of the Fund, solely to comply with black letter law would have in fact caused loss to investors, whose interests SEBI seeks to safeguard: Noticees' actions were consistent with the object of the SEBI Act, which seeks to protect investor interests and ensure orderly market development. The allegation regarding non-winding up of the Scheme within the timelines envisaged under the PPM is academic, as the Residual Assets have already been liquidated and intimated to SEBI on June 24, 2025. At all times, Noticees acted transparently and in the best interest of investors by securing super majority consent (over 75% of investment value) before extending the Scheme's tenure, and such extension was disclosed voluntarily. Neither the Examination Report nor the SCN identifies any harm to investors, and the Noticees derived no monetary benefit, having ceased charging management fees since November 4, 2019 until final liquidation in July 2024. In the absence of mala fide intent, negligence, or deliberate violation, Noticees' conduct*

reflects adherence to investor protection principles under the SEBI Act, demonstrating that the impugned actions were undertaken solely to safeguard investor interests.

(b) *In this regard, reliance is also placed on the Hon'ble SAT's order in Terrascope Ventures Limited v. SEBI (Date of decision June 02, 2022 Appeal No. 116 of 2021) whereby the Hon'ble Tribunal ruled that once utilisation of proceeds has been ratified by shareholders, acts done by a company become valid and authorised. Relevant extracts of the said order are reproduced hereunder for facility:*

"12. Once the utilization of the proceeds have been ratified by the shareholders of the Company, the acts and deeds done by the Company becomes valid and authorized and therefore there was no variation of the utilization of the proceeds. The show cause notice alleging variation in the utilization of the proceeds is, thus, erroneous.

13. For the same reason, since the utilization of the proceeds have been ratified, there was no variance in the utilization of the proceeds and consequently there was no violation of Clause 43 of the Listing Agreement."

(c) *Given the above, issuance of an adverse order in the matter assailing the consent given to the Scheme by its investors shall have the effect of scuttling investors' autonomy and their best interests, which SEBI is mandated to safeguard. The issuance of adverse directions against well-meaning and well-intended actions of the parties involved would in fact set a bad precedent for the market in general, deterring investment professionals from taking the right steps in the interest of investors while encouraging them to take the easy path, even if detrimental to investors' interest.*

(d) *Regulation 23(1)(a) of the VCF Regulations is Directory not Mandatory: As a matter of law, a penal intervention for alleged violation of regulation 23(1)(a) of the VCF Regulations for no reason other than the deadline being missed, sans regard to the underlying and the attendant facts and circumstances is untenable.*

"23. Winding Up
(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"

(e) *The deadline contained in the provision is itself adopted from a contract – whatever be the tenure in the VCF's placement memorandum. It is a settled principle that contracts are capable of amendment/novation by mutual consent of the parties. Such autonomy to determine the terms which govern the relationship between parties goes at the very heart of the law of contract. If the parties to a contract amend the term, without any further act or deed, the deadline referred to in regulation 23 too would stand extended.*

(f) *Therefore, being a directory provision, as regards consequence for contravention of the provision, penalty is not an inexorable outcome. Mitigating factors must be considered, reasonable circumstances that led to the deadline being missed must be factored in, and only then one could conclude if the matter of worthy of penalty. If the provision were "mandatory" the penalty would be a "no-fault liability", i.e., regardless of whether any fault or laxity is involved, the consequence of contravention would follow.*

(g) *Besides, if a mandatory provision is violated nothing further can be done to remedy it. In the case of regulation 23(1)(a) of the VCF Regulations, if the deadline is missed, the winding up process would have to continue. It is only that fresh investments cannot be made and indeed it is not even alleged that fresh investments have been made in the instant case.*

(h) *Being timeline-based provision, which timeline is adopted from the placement memorandum rather than a timeline stipulated by law, the regulation assumes a directory nature as opposed to a mandatory one.*

(i) *In this regard, reference is drawn to the decision of the Hon'ble Supreme Court of India in Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416, whereby the said principle has been adopted in its application to the Insolvency and Bankruptcy Code, 2016 in the following words:*

"…the timelines contained in the provisos to Sections 7(5), 9(5) and 10(4) of the Code are all directory and not mandatory. This is for the obvious reason that no consequence is provided if the periods so mentioned are exceeded. Though this decision is not in the context of the 14-day period provided by Section 7(4), we are of the view that this judgment would apply squarely on all fours so that the period of 14 days given to NCLT for decision under Section 7(4) would be directory. We are conscious of the fact that under Section 64(1) of the Code, NCLT President or the Chairperson of NCLAT may, after taking into account reasons by NCLT or NCLAT for exceeding the period mentioned by statute, extend the period of 14 days by a period not exceeding 10 days. We may note that even this provision is directory, in that no consequence is provided either if the period is not extended, or after the extension expires. This is also for the good reason that an act of the court cannot harm the litigant before it."

(j) *The scope of the word 'shall' is thoroughly adjudicated upon in the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India Salem Advocate Bar Assn. (II) v. Union of India, (2005) 6 SCC 344. The Hon'ble Supreme Court of India interpreted Order VIII Rule 1 of Code of Civil Procedure. For the sake of convenience Order VIII R 1 is quoted below:*

"ORDER VIII
[Rule 1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:
Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons…]"

(k) *The main point of contention is whether 'shall' in "which shall not be later than 90 days" is mandatory or directory in nature. The Hon'ble Apex Court held as follows:*

"20. The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having

regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

(l) In view of the aforesaid, regulation 23(1)(a) of the VCF Regulations is directory in nature. In the instant matter, investors have consented to extend the tenure of the Fund. Therefore, the very contract from which the provision derives the deadline has amended the deadline and therefore, the requirement under regulation 23(1)(a) of the VCF Regulations stood changed.

(m) In such circumstances, issuance of any adverse direction against the Noticees would tantamount to assailing the consent given to the Scheme by its investors. It shall further have the effect of scuttling investors' autonomy and their best interests, which SEBI is mandated to safeguard.

(n) The principles of lex non cogit ad impossibilia and impotentia excusat legem is squarely applicable to the present matter: The delay in winding up the Scheme was occasioned by circumstances beyond the control of the Noticees, making strict compliance with the timelines envisaged under the PPM impossible. In this regard, reliance is place on the decision of the Hon'ble Supreme Court of India in Raj Kumar Dey v. Tarapada Dey, (1987) 4 SCC 398 wherein the Hon'ble Apex Court opined on the well-established legal principles of lex non cogit ad impossibilia and impotentia excusat legem which mean that the law does not compel the performance of an impossibility which is squarely apply to the facts of the present case.

(o) The extension of the Scheme's tenure was necessitated by procedural bottlenecks with depositories and, most critically, the unprecedented disruptions caused by the Covid-19 pandemic, which severely impacted operational timelines across the financial sector. Despite these external constraints, Noticees acted transparently and in good faith by obtaining super majority consent from investors before any extension and ultimately liquidated all residual assets, as intimated to SEBI on June 24, 2025. In the absence of mala fide intent or investor harm, the delay cannot be construed as a deliberate violation but rather as an unavoidable consequence of circumstances excused under the aforesaid doctrines, reinforcing that the Noticees' conduct remained aligned with the investor protection mandate under the SEBI Act.

(p) Without Prejudice to the above, the alleged violations are at best merely technical and venial in nature which do not merit imposition of penalty: Without prejudice to the submissions, the SCN seeks to penalize the Noticees for technical violations that have not impacted the securities market or the investors of the Scheme. In light of the fact that alleged non-compliances were procedural irregularities at best, which have not affected the interests of the investors, the alleged violations at best are technical or venial breach, no gain has been made by the Noticees, no loss has been caused to investors as a consequence of the same, and Noticees had no mala fide intent, the facts of the matter do not merit imposition of penalty. In this regard, reliance is placed

on Ld. WTM's Order In the matter of acquisition of shares of Refex Refrigerants Limited dated February 02, 2017, whereby considering the aforesaid factors, the Ld. WTM disposed the proceedings without any adverse directions against the notice therein observing as under:

"13. On an overall assessment of the facts and circumstances of the case, I am inclined to arrive at the following conclusions:
that there is a violation of regulation 11(2) of the Takeover regulations, 1997 by the Noticee;
that the violation is un-intentional and not for consolidation
that the violation is technical and venial in nature; and

14. In view of the above, in exercise of powers conferred upon me under section 11B of the SEBI Act, 1992, I do not find this to be a fit case warranting a direction as proposed in the show cause notice dated February 26, 2016 and the show cause notice stands disposed accordingly."

(q) *In similar vein, the Hon'ble SAT in Doogar and Associates v. SEBI (Appeal No. 20 of 2002) observed as follows in respect of imposition of penalty:*

"… Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute…"

(r) *In light of the above, the alleged lapse by the Noticees was purely un-intentional and borne out of reasons beyond the control of the Noticees. The facts and evidence on record make it abundantly clear that every action of the Noticees, and especially the impugned actions considered in the SCN, have in fact served the interest of investors in the face of tumultuous market conditions. Being so, Noticees deserve consideration from SEBI for their well-meaning actions instead of penal consequences and any alleged non-compliance which did not result in any undue harm to investors or gain to the Noticees ought to be looked at with leniency.*

E. <u>Prayer</u>

(a) *In light of the submission made hereinabove, the SCN be withdrawn with immediate effect and no penalty under section 15HB of the SEBI Act read with regulation 39 of the AIF Regulations be imposed on the Noticees, as a consequence of the alleged violations which, without prejudice to the aforesaid are non est. Reliance is placed on the Hon'ble SAT's order in P.G Electroplast Limited v. SEBI [Appeal No.281 of 2017] whereby it was observed that in cases of venial/ technical violations, an authority, exercising its discretion under section 15J of the SEBI Act would be justified in refusing to impose any penalty:*

"Penalty can be imposed for failure to carry out a statutory obligation under the SEBI's Act. Factors contemplated under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act."

(b) Similarly, the Hon'ble Supreme Court of India in Hindustan Steel Ltd. v. State of Orissa (1969 (2) SCC 627), pronounced as follows:

"Under the Act penalty may be imposed for failure to register as a dealer-Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

(c) In light of the above, no penalty ought to be imposed on the Noticees as a result of the alleged violations in relation to charges levelled against them in the SCN.

(d) Without prejudice to anything stated hereinabove, in case SEBI decides to levy any penalty on Noticee, it must take into account factors specified in section 15J of the SEBI Act.

(e) With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": the findings in the SCN do not allege that Noticees have made any disproportionate gain or gained any unfair advantage on account of the alleged violations. With regard to Clause (b):- "the amount of loss caused to an investor or group of investors as a result of the default": there is no document on record to suggest that any loss whatsoever has been caused to any investor as a result of the allegations levelled in the SCN. In fact, as submitted hereinabove, the impugned extension of the term has resulted in superior returns to the investors of the Fund who have at the end of liquidation received good returns on their investment which otherwise would not have been the position had the Noticees

prematurely liquidated all the assets of the Fund even when procedural factors beyond the control of the Noticees and prevailing market conditions on account of the Covid-19 pandemic made timely liquidation commercially unviable and would have significantly eroded the value of the portfolio, thereby resulting in materially lower returns for the investors. With regard to Clause (c):- "the repetitive nature of the default." the alleged violation was non est, and hence there is no question of repetitive nature of the default.

(f) Further, the Hon'ble Supreme Court of India in Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari, (2019) 5 SCC 90, held that the provisions of Clauses (a), (b) and (c) of section 15-J are only illustrative in nature and have to be taken into account whenever such circumstances exist. The Hon'ble Supreme Court of India further held that factors other than those enumerated in Clauses (a), (b) and (c) of section 15-J can also be considered by the Adjudicating Officer. Therefore, in light of the submissions made hereinabove, the SCN be revoked, and no penalty be imposed, or without prejudice to the above, if imposed, it be minimal.

Reply of Noticee-3

Most of the submissions made by Noticee-3 are similar to the submissions of Noticee-1 and 2 as mentioned hereinabove, which is not reproduced for the sake of brevity. The additional submissions of Noticee-3 are as under:

A. Policy Efforts of Vistra

(a) While carrying out its duties as trustees, Vistra has been proactive in bringing to the attention of SEBI, the practical difficulties encountered under the VCF Regulations. In this regard, Vistra has submitted to SEBI, various representations for SEBI's consideration and assistance, from time to time. As a responsible trustee and member of trustee industry, Vistra vide its letter dated August 23, 2016 and email dated May 11, 2016 had submitted written representations to SEBI highlighting the practical difficulties, interpretational issues encountered while adhering to both the AIF Regulations and the VCF Regulations. Further, in January 2023, Vistra had submitted a representation to the Whole Time Member of SEBI on the practical challenges faced by venture capital funds and trustees, also suggesting exit strategies in respect of funds that have outlived their respective tenures. These representations, inter alia, covered suggestions with regard to exit route and process to be followed in case of extension of fund tenure.

(b) Vistra had also highlighted practical difficulties faced by VCFs and trustees with respect to the market challenges and need for amendment in the VCF Regulations. In this regard, Vistra had a detailed meeting with SEBI, wherein the Noticee discussed such concerns in detail. Further, Vistra had also made representation before the Alternative Investment Policy Advisory Committee of SEBI in June 2016 on the challenges faced by VCFs and way forward.

(c) SEBI has also acknowledged such difficulties encountered by VCFs and AIFs in liquidating their investments within the prescribed tenure. SEBI has also recognized

that winding up schemes or funds at a distressed valuation is not in the investors' best interest. This position is reflected in SEBI's Consultation Paper dated February 03, 2023 concerning "Consultation Paper on providing option to Alternative Investment Funds and their investors to carry forward unliquidated investments of a scheme upon completion of its tenure" as well as the SEBI Board Meeting held on March 29, 2023.

(d) *Considering the representations received from the VCF industry, regarding the difficulties faced to fully liquidate their investments during the tenure of their schemes and wind up, SEBI issued the SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2024, expressly enabling funds to wind up without investor consent, thereby implicitly acknowledging the very policy gap which Vistra had raised in its several representations and meetings with SEBI. This provided flexibility for migration of such VCFs which are dealing with unsold investments due to lack of liquidity, to the AIF regime, the modalities of which are detailed in the SEBI circular dated August 19, 2024. VCFs were also provided an additional period of one year to liquidate their investments and wind up the schemes. Once migrated, they could also enter into a dissolution period after obtaining approval for their investors. In this manner, SEBI has also acknowledged and sympathized with this issue that has plagued the venture capital space.*

(e) *Moreover, SEBI as recently as on July 15, 2025 issued a public notice introducing the VCF Settlement Scheme, 2025 to provide an opportunity to such VCFs to settle actions arising out of having schemes whose liquidation periods have expired, but not wound up and that continued to hold unliquidated investments, and completed the migration. In this notice as well, SEBI has acknowledged that some VCFs are unable to liquidate their investments during the tenure of the fund and continue to hold the unliquidated investments beyond the expiry of their tenure.*

(f) *Vistra has been and is committed to engaging and working with the regulator in its attempts to foster growth in the funds space while instilling regulatory and financial stability, ensuring proper recognition and transparent disclosure of true asset quality, liquidity, and fund performance by VCFs/AIFs and their investment managers.*

(g) *It is pertinent to note that throughout the Fund's extended term, the Noticee proactively monitoring the Fund's activities in the best interest of the investors.*

B. <u>Submissions on Merit</u>

(a) *Vistra has complied with its duties and obligations as a Trustee to the VCF: Noticee submitted that as a Trustee to the Fund, Vistra has acted in good faith and discharged its duties and obligations as set out under the PPM, Trust Deed, Contribution Agreement and Investment Management Agreement ("Fund Documents") as well as the VCF Regulations. It is impressed that Vistra, as an independent third-party trustee has undertaken independent oversight over the VCF (without involvement of any conflict of interest) and also diligently discharged the duties of a trustee, as contemplated under the scheme of the VCF Regulations as well as the Indian Trusts Act, 1882.*

(b) *The VCF Regulations, reinforced by the Fund Documents, clearly delineate the distinct roles of the trustee and the Investment Manager. The Investment Manager is vested with the exclusive authority to make all commercial decisions concerning the Fund's investments, divestments, and distributions, as stipulated in the PPM. Conversely, Vistra's powers as trustee are circumscribed by the Trust Deed and the Investment Management Agreement. As Vistra has repeatedly highlighted in its representations to SEBI, a trustee lacks the unilateral power to force the liquidation of assets. Therefore, Vistra has acted entirely within its defined role, which is one of oversight rather than executive control over the Fund's divestment strategy.*

(c) *In the instant case as well, as per the provisions of the Investment Management Agreement executed between the Trustee and the Investment Manager, the Investment Manager has full discretion to perform all acts, deeds, things, desirable or expedient in the management of the affairs of the VCF and to best expedite the carrying out of its objects as it deems fit, so long as the actions were within the powers of the Investment Manager and in conformity with the VCF Regulations and objectives of the VCF. As per the Fund Documents, the powers and duties of the Trustee are limited solely to the Fund Documents and comprehensive reading of the same amply clarifies that the trustee has absolutely no influence on the day-to-day commercial decisions and/or management of the fund or the investments made by the fund manager. It is also significant that unlike the SEBI (Mutual Funds) Regulations, 1996 which contain specific provisions spelling out the rights and obligations of a trustee, the VCF Regulations contained no such provision specifically enlisting the powers as well as obligations of the trustee to a VCF. Given these limitations, it is difficult for a trustee to step into the shoes of an Investment Manager, and wind-up the Fund unilaterally, after fulfilling the requisite formalities.*

(d) *As an independent third-party trustee, Vistra has undertaken all such measures as it could to be able to require the Investment Manager to wind up the VCF. Accordingly, Vistra has discharged its duties and obligations expected of a trustee under the legislative scheme of the VCF Regulations and beyond.*

(e) *Given the steps towards winding up of the VCF/ distribution of proceeds to investors directed to be undertaken by Vistra, issuance of any adverse direction(s), if any against it would be disproportionate, harsh and excessive: Noticee submitted that especially given the bona fide conduct of Vistra, any direction of penalty under the SEBI Act ought not to be issued, as the same would be excessively disproportionate, harsh and unreasonable especially given that the Noticee had performed all its functions to the best extent possible.*

(f) *On April 27, 2023, the Noticee wrote to the Investment Manager highlighting the regulatory obligation to wind up the Fund and seeking information on actions taken/proposed to be taken in that regard. Further, on May 05, 2023, the Noticee wrote to SEBI conveying that it had directed the Investment Manager to wind up the Fund and surrender its registration certificate. Vide its email dated August 28, 2023, the Noticee informed SEBI of its active engagement with the Investment Manager and provided updates on winding up and the actions taken by it. The Noticee informed SEBI that it had been constantly and closely monitoring the liquidation process.*

(g) *In this regard, reference is drawn to Hon'ble Supreme Court's decision in the case of Excel Corp Care Limited v. Competition Commission of India, (2017) 8 SCC 47, wherein the Apex Court highlighted the principle of proportionality in issuance of directions by administrative bodies:*

"111. It should be noted that any penal law imposing punishment is made for general good of the society. As a part of equitable consideration, we should strive to only punish those who deserve it and to the extent of their guilt. Further, it is well-established by this Court that the principle of proportionality requires the fine imposed must not exceed what is appropriate and necessary for attaining the object pursued. In Coimbatore District Central Coop. Bank v. Employees Assn. [(2007) 4 SCC 669], this Court has explained the concept of "proportionality" in the following manner:

18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise the elaboration of a rule of permissible priorities.

19. De Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former ("balancing test") permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter ("necessity test") requires infringement of human rights to the least restrictive alternative."

(h) *Further, in Maharashtra State Board of Secondary Education and Higher Secondary Education v. K.S. Gandhi & Ors., (1991) 2 SCC 716, the Hon'ble Supreme Court has ruled as under:*

"38. The question then is whether the rules relating to mode of punishment indicated in the Appendix 'A' to the resolution are invalid. We have given our anxious thought to the contention and to the view of the High Court. In our view the punishments indicated in the last column is only the maximum from which it cannot be inferred that it left no discretion to the disciplinary authority. No axiomatic rule can be laid that the rule making authority intended that under no circumstances, the examination Committee could award lesser penalty. It depends on the nature and gravity of the misconduct to be dealt with by the disciplinary authority. In a given case, depending on the nature and gravity of the misconduct lesser punishment may be meted out."

(i) *Noticee submitted that in the instant case, there is no misconduct on the part of Vistra, which has only acted in accordance with its duties as a Trustee to the VCF.*

<u>Additional submissions of Noticees</u>:

(a) *Introduction of VCF Settlement Scheme, 2025 by SEBI demonstrates that SEBI acknowledged and sympathised with the issue that has plagued the venture capital space. It is pertinent to note that if the remedy proposed under the consultation paper was made available to the intermediaries and market participants earlier, the Noticees would have had the option to avail the migration to AIF.*

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticees in the SCN, their replies, submissions made during personal hearing and the material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether Noticee-1 and 2 failed to wind up the Scheme upon completion of its tenure as per terms of the PPM and thereby violated regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations?

   II. Whether Noticee-3 failed to intimate the Fund to initiate winding up of the Scheme when its tenure ended as per terms of the PPM and thereby violated regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations?

   III. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act read with regulation 39 of the AIF Regulations?

   IV. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15-J of the SEBI Act read with rule 5(2) of the Rules?

8. Before proceeding further, it is pertinent to refer to the relevant provisions of VCF Regulations, which are alleged to have been violated by the Noticees, as under:

   VCF Regulations:

   "23. Winding Up

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

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

   (b) if it is the opinion of the trustees or the trustee company, as the case may be, that the scheme shall be wound up in the interests of investors in the units;

   (c) if seventy-five per cent of the investors in the scheme pass a resolution at a meeting of unit holders that the scheme be wound up; or

   (d) if the Board so directs in the interests of investors.

   …….

   (3) The trustees or trustee company of the venture capital fund set up as a trust or the Board of Directors in the case of the venture capital fund is set up as a company (including body corporate) shall intimate the Board and investors of the circumstances leading to the winding up of the Fund or Scheme under sub-regulation (1)."

"24. Effect of winding-up.
(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."

9. The issues raised in this matter are dealt in the following paragraphs.

Issue I. Whether Noticee-1 and 2 failed to wind up the Scheme upon completion of its tenure as per terms of the PPM and thereby violated regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations?

Issue II. Whether Noticee-3 failed to intimate the Fund to initiate winding up of the Scheme when its tenure ended as per terms of the PPM and thereby violated regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations?

10. Before proceeding to the merits of the case, it is appropriate to deal with the following preliminary issues raised by the Noticees. Noticees submitted that initiation of adjudication proceedings against them is in deviation from SEBI's own internal policies on this subject, including the Enforcement Manual. In this regard, it is noted that the Enforcement Manual relied upon by the Noticees is an internal document which, *inter alia*, guides the officers of SEBI in selection of appropriate actions while giving ample discretion to competent authority to initiate suitable action in novel scenarios. Further, the said Enforcement Manual itself states that it has been prepared to guide officers of SEBI and is for internal use only. Any non-observance or deviation from this manual will not vitiate any quasi-judicial proceedings. Moreover, it is noted that the excerpts of the Enforcement Manual quoted by the Noticees in their reply is related to policy for taking administrative actions. However, in respect of Enforcement Actions, it is specified that *"Enforcement actions may be considered after satisfying the availability of sufficient evidence, considering the ingredients of the violations and the principles/precedents laid down in the orders of SEBI and SAT/ Courts"*. Irrespective of the above, in the instant matter there is no deviation from the said Manual as the Noticees have not read the Manual in its entirety where it states that

'……. expedited settlement proceedings (as a newly proposed administrative action) for late filings, delayed compliance, etc. in accordance with the SEBI Settlement of Administrative and Civil Proceedings) Regulations, 2014 (Settlement Regulations) may be considered'. As such, the Manual is not providing for administrative action rather provides for settlement opportunity which is at the discretion of the Noticees. Incidentally, it is found that the Noticees had filed for settlement in this matter which they withdrew later. Thus, initiation of the extant adjudication proceedings do not suffer from any procedural infirmities, hence, the said contentions of the Noticees are misconceived and untenable.

11. Noticees further contended that the issuance of the SCN qua the Noticees is unduly harsh and unwarranted as the violation was technical and at this stage, it is merely academic as Noticees had liquidated the Residual Assets prior to issuance of the SCN. In this regard, it is noted that the VCF Regulations clearly mandates that *a scheme of a venture capital fund set up as a trust shall be wound up when the period of the scheme, if any, mentioned in the placement memorandum is over*, however, the Noticees failed to wind up the Scheme upon completion of its tenure as disclosed in the PPM, therefore, the alleged violation of the provisions of VCF Regulations cannot be considered as mere technical violation and academic issue. Further, the alleged violations persisted during the examination period and Noticees liquidated the investments in four investee companies with a delay in the range of one year and nine months to four years and nine months, as mentioned in Table-2 above, therefore, the alleged violation of the provisions of VCF Regulations is substantive violation and not a mere technical violation. Hence, the said contention of the Noticees is untenable.

12. Noticees further submitted that there is no allegation in the SCN concerning violation of any administrative actions taken by SEBI, based on which the adjudication proceedings had to be initiated. In this regard, it is noted that for initiation of adjudication proceedings, there is no prerequisite or requirement of any administrative actions as contended by the Noticees. Therefore, the contention of the Noticees is flawed and devoid of any merit.

13. Further, Noticees submitted that they acted in the interest of investors and obtained super majority from the investors prior to extending the term of the Scheme, that neither Examination Report nor SCN have identified any instance of undue harm to investors, the Fund had not charged any management fee since November 04, 2019 till the conclusion of the liquidation of all assets of the Scheme and the alleged violations were not deliberate, mala fide or borne out of any negligence in operations. In this regard, it is noted that as per the regulatory framework prescribed by the VCF Regulations, a scheme of the VCF is mandatorily required to be wound up when the period of the scheme mentioned in the PPM is over. The tenure stipulated in the PPM is not a mere commercial arrangement between the investors and the Fund, but it is a condition provided under the VCF Regulations governing the lifecycle of the Scheme. Upon expiry of such tenure, the obligation to initiate winding up arises automatically and admits of no discretion. Any continuation beyond the stipulated period is ex facie contrary to the VCF Regulations.

14. The defence advanced by the Noticees that the extension of term of the Scheme was undertaken in the interest of investors and pursuant to approval of a super-majority of investors is misconceived and untenable. The disclosure of tenure in the PPM is a material and foundational representation forming the basis of investor participation and an extension of tenure of the Scheme beyond the term disclosed in the PPM, in contravention of the VCF Regulations, cannot be justified as being in investors' interest, that too without any appropriate explanation. It is a settled principle that parties cannot, by mutual agreement, validate an act that is ultra vires the governing statute. It is noted that the regulatory compliance under securities law is not subject to waiver by the Fund/ investors, irrespective of the quantum of approval obtained/ granted. The plea that the continuation was in the interest of investors or with the approval of investors cannot override the express regulatory mandate. Acceptance of such a proposition would render the statutory requirement of a fixed tenure illusory and defeat the very framework of VCF Regulations. Thus, the attempt of the Noticees to justify the extension of term of the Scheme on the basis of investors consent is unsustainable.

15. Further, the contention that no management fees were charged and that no mala fide intent or investor prejudice has been demonstrated is equally irrelevant to the determination of contravention. The obligation to wind up the Scheme upon expiry of its tenure specified in PPM is a mandatory regulatory requirement and the breach occurred upon failure to comply. Bona fide conduct of the Noticees, non-charging of management fees and absence of investor prejudice, if any, may, at best, be considered as a mitigating factor in the determination of penalty, however, they do not obliterate or cure the underlying violation. Therefore, the continuation of the Scheme beyond the tenure specified in the PPM constitutes a clear and admitted breach of the applicable VCF Regulations.

16. Noticees further submitted that the cause of action in the instant matter is stale as violation have already been rectified and nothing remains as on date of this reply. In this regard, it is observed, as noted hereinabove, that the requirement to wind up the Scheme upon expiry of its tenure, as specified in the PPM, is an explicit and mandatory obligation under the VCF Regulations. Such regulatory mandate requires strict, timely and appropriate compliance. The failure of the Noticees to initiate and complete the winding up process within the prescribed timeline constitutes a completed contravention, which continued during the examination period. The said non-compliance cannot be retrospectively cured merely on account of subsequent winding up or exit from investments. Subsequent exit from the said investments does not efface the violation nor absolve the Noticees of the regulatory consequences arising from the breach. The statutory obligation to wind up the Scheme upon completion of its tenure cannot be substituted or deemed satisfied by delayed compliance. Accordingly, the contention of the Noticees that the cause of action has become stale is devoid of merit and liable to be rejected.

17. In view of the above, it is noted that the preliminary issues raised by the Noticees hold no merit. Having dealt with the preliminary issues, I shall now proceed to address the key issues that arise for consideration.

18. It was alleged in the SCN that Noticee-1 exited from only two out of six investments within the prescribed timelines, thus, the delay in exit from the remaining four

investments was in the range of one year and nine months to four years and nine months. Therefore, the Noticee-1 and 2 failed to wind up the Scheme upon completion of its tenure, including two permissible extensions of one year each, ended as per terms of the PPM, i.e., by November 04, 2019. Noticee-3 allegedly failed to intimate the Fund to initiate winding up of the Scheme when its tenure as specified in the PPM ended.

19. In response to above allegations, Noticees submitted that pre-mature winding up of the Fund, solely to comply with black letter law would have caused loss to the investors. In this regard, it is noted that the Noticees have failed to provide any material particulars, supporting evidence, or cogent explanation to substantiate how such timely winding up would have resulted in losses to the investors. Mere assertion, unsupported by factual or documentary evidence, cannot be accepted as a valid justification for non-compliance with a mandatory regulatory requirement. In the absence of any demonstrated causal linkage between timely winding up and purported investor loss, the contention of the Noticees remains unsubstantiated and is liable to be rejected.

20. Further, the contention of the Noticees that their action of not winding up the Scheme upon completion of its tenure was consistent with the objects of the SEBI Act, namely protection of investors' interest and orderly development of the securities market, is untenable. It is noted that the objectives of the SEBI Act are achieved through adherence to the statutory and regulatory framework prescribed thereunder. Compliance with mandatory regulatory requirements cannot be substituted by a subjective flawed assessment of perceived investor benefit. Any action taken in contravention to the explicit regulatory provisions cannot be justified on the ground that it was purportedly undertaken in the interest of investors. Acceptance of such an argument would undermine regulatory certainty and defeat the very framework designed to safeguard interest of the investors and ensure orderly market conduct. Accordingly, the said contention of Noticees is untenable.

21. Noticees further submitted that they acted transparently and in the best interest of investors by securing super majority consent (over 75% of investment value) before

extending the Scheme's tenure. In support of their contention, Noticees placed reliance on the observations of the Hon'ble SAT in the matter of *Terrascope Ventures Limited v. SEBI* ("Terrascope") that once utilisation of proceeds has been ratified by shareholders, acts done by a company become valid and authorised. In this regard, it is noted the matter of Terrascope pertained to ratification of variance in utilisation of preferential issue proceeds by shareholders, however, the instant matter is related to failure of winding up of the Scheme upon expiry of its tenure and extension of tenure of the Scheme beyond the terms specified in the PPM by securing super majority consent of investors, which is in non-compliance to the provisions of VCF Regulations. Thus, facts and issues involved in the matter of Terrascope are therefore clearly distinguishable from those in the instant proceedings. The obligation to wind up the Scheme upon completion of its tenure is regulatory in character and cannot be waived, validated or cured through investor consent or ratification, since regulatory mandates cannot be overridden by the investors consent. The contravention occurred upon failure to wind up the Scheme within the prescribed timeline and delayed winding up of the Scheme does not efface the breach. Accordingly, the ratio laid down in Terrascope is inapplicable to the facts of the present case and does not afford any relief to the Noticees.

22. Further, Noticees argued that regulation 23(1)(a) of the VCF Regulations is merely directory not mandatory in nature. Therefore, being a directory provision, as regards consequence for contravention of the provision, penalty is not an inexorable outcome. Noticees also contended that being timeline-based provision, which timeline is adopted from the PPM rather than a timeline stipulated by law, the regulation assumes a directory nature as opposed to a mandatory one. In support of their contentions, Noticees relied on the observations of the Hon'ble Supreme Court in the matter of *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* and *Salem Advocate Bar Association, Tamil Nadu v. Union of India Salem Advocate Bar Assn. (II) v. Union of India*. In this regard, it is noted that the reliance placed by the Noticees on said observations is irrelevant as those decisions pertain to the insolvency resolution and efficiency of the judicial process. In the matter of Salem Advocate Bar Association, it was held that *"The use of the word 'shall' is*

ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. …….. the mandatory or directory nature of Order VIII Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. …….. In Raza Buland Sugar Co. Ltd., Rampur v. The Municipal Board, Rampur [AIR 1965 SC 895], a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."

23. In view thereof, it is noted that regulation 23(1)(a) of the VCF Regulations clearly mandates that *a scheme of a venture capital fund set up as a trust shall be wound up when the period of the scheme, if any, mentioned in the placement memorandum is over.* The language, object and intent of the regulatory framework make it clear that the requirement to wind up the Scheme upon expiry of its stipulated tenure is a mandatory obligation intended to ensure market discipline and the timely return of capital to the investors. The use of imperative language in the provision, coupled with the absence of any express discretion permitting any extension beyond the prescribed timelines, indicates a clear legislative intent to impose strict compliance. Treating the provision as merely directory would defeat the regulatory purpose and permit circumvention of regulatory safeguards through investors approvals or delayed actions, thereby undermining the discipline and regulation sought to be achieved through the VCF Regulations. Further, it is noted

that the mandate to wind up the Scheme upon completion of its tenure as specified in the PPM derives its force from regulation 23(1)(a) of the VCF Regulations and not merely from the terms of PPM as contended by the Noticees. Moreover, once the PPM is filed with SEBI, the terms therein are not merely private contract but become the statutory basis upon which the Fund is permitted to operate. Thus, the obligation under regulation 23(1)(a), therefore, cannot be construed as directory or advisory in nature.

24. In this context, further reliance is placed on the order of the Hon'ble SAT in the matter of *Cinema Capital Advisory Private Limited and Ors.*[1], wherein it was observed that:

> *"11. It was contended that the word "shall" used in regulations 23 and 24 is not mandatory but is directory in as much as there could be a possibility where the proceeds or winding up was beyond the given circumstances and, therefore what is required to be seen is whether sincere efforts was made on their part in winding up the scheme and distributing the proceeds. We are of the opinion, that it is not necessary for us to go into the question as to whether the period prescribed under regulation 23 and 24 is mandatory or not nor is it necessary to go into the explanation given by the appellants as to why they could not wind up the scheme within the stipulated period for the reasons stated hereunder.*
>
> *12. Admittedly, the scheme expired on November 14, 2015. Decision to wind up the scheme was taken on March 07, 2016. As on date, more than 5 years has elapsed and admittedly the entire proceeds has not been distributed to the investors nor the scheme has been wound up. Assuming that the regulations 23 and 24 are directory in nature, nonetheless, the appellants were required to wind up the scheme and distribute the proceeds at the earliest. Five years is a long time and therefore it is clear that the appellants bonafides is doubtful."*

25. Similarly, in the instant matter, the delay in exit from the investment in four companies was in the range of one year and nine months to four years and nine months even after completion of the extended tenure of the Scheme, which resulted in delay in winding up of the Scheme of the Fund in mandated timelines

[1] Appeal No. 437 of 2019, Date of Decision: September 14, 2021

as per the PPM read with regulation 23(1)(a) of the VCF Regulations. Therefore, the contention of the Noticees is devoid of merit and stands rejected.

26. Further, Noticees submitted that the deadline contained in the provision is itself adopted from a contract- whatever be the tenure in the VCF's placement memorandum. They stated that the contracts are capable of amendment/novation by mutual consent of the parties. If the parties to a contract amend the term, without any further act or deed, the deadline referred to in regulation 23 too would stand extended. Noticees contended that the investors had consented to extend the tenure of the Fund, therefore, the very contract from which the provision derives the deadline has amended the deadline and thus, the requirement under regulation 23(1)(a) of the VCF Regulations stood changed. In this regard, it is noted that while parties to a contract may, amend or novate contractual terms *inter se*, such contractual autonomy operates subject to, and cannot override or circumvent, regulatory mandates. The tenure specified in the PPM acquires regulatory significance once it is incorporated into a scheme governed by the applicable regulatory framework and compliance with the corresponding regulatory obligations becomes mandatory. The deadline specified in regulation 23(1)(a) of the VCF Regulations is not a mere contractual stipulation but a regulatory obligation intended to ensure certainty, discipline and investor protection within the fund framework. Consequently, any extension of the tenure of the Scheme by investors approval, cannot, by itself, modify or override the applicable regulatory provisions. Acceptance of such an argument would allow investors approvals/ ratifications to dilute mandatory regulatory mandates, which is impermissible. Further, it is already held hereinabove that the mandate to wind up the Scheme upon completion of its tenure as specified in the PPM derives its force from regulation 23(1)(a) of the VCF Regulations and not merely from the terms of PPM. Therefore, the above contentions of the Noticees are misplaced and untenable.

27. Noticees further submitted that the delay in winding up the Scheme was caused by circumstances beyond their control, making strict compliance with the timelines envisaged under the PPM impossible, thus, the principles of *lex non cogit ad impossibilia* and *impotentia excusat legem* is applicable in the present matter. In

this regard, it is noted that Noticees submitted that Net Avenue Technologies Limited was listed on the SME platform of the NSE, viz., NSE Emerge in early December 2023 and the shares of the company held by the Fund were put under lock-in category and they were awaiting the un-locking of holdings by NSDL to initiate liquidation of the shares. However, it is noted that the Scheme of the Fund was mandated to be wound up by November 04, 2019 as per terms of the PPM and provisions of VCF Regulations. The roadblocks cited by the Noticees that lock-in of holdings of the Funds in Net Avenue Technologies in December 2023 occurred more than four years after the original deadline had already lapsed. Thus, the Noticees are attempting to apply an impossibility that arose in 2023 to a breach that was already committed in 2019. Had the Noticees initiated and completed the winding up process within the prescribed period, the subsequent lock-in issue would never have become a factor. The subsequent impossibility is, therefore, a result of the Noticees' own prior default. Further, with respect to investment in Attero Recycling Private Limited, Noticees submitted that they got the company to start the process of dematerialization, however, CDSL was designated depository of the company, which resulted in further procedural roadblocks for the Noticees to complete the liquidation process. In this regard, it is observed that Noticees have not mentioned any date when the said event transpired, however, it is noted from the records that no such roadblock was stated during the examination, which indicate that there was no impossibility in liquidation of the said investment in Attero Recycling Private Limited till 2023. Noticees were required to liquidate the said investment by November 04, 2019, when no such purported impossibility was there, which they failed to do. Further, with respect to investments in remaining two companies, namely, Drishtisoft Solutions and Captronic Systems, Noticees have not made any specific submission, which indicates that they have nothing to submit in this regard and the allegation levelled against Noticees is accepted by them. Moreover, it is pertinent to note that the option of in specie distribution was always open to the Noticees. Therefore, the delay in winding up the Scheme was not caused by any impossibility at the relevant time, hence, the contentions of the Noticees are devoid of any merit.

28. Further, Noticees submitted that the extension of the Scheme's tenure was necessitated by procedural bottlenecks with depositories and, most critically, the unprecedented disruptions caused by the Covid-19 pandemic, which severely impacted operational timelines across the financial sector. In this regard, it is noted that Noticees cannot make Covid-19 pandemic as an excuse for the delay in exit from the investments in four companies in the range of one year and nine months to four years and nine months and their failure to wind up the Scheme in mandated timelines as per regulation 23(1)(a) of the VCF Regulations. Further, it is also noted that there was no Covid-19 pandemic when Noticees were liable to wind up the Scheme in November 2019, therefore, the pandemic occurring in 2020 cannot be retroactively applied to excuse a breach that had already occurred in November 2019. Accordingly, the said submissions of the Noticees are untenable.

29. It was also submitted by Noticees that SEBI had introduced the VCF Settlement Scheme, 2025 to provide an opportunity VCFs to settle actions where liquidation period had expired, but not wound up. Further, during the personal hearing, it was pointed out that had the scheme not wound up, the Noticees could have availed the benefit of the said settlement scheme. In this regard, it is noted that if Noticee 1 was eligible to avail the said settlement scheme, it would have still paid at least Rs. 7,00,000/- as per VCF Settlement Scheme's framework to settle the matter.

30. Noticee-3 further contended that it lacks the unilateral power to force the liquidation of assets, therefore, it acted entirely within its defined role, which is the oversight rather than executive control over the Fund's divestment strategy. Noticee-3 also contended that the powers and duties of the Trustee are limited solely to the Fund Documents and comprehensive reading of the same amply clarifies that the Trustee has absolutely no influence on the day-to-day commercial decisions and/or management of the Fund or the investments made by the Fund Manager. In this regard, it is noted that regulation 23(1)(b) of VCF Regulations stipulates that *'a scheme of a venture capital fund set up as a trust shall be wound up, if it is the opinion of the trustees or the trustee company, as the case may be, that the scheme shall be wound up in the interests of investors in the units;'* and regulation 23(3) of VCF Regulations stipulates that *'the trustees or trustee company of the*

venture capital fund set up as a trust or the Board of Directors in the case of the venture capital fund is set up as a company (including body corporate) shall intimate the Board and investors of the circumstances leading to the winding up of the Fund or Scheme under sub-regulation (1)'. It is also noted that in a VCF structured as a trust, the Trustee serves as the fiduciary guardian of the unit-holders' interests and it is responsible for ensuring that all fund activities of Fund remain in compliance with the VCF Regulations. However, in the instant matter, Noticee-3 by failing to intimate the Fund to initiate winding up of the Scheme when its tenure ended in November 2019, effectively neutralized a key safeguard intended to prevent the prohibited extension of the Scheme. Thus, it not the case of undertaking the executive control over the Fund's divestment strategy or influencing the day-to-day commercial decisions of the Fund as contended by Noticee-3, however, Noticee-3 failed to advise to the Fund to initiate winding up of the Scheme when its tenure ended in November 2019. Therefore, the above contentions of the Noticees are untenable.

31. Noticee-3 further submitted that on April 27, 2023, it wrote to the Investment Manager highlighting the regulatory obligation to wind up the Scheme and sought information on actions taken/proposed to be taken in that regard. Further, on May 05, 2023 and August 28, 2023, the Noticee informed SEBI that it had directed the Investment Manager to wind up the Fund and to provide updates on winding up, and it was actively engaged with the Investment Manager. In this regard, it is noted that Noticee-3 has admitted that it advised to the Fund to initiate winding up in April, 2023 only. However, Noticee-3 failed to intimate the Fund to initiate winding up of the scheme when its tenure, as per terms of the PPM, ended on November 04, 2019. There was a delay of more than three years in said intimation and it came only after SEBI received an email dated January 27, 2023 from Noticee-1 regarding extension of term of the Scheme.

32. With regard to Noticee-3, it is noted that an Adjudication Order dated March 22, 2019 in the matter of CIG Realty Fund was passed in respect of Vistra ITCL (India) Ltd. (IL & FS Trust Company Ltd.) (Noticee-3), wherein the following was observed:

"It is admitted position that the Noticee did not remain as Trustee of the Fund when the period of Scheme -2 was extended for three years after September 27, 2016 and the charge against the Noticee is only with regard to 3rd extension of Scheme-1. The Noticee has demonstrated on the basis of correspondence between it and the Investment Manager UAIPL via email/letter that it never keen on allowing the said extension of period of Scheme-1. The documents produced by the Noticee also show that it had questioned the proposal of such extension. Thereafter, the Noticee had stepped down as the Trustee of the Fund on March 02, 2016. Considering these facts and circumstances, I am of the view that the Noticee is not liable for imposition of monetary penalty in this case. The SCN dated November 30, 2018 in respect of the Noticee viz; Vistra ITCL (India) Ltd. (IL & FS Trust Company Ltd.) is disposed of accordingly."

33. It is also noted that the issue in aforesaid matter was similar to the instant matter, wherein Noticee-3 had demonstrated that it was never keen on allowing the extension of period of scheme-1 in that matter and it had questioned the proposal of such extension beyond the term specified in the PPM, thereafter, Noticee-3 had stepped down as the Trustee of the fund in the matter of CIG Realty Fund. I note that the said order was passed in March 2019, hence during the relevant time of obtaining the third extension of the Scheme in the present matter in 2019, Noticee-3 was well aware of the VCF Regulations and its role and responsibilities. Despite its prior experience and clear understanding of its role, Noticee-3 failed to take adequate measures in the instant case and deviated from its fiduciary duties and responsibilities. Its failure to intimate the Fund to initiate winding up of the Scheme in November 2019 or to even formally dissent, signifies a wilful deviation from its fiduciary role. Therefore, Noticee-3's plea of bona fide intent is untenable.

34. In view of the above findings, I hold that Noticees violated the provisions of regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations.

Issue III. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act read with regulation 39 of the AIF Regulations?

35. In light of the findings and observations brought out against the Noticees in the foregoing paragraphs, it is evident that Noticees violated the provisions of

regulation 23(1)(a) read with regulation 23(3) and 24(2) read with regulation 23(3) and 23(1)(a) of VCF Regulations.

36. With regard to levy of monetary penalty, Noticees submitted that the violations are at best merely technical, un-intentional and venial in nature which do not merit imposition of penalty, the default did not result in any undue harm to investors or gain to the Noticees and the object of examination is remedial and not punitive, hence, no penalty should be imposed on them. In this regard, Noticees relied on the observations of the Hon'ble Supreme Court in the case of *Hindustan Steel v. State of Orissa*[2], observations of the Hon'ble SAT in the matter of *UPSE Securities Limited v. SEBI*[3], *Religare Securities Limited v. SEBI*[4], *IDBI Trusteeship Services Limited v. SEBI*[5], *Doogar and Associates v. SEBI*[6], *P.G. Electroplast Limited v. SEBI*[7] and observations in WTM's Order dated February 02, 2017 in the matter of acquisition of shares of *Refex Refrigerants Limited*.

37. I find that the allegation of violations established in the cases relied upon by Noticees are materially different from the violations that have been established in the present case. Further, the facts and circumstances of the said cases differ from the instant matter and Noticees have also failed to demonstrate that how the aforesaid cases will be applicable in the instant proceedings. I shall now proceed to deal with the aforesaid cases in the following paragraphs.

38. In the matter of *Hindustan Steel v. State of Orissa*, it was held by the Hon'ble Supreme Court that "*Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."* I note that the position has since been clarified by the

[2] 1969 (2) SCC 627
[3] Appeal No. 109 of 2011, decided on July 25, 2011
[4] Appeal No. 23 of 2011, decided on June 16, 2011
[5] Appeal No. 186 of 2023, decided on February 22, 2023
[6] Appeal No. 20 of 2002
[7] Appeal No. 281 of 2017

Hon'ble Supreme Court in its order dated May 23, 2006 in the case of *Chairman SEBI v. Shriram Mutual Fund and Anr. 68 SC 216 (SC),* wherein it was held that decision in case of Hindustan Steel Ltd. pertained to criminal/quasi criminal proceedings and it would not apply to imposition of civil liabilities under SEBI Act and regulations made thereunder.

39. Further, I note that the Hon'ble SAT in the matter of *UPSE Securities Limited* observed that for serious lapses, it would always be open to SEBI to take penal action in accordance with law. In the matter of *Religare Securities Limited*, the Hon'ble SAT dealt with procedural lapses identified during an inspection of the intermediary's broking and depository operations. The Hon'ble SAT noted that the inspecting team had failed to raise queries or seek clarifications during the inspection and therefore, the benefit of doubt was extended to the intermediary. In said matter, the Hon'ble SAT observed: *"This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent."* Similarly, in the matter of *IDBI Trusteeship Services Limited,* inspection findings were made regarding failure in updating the default history information and asset cover certificate, which were observed to be technical and not serious in nature by the Hon'ble SAT. I note that it is not a case where inspection found minor and technical discrepancy/irregularity, however, the lapses in the instant matter are serious and substantial in nature as observed hereinabove. Therefore, the ratio of aforesaid cases does not provide any relief to the Noticees in the instant matter.

40. Similarly, in the matter the of *Doogar and Associates*, the merchant banker filed a copy of the public announcement related to public offer with delay. However, the violations established in the present cases are materially different and grave from the violations of the relied upon matter. The Hon'ble SAT noted the merchant banker's bona fide conduct, observing that an unexpected development caused the failure to file the public announcement with SEBI two days in advance of its publication, as required. In the said case, there was an omission by the employee

where the merchant banker had acted honestly and diligently, unlike the present matter.

41. In respect of *P.G. Electroplast* case, it is noted that the matter is related to providing adequate disclosures in the draft red herring prospectus by P.G. Electroplast for public issue, where the Hon'ble SAT observed the information related to the ICD agreements were communicated to its merchant banker, the prospectus had fairly disclosed the relevant information and the detail related to agreements for purchase of land executed with other entities was mentioned in the prospectus but not at the appropriate place. Hence, the non-disclosure was observed to be a technical violation only and the maximum penalty of Rs. 1 crore each imposed upon the appellants was observed to be grossly disproportionate to the violation. However, the facts and circumstances of the case and violations established in the present cases are materially different from the observations made by the Hon'ble SAT in said matter. Accordingly, reliance placed by the Noticees on the observations of the Hon'ble SAT in case of P.G. Electroplast is untenable.

42. As regards SEBI WTM's Order dated February 02, 2017 in the matter of acquisition of shares of *Refex Refrigerants Limited,* it is noted that the allegations were pertaining to violation of provisions of SEBI Takeover Regulations, where acquisition of minuscule and negligible percentage of shares (42 shares) was involved and subsequent amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 introduced more relaxed provisions that would have permitted such an acquisition without an open offer, which mitigated the gravity of the violation. Hence, said case does not stand on the same footing as the given case of Noticees. Further, I also note that the Hon'ble Supreme Court in the matter of *Adjudicating Officer v. Bhavesh Pabari* held that section 15J are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty. Hence, the aforesaid contentions of the Noticees are not acceptable.

43. With regard to contentions of the Noticees that the non-compliance was inadvertent in nature and it did not affect the interest of the investors, not impacted the

securities market, no gain was made by the Noticees and no loss was caused to the investors, I note that the said violation by the Noticees is a substantive lapse under the VCF Regulations and further reliance is placed on the observations of the Hon'ble SAT in the matter of *Komal Nahata v. SEBI (Appeal No. 5 of 2014 dated January 27, 2014)* observed that the *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure"*.

44. I further note that in Appeal No. 78 of 2014 in the case of *Akriti Global Traders Ltd. v. SEBI*, the Hon'ble SAT vide order dated September 30, 2014 observed that the *"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".*

45. Further, reliance is placed on the judgment of Hon'ble Supreme Court dated May 23, 2006 in the matter of *SEBI v. Shriram Mutual Fund (Supra),* wherein it was, *inter alia,* observed that:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."

46. Therefore, the aforesaid violations, make the Noticees liable for penalty under section 15HB of the SEBI Act read with regulation 39 of the AIF Regulations, which read as under:

SEBI Act:

"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."*

AIF Regulations:

"Repeal and Saving.
39. *(1) The Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 hereby shall stand repealed.*
(2) Notwithstanding such repeal:

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

(b) All venture capital funds or schemes launched by such venture capital funds prior to date of notification of these regulations shall continue to be governed by provisions of Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 till the fund or Scheme is wound up:
Provided that such funds shall not launch any new Scheme after notification of these regulations;

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

(3) After the repeal of Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations."

Issue IV. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15-J of the SEBI Act read with rule 5(2) of the Rules?

47. While determining the quantum of penalty, the following factors stipulated in section 15-J of the SEBI Act are taken into account: -

"Factors to be taken into account while adjudging quantum of penalty

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

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

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

(c) the repetitive nature of the default."

48. In this case, 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 non-compliance to the provisions of VCF Regulations is not available. With respect to the repetitive nature of the default, I do not find anything on record against Noticee-1 and 2. The detail of previous defaults by the Noticee-3 are summarised in the table given below:

Table-3

Sr. No.	Case name	Provisions violated	Date of Order	Penalty/ Directions
1	Vaishno Devi Dairy Products Limited	Regulation 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as **'DT Regulations'**) and regulation 16 read with clause 19 of Code of Conduct prescribed under DT Regulations.	April 27, 2022	₹10,00,000/- (Reduced to ₹5,00,000/- by the Hon'ble SAT)
2	LRN Finance Ltd	Regulation 15(1)(i) and 16 of the DT Regulations read with the clause (1), (2), (3) and (4) of Code of Conduct given under Schedule III.	October 26, 2018	₹5,00,000/-
3	Vistaar Religare Media Fund	Regulation 23(1)(b) of VCF Regulations.	April 24, 2023	Directed not take new assignments as trustee of AIF of any category, for a period of three months.
4	Inpsection of Vistra ITCL India Limited FY 2021-22	Regulations 15(1)(r), 15(1)(s) and 16 of DT Regulations, clauses 4, 13 and 15 of Schedule III of DT Regulations and SEBI circulars.	August 29, 2024	₹12,00,000/-
5	Inspection of Vistra ITCL India Limited FY 2022-23	Regulations 13(a), 15(6), 15(1)(r) and 15(1)(s) of DT Regulations, clause 4 of Code of Conduct and SEBI circulars.	August 22, 2024	₹6,00,000/-

Sr. No.	Case name	Provisions violated	Date of Order	Penalty/ Directions
6	KellyGamma Fund	Regulation 20(1), 20(2) of AIF Regulations read with clause 3(b) of Code of Conduct as specified in the Fourth Schedule of AIF Regulations.	February 28, 2025	₹1,00,000/-
7	India Asset Growth Fund	Regulations 20(1), 20(2) of AIF Regulations read with clauses 3(a) and 3(b) of Code of Conduct of AIF Regulations.	June 20, 2025	₹6,00,000/-

49. Further, I note that the findings of the examination brought that Noticee-1 and 2 failed to wind up the Scheme upon completion of its tenure as specified in the PPM and Noticee-3 failed to intimate the Fund to initiate winding up of the Scheme when its tenure ended, thereby Noticees violated the provisions of VCF Regulations. The said violation by the Noticees attracts monetary penalty. I also note that the violation by Noticee-3 is repetitive in nature in view of the Table-3 above.

ORDER

50. Taking into account the facts and circumstances of the case, material available on record, submissions of the Noticees, findings made hereinabove and factors mentioned in section 15J of the SEBI Act, in exercise of the powers conferred upon me under section 15-I of SEBI Act read with rule 5 of the Rules, I hereby impose the following monetary penalty on the Noticees:

Noticee No.	Name of Noticee	Penalty Provisions	Amount of penalty (in ₹)
1	Forum Synergies India Trust	Section 15HB of the SEBI Act	₹10,00,000/- (Rupees ten lakh only) Noticee-1 and 2 are jointly and severally liable to pay the said penalty.
2	Forum Synergies (India) Fund Managers Private Limited		
3	Vistra ITCL (India) Limited		₹10,00,000/- (Rupees ten lakh only)

In my view, the said penalty is commensurate with the violations committed by Noticees in this case.

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, 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.

53. In terms of rule 6 of the Rules, copy of this order is sent to the Noticees and also to SEBI.

JAI SEBASTIAN

Digitally signed by JAI SEBASTIAN
Date: 2026.02.23 16:01:28 +05'30'

Place: Mumbai
Date: February 23, 2026

JAI SEBASTIAN
ADJUDICATING OFFICER