

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/ 235 - 236 /2017]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:-

SREI Multiple Asset Investment Trust (PAN: AANTS4505M)
SREI Alternative Investment Managers Limited (PAN: AAGCS5232F)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had carried out an inspection on October 15, 2015 covering the period April 01, 2014 to October 15, 2015 (hereinafter referred to as '**Inspection Period**') in order to examine various compliance requirements including the Know Your Client (KYC), due diligence norms etc. followed by the SREI Multiple Asset Investment Trust- an Alternative Investment Fund, in course of its business. Inspection *prima facie* revealed that (1) SREI Multiple Asset Investment Trust- an Alternative Investment Fund bearing SEBI Registration Number IN/AIF2/13-14/0077 (hereinafter referred to as '**SMIT / Fund / the Noticee No. 1**') and (2) SREI Alternative Investment Managers Limited – a Fund Manager / Sponsor of SMIT (hereinafter referred to as '**SAIML / Investment Manager / the Noticee No. 2**') or both are referred to as "**the Noticees**" collectively, had indulged into violations of regulation 2 (1) (b), 7 (1) (a) & 7 (1)(b), 10 (d), 15 (1) (c) of the SEBI (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as "**AIF Regulations**") and SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015, alleged to have been committed by Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and vide order dated February 09, 2017 appointed the undersigned as the Adjudicating Officer under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), the violations of aforesaid provisions of AIF Regulations and SEBI Circular, alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice No. EAO/RA/JP/8114/2017 dated April 10, 2017 (hereinafter referred to as "**SCN**") was served upon the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under section 15 HB of the SEBI Act for the alleged violations of regulation 2 (1) (b), 7 (1) (a) & 7 (1)(b), 10 (d), 15 (1) (c) of the **AIF Regulations** and SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015.
4. The irregularities as observed during the course of inspection against the Noticees (which are mentioned under the Inspection Report enclosed Annexure II along with SCN) and the allegations levelled, are mentioned hereunder.
 - (i) *The Noticee No. 1 / SMIT is registered as a Category II Alternate Investment Fund (AIF). The Fund's investment objective was to focus on the real asset sectors of the Indian economy, to target special situation companies and projects like last mile funding to complete a project which is facing paucity of funds, helping companies in correcting the liability profile which have longer payback periods compared to bank funding tenure and to deliver high yield return to investor while protecting the downside of capital through use of debt*

and quasi high yield debt instruments. The Noticee No. 2 is the Sponsor / Investment Manager of the SMIT / Fund.

- (ii) The SMIT has launched schemes viz. India Growth Opportunities Fund (IGOF) and Vision India Fund (VIF). Investment strategies adopted by SMIT for IGOF was to primarily focus in financing brownfield assets which carries a lower execution risk as compared to greenfield assets and to invest in growth opportunities that can only be harnessed if adequate capital investment is made available to the companies or SPV's at right time. Inspection revealed that IGOF was having 3 investors, details of which are as under:

Name of the investors	Category	Commitments : Before redemption (₹ in crore)	Funds raised : Before redemption (₹ in crore)	Funds : After redemption (₹ in crore)
Essar Oil Ltd.	Corporate	1195.00	1195.00	747.95
Srei infrastructure Finance Ltd.	Corporate	60.49	60.49	39.41
Srei Alternative Investment managers Ltd.	Corporate	5.00	5.00	3.13
Total		1260.49	1260.49	790.49

Allegation of Non-Compliance with the Definition / Objective of AIF:

- (iii) That SMIT-IGOF instead of making investments of the amount raised from the investors in term of AIF Regulations, has granted loans out of such amount to the entities tabulated below.

(Before June 29, 2015)

Name of the company	Amount invested: Before redemption (₹ in crore)	Amount invested as a % of total investible funds
Essar Steel Chhattisgarh Ltd.	275	21.82%
Essar Steel India Ltd.	275	21.82%
Essar Steel Jharkhand Ltd.	275	21.82%
Essar Shipping Ltd.	100	7.93%
Essar Pellets Marketing Ltd.	275	21.82%
Odisha Slurry Pipeline Infrastructure Ltd. (OSPIL)	60	4.76%
TOTAL	1260	100

(iv) The minutes of the meeting of the Investment Committee of SMIT-IGOF dated June 26, 2015 (Annexure III of SCN) revealed that the Noticee No. 2 / Investment Manager informed the Investment Committee about Fund expecting approximately ₹ 1,340 cores towards repayment of principal and interest from the aforesaid companies / borrowers (except OSPIL), on or before June 30, 2015. The Noticee No. 2 also informed that the Fund has been recently launched and is in investment mode, therefore, it is advisable to explore the possibility of reinvesting the repayment proceeds by way of granting fresh debt facilities to other companies or it may also acquire portfolio of loan assets from other companies. The details of further loans made by SMIT –IGOF are as under:

(After June 29, 2015)

Name of the company	Amount of loan: After redemption (₹ in crore)
<i>Essar Shipping Ltd.</i>	152
<i>Paradeep Steel Company Limited</i>	5
<i>Loop Mobile Holdings India Limited</i>	299
<i>Loop Telecom Limited</i>	2
<i>Essar Satvision Limited</i>	24
<i>Essar Oilfield Services India Limited</i>	90
<i>Essar Projects India Ltd.</i>	222
<i>Others</i>	2
TOTAL	796

(v) During the inspection, the Noticee No. 1 / SMIT submitted that it had used the amount contributed by the investors for the purpose of giving loans to the various companies and the details of the loans given to various companies and details of the repayments proceeds which were again given as loans to the companies, are shown in below tables:

Borrower	Tenure	Rate of interest	Fee	Amount of loan granted before redemption
<i>Essar Steel India Ltd.</i>	One year from the date of first disbursement	12.50% p.a	0.25% p.a.	₹ 275 crores
<i>Essar Pellets Marketing Ltd</i>		12.50% p.a	0.25% p.a.	₹ 275 crores
<i>Essar Steel Chhattisgarh Ltd.</i>		12.50% p.a	0.25% p.a.	₹ 275 crores
<i>Essar Steel Jharkhand Ltd.</i>		12.50% p.a	0.25% p.a.	₹ 275 crores
<i>Essar Shipping Ltd.</i>		12.50% p.a	0.25% p.a.	₹ 100 crores

Repayments Proceeds again given as loan

Borrower*	Rate of interest	Fee	Amount of loan granted after redemption
<i>Paradeep Steel Company Limited</i>	12.5%	0.5% <i>p.a</i>	4.54
<i>Loop Mobile Holdings India Limited</i>	17.5%	0.5% <i>p.a</i>	298.56
<i>Loop Telecom Limited</i>	18%	0.5% <i>p.a</i>	2.37
<i>Essar Satvision Limited</i>	12%	0.5% <i>p.a</i>	24
<i>Essar Oilfield Services India Limited</i>	16.5%	0.5% <i>p.a</i>	90
<i>Essar Shipping Limited</i>	14.5% & 16.5%	0.5% <i>p.a</i>	152
Total			794

** Acquisition of loan assets from SREI Infrastructure Finance Ltd*

(vi) *It was alleged that the Noticees had used the amount contributed by the investors for the purpose of giving loans to the various companies instead of investing the same as per definition of 'Alternative investment Fund' prescribed under regulation 2(1) (b) of AIF Regulations and therefore allegedly violated regulation 2 (1) (b) which is produced as under;*

2 (1) (b) "Alternative Investment Fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

(i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and

Allegation of Non-Compliance of Investment Conditions

(vii) *That an amount to the extent of ₹ 1,352 crores (Capital + profit) was received by IGOF on June 29, 2015 on account of repayment of loans from the borrowers; and out of the same, capital to the extent of ₹ 470 crores and profit of ₹ 35 crores was distributed to the investors and the balance amount was used to acquire loan assets from SREI Infrastructure Finance Ltd. (copy*

of letter dated January 02, 2016 of the Noticee No. 1 enclosed as Annexure-IV with SCN). The details of the loans given to various entities as on inspection date are as follows:

S. No	Name Of the company	Amount given (₹ in Crores)	Amount given (As % Of Investible Corpus)	Sector / Industry
1	Paradeep Steel Company Limited	4.54	1%	Industrial products
2	Loop Mobile Holdings India Limited	298.56	38%	Telecommunication
3	Loop Telecom Limited	2.37	0%	Telecommunication
4	Essar Satvision Limited	24	3%	Telecommunication
5	Essar Oilfield Services India Limited	90	11%	Services sector
6	Essar Shipping Limited	152	19%	Shipping and Ports
7	Essar Projects India Ltd.	222	28%	Engineering and outsourced engineering services
	TOTAL	794	100%	

(viii) It was alleged that that the Noticees at two occasions had invested in Investee Company of more than 25% of the total investible funds collected from the investors in violation of regulation 15 (1) (c) of AIF Regulations. The aforesaid provision is reproduced as under;

15 (1) Investments by all categories of Alternative Investment Funds shall be subject to the following conditions:-

(a).....

(b).....

(c) "Category 1 and II Alternative Investment Funds shall invest not more than twenty five percent of the investible funds in one Investee Company.

Allegation of Non - Compliance of Investment Committee's Decision and Failure in following Investment Strategy specified in Private Placement Memorandum

- (ix) *That the Private Placement Memorandum (PPM) of SMIT-IGOF (Annexure V of SCN) stated as- 'Investment Manager shall constitute an Investment Committee (IC), which will be responsible for making investment decisions on behalf of the fund. The decision of the IC will be final and binding upon the Investment Manager'. As per minutes of the Investment Committee (IC) meeting of SMIT-IGOF dated June 30, 2015 (Annexure VI of SCN), the IC had decided that the loan assets acquired by SMIT from Srei Infrastructure Finance Limited, would generate yield in the range of 14-16%. However, it was alleged that SMIT has given loans to Paradeep Steel Company Limited and Essar Satvision Limited at 12.5% and 12% respectively (as shown in table above) which was not in compliance with SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015.*
- (x) *Further, as per aforesaid SEBI Circular dated October 01, 2015 for guidelines on overseas investments and other issues/clarifications for AIFs/VCFs, it was stated that - it has been clarified that all managers shall carry out all the activities of the AIF in accordance with the placement memorandum circulated to all unit holders and as amended from time to time in accordance with AIF Regulations and circulars issued by SEBI". Inspection revealed that in the PPM of the SMIT-IGOF, it was stated that- "The Fund will aim to make 10 to 15 investments, ranging between ₹ 50 crores to ₹ 200 crores each, in "Portfolio Investment" and collectively, the "Portfolio Investments". However, it was alleged that SMIT has given loan of ₹ 299 crores and ₹ 222 crores to Loop Mobile Holdings India Limited and Essar Projects India Ltd respectively, which was not in accordance with the limit specified in the PPM.*
- (xi) *Hence, it was alleged that the Noticees had not acted in accordance with the decisions of the IC and also not followed the investment strategy as specified in the PPM in respect of amount of portfolio investment and thus, violated the guidelines prescribed in SEBI Circular dated October 01, 2015.*

Allegation of Failure in Keeping Continuing Interest by Sponsor / Manager

(xii) *As per regulation 10(d) of AIF Regulations, “the Manager or Sponsor shall have a continuing interest in the Alternative Investment Fund of not less than two and half percent of the corpus or five crore rupees, whichever is lower, in the form of investment in the Alternative Investment Fund and such interest shall not be through the waiver of management fees.” Inspection revealed that the Sponsor’s / Noticee No. 2 initial contribution i.e. before June 29, 2015 was ₹ 5 crores in SMIT-IGOF, however, after June 30, 2015, it was reduced to ₹ 3.13 crore (as the amount of ₹ 1.87 crores was distributed to the Sponsor as repayment of capital). It was alleged that since the amount of funds raised by IGOF was ₹ 790 crores, hence, the amount of fund contributed by the Sponsor should have been at least ₹ 5 crores, however, the Noticee(s) had failed in maintaining specified continuing interest and therefore, allegedly had violated regulation 10(d) of AIF Regulations.*

(xiii) *It was stated in SCN that the aforesaid alleged violations (viz. regulation 2 (1) (b), 7 (1) (a) & 7 (1) (b), 10 (d), 15 (1) (c) of the AIF Regulations and SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015), if established, would make the Noticees liable for monetary penalty under section 15 HB of the SEBI Act.*

5. In respect of SCN, the Noticee No. 1 had filed reply dated April 24, 2017 and also sought an opportunity of hearing in the matter. However, no reply was received from the Noticee No. 2 despite lapse of sufficient time. Therefore, vide a common notice dated September 06, 2017, the Noticee(s) were provided an opportunity of hearing on October 03, 2017 and the Noticee No. 2 was advised to file reply, if any, on or before September 20, 2017.

6. A reply dated September 18, 2017 was received from the Noticee No. 2 which was similar as of Noticee No. 1. Hearing on October 03, 2017 was attended by the authorized representatives (**ARs**) of the Noticees and they reiterated as stated in aforesaid replies. During the course of hearing, the ARs were asked whether they would like to produce any evidence in support of their submissions as made in their replies dated April 24, 2017 and dated September 18, 2017 as no evidence is produced during hearing and along with their aforesaid replies. In response, the ARs had stated that they would produce the evidences, if any, along with additional reply/submission within 10 days. Thereafter, additional reply dated October 10, 2017 was received from the Noticees along with Annexures.
7. The core submissions made by the Noticees towards the SCN through their aforesaid reply / additional reply and during course of hearing, are mentioned below;

Submissions of the Noticees

i. As per common finance parlance investment is -" a monetary asset purchased with the idea that the asset will provide income in the future or appreciate and be sold at a higher price." Hence when the Fund is granting a Loan or buying a rupee term facility, a Loan asset is created in the books of the Fund which provides income in the future and falls under the ambit of investment.

ii. SMIT is registered with SEBI as a Category II - Alternative Investment Fund and as per the AIF regulation clause 4 (b) Category II - AIF is defined as follows:

Category II Alternative Investment Fund means Fund which does not fall in Category I and III and which does not undertake leverage or borrowing other than to meet day-to-day operational requirements and as permitted in these regulations;

Explanation - For the purpose of this clause, Alternative Investment Funds such as private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other Regulator shall be included.

iii. Hence the Category II - AIF can be a debt fund and debt Fund has been defined under the Clause 2 (1) (i) of AIF Regulation as follows;

"debt fund means an Alternative Investment Fund which invests primarily in debt or debt securities of listed or unlisted investee companies according to the stated objectives of the Fund."

iv. Moreover, Page 7 of the of The Private Placement Memorandum (PPM) under the section Investment strategy of India Growth Opportunities Fund filed with SEBI for its scheme states that-

*"The Fund shall allow investors to participate in the growth plans of companies undertaking major expansion, modernization including mergers and acquisitions opportunities by financing/investing in the form of bridge/interim financing, equity, quasi-equity, mezzanine capital, **loans**, securitization of loans /receivables etc.*

v. The PPM clearly states that the investment can be in the form of Loans (refer Annexure V of SCN) at page 7 -8 point no. 4.

vi. At the time of filing of PPM and also during the various rounds of discussion we had with SEBI officials for obtaining the registration of SMIT, nowhere it was communicated to us that the investment cannot be in the form of Loans. Further the definition of 'Debt' as per common industry parlance itself means Loan, bonds, Commercial paper, and Mortgages etc. and further Debts can be in the form of secured debt or unsecured debt etc. Hence, we believe that SMIT has not violated the AIF regulation by making investment in Loans.

vii. Regulation 15 (1) (c) of AIF states Category I and II Alternative Investment Funds shall invest not more than twenty five percent of the corpus in one Investee Company;

As per AIF Regulation 2 (1) (h) corpus is defined as "Corpus means the total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any such document as on a particular date".

viii. The Fund IGOF has invested ₹ 299 crores and ₹ 222 crores in two different entities on 29th June 2015. The Corpus committed by Investors as on 29th June 2015 by way of a written contract on a particular date was ₹1260 crores. Hence as per the committed corpus on 29th June 2015, the maximum investment the Fund IGOF can make in a single entity is ₹ 315 crores. The Fund IGOF has not made any investment exceeding ₹ 315 crores or 25% of the committed corpus on 29th June 2015. It was only on 9th July 2015 that the Fund made distribution of capital and Profit

amounting to ₹ 470 crore and ₹ 35 crore respectively that the 25% investment limit was breached.

ix. That as and when distributions are made to the contributors such limits are likely to get breached and for an ongoing investment fund it is very difficult for the fund to proportionately exit from all the investment at once and be able to maintain the 25% investment Limit. We believe that the 25% investment limit was not breached at the time of making fresh investment. Hence, we do not foresee any violation of Clause 15 (1) (c) of AIF Regulation.

x. We wish to provide the SEBI quarterly Return for June 2015 and September 2015 filed by SMIT (Annexure B) as evidence which states that the committed corpus of the fund as on 30 June 2015 is ₹ 1260 Crores, when the investment of ₹ 299 crores and ₹ 222 crores in 2 of the entities were made and accordingly the all the investments of SMIT is within the 25% limit of ₹ 315 Crs. Further, the quarterly Return for June 2015 and September 2015 filed by SMIT clearly shows that the redemptions from IGOF was made in quarter ended September 2015 and it was only after this redemption that the 25% investment limit was breached.

xi. In para 3, page 7 of the PPM under the heading Investment Strategy, it was stated that - "The Fund will aim to make 10 to 15 investments, ranging between ₹ 50 crores to ₹ 200 crores each, in "Portfolio Investment" and collectively, the "Portfolio Investments". We would like to highlight that the investment limit to ₹ 200 crore is only indicative and even the statement made by the Fund says that it only aims to make investment in the range of ₹ 50-200 crores, therefore we believe that any investment below 50 crore and above 200 crore is not in violation of investment strategy of the Fund or even provisions of SEBI Circular dated October 01, 2015.

xii. We want to highlight that the interest rate in loan assets of two companies may be less than the range of 14-16% as decided by the IC, however the overall return of the portfolio of loan asset is higher than 14% which was as approved by the Investment Committee (IC). The IC minutes nowhere states individual interest rate of 14% to 16%, but, it states that the loan investments are likely to generate yield in the range of 14 to 16%. Therefore, the Fund did not violate the decision of its IC.

xiii. The Investment Manager or Sponsor contributed ₹ 5 Crores in IGOF, but it was reduced to ₹ 3.13 crore as the amount to the extent of ₹ 1.87 crore was the Investment Manager cum Sponsor share of redemption and the same was distributed to them pursuant to redemption made by the Fund. The same condition as laid down in regulation 10 (d) of the AIF Regulations was maintained by the Investment manager / Sponsor till it received redemption from the Fund directly.

iv. Moreover the Distribution Clause of PPM states that-

"Any distribution by the Fund amongst the Contributors shall be made pro rata to their individual Capital Contribution to the Scheme of the Fund. Hence, as the Sponsor is also one of the contributors, they have the right to income and capital distribution at the time of redemption". Hence, SMIT has not violated clause 10(d) of AIF Regulations. We seek clarity on the Regulation as how the sponsor shall maintain continuing interest of 2.5% of the corpus or ₹ 5 crores whichever is lower even at the time when the Fund is making proportionate distribution of capital and income as the sponsor is also one of the contributor and they have the right to income and capital distribution at the time of redemption.

xv. The loans given directly to companies by IGOF in March 2014 and August 2014 has been repaid by all the borrowers on June 29, 2015 and as on date we have not granted direct loan to any entity. The debt outstanding is by way of acquisition of loan assets by IGOF which were under stress and not by way of grant of direct loan. Also, as per the investment strategy of the fund, acquiring stress assets is one of the prime investment objectives of the fund. Further as on date, there is no debt that is outstanding in SMIT which has been granted by way of Loan facility and whatever debt is in the books of SMIT are only by way of acquisition of stressed assets from other lenders. Hence there is no violation of the provisions of AIF Regulations.

xvi. We wish to provide evidence of list of investors and their investment amount (Annexure D) which highlights that the investment of the Investment Manager was ₹ 5 Crores in IGOF as on June 30, 2015 and only after redemption on July 09, 2015 the contribution of the investment manager was reduced to ₹ 3.13 Crores.

8. After taking into account the allegations, submissions of the Noticees and evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case / SCN are :

- a) Whether the Noticees had used the amount contributed by the investors for the purpose of giving loans to the various companies instead of investing the same as per definition of 'Alternative investment Fund' prescribed under regulation 2(1) (b) of AIF Regulations?
- b) Whether the Noticees had invested in Investee Company of more than 25% of the total investible funds collected from the investors in violation of regulation 15 (1) (c) of AIF Regulations?
- c) Whether the Noticees had not acted in accordance with the decisions of the IC and also not followed the investment strategy as specified in the PPM in respect of amount of portfolio investment? If yes, then whether the same is in violation of SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015?
- d) Whether the Noticee(s) / Sponsor or Manager had failed to maintain specified continuing interest as per regulation 10(d) of AIF Regulations?
- e) Whether the aforesaid violations/failure, if any, on the part of the Noticees, would attract monetary penalty under section 15 HB of the SEBI Act?
- f) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

ISSUE

Whether the Noticees had used the amount contributed by the investors for the purpose of giving loans to the various companies instead of investing the same as per definition of 'Alternative investment Fund' prescribed under regulation 2(1) (b) of AIF Regulations?

10. To examine the aforesaid issue / allegation, I have taken into account the following definition under AIF Regulations which are material to the issue involved.

Reg. 2 (1) (b) "Alternative Investment Fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

(i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors;

11. From the aforesaid definition of regulation 2(1) (b), it is noted that Fund can make investment in accordance with "Defined Investment Policy". The requirement of defined investment policy or 'investment strategy' has been mentioned in regulation 9(1) of AIF Regulations as under:

*"9(1) All Alternative Investment Funds shall state **investment strategy, investment purpose and its investment methodology** in its placement memorandum to the investors.*

(2) Any material alteration to the fund strategy shall be made with the consent of atleast two-thirds of unit holders by value of their investment in the Alternative Investment Fund."

12. I have also noted that as per eligibility criteria for Fund while seeking registration from SEBI, the requirement of 'objective' / 'corpus' etc. has been indicated under regulation 4 (1) of the AIF Regulations which is as under;

"4. For the purpose of the grant of certificate to an applicant, the Board shall consider the following conditions for eligibility, namely,-

*(i) the applicant has clearly described at the time of registration the **investment objective, the targeted investors, proposed corpus, investment style or strategy and proposed tenure of the fund or scheme;**"*

13. From the aforesaid definitions under AIF Regulations, it is noted that for making any investment, the Fund has to define *inter- alia* its Investment Policy / investment strategy even at the beginning of registration itself. Therefore, the question whether the investment made by the Noticees was within the definition of AIF Regulations or not, would depend upon the PPM of Noticee(s) specifying the investment policy/strategy etc.

14. I have noted that the Noticees had made PPM for the India Growth Opportunities Fund - a scheme of Noticee No.1 (which is annexed as Annexure – 5 of the SCN) and in said PPM at page 6 to 8, the Investment Strategy has been defined which *inter –alia* includes investment by way of finance / loan etc. The relevant portion of said PPM is produced as under:

“The Fund shall allow investors to participate in the growth plans of companies undertaking major expansion, modernization including mergers and acquisitions opportunities by financing/investing in the form of bridge/interim financing, equity, quasi-equity, mezzanine capital, loans, securitization of loans/ receivables etc.”

15. From the above, it is clear that the PPM had specifically covered the investment in the form of finance/loan to various kinds of companies. From the said PPM, it is established that the amount contributed by the investors have been used for the purpose of giving loan to the various companies in accordance with its PPM and not against the definition of regulation 2(1) (b) of the AIF Regulations. I have also noted that inspection does not reveals that the said PPM was not for the benefit of investors.

16. Therefore, the violation of regulation 2(1)(b) of the AIF Regulations does not stand established against the Noticees.

ISSUE

Whether the Noticees had invested in Investee Company more than 25% of the total investible funds collected from the investors in violation of regulation 15 (1) (c) of AIF Regulations?

17. I have noted that regulation 15 (1)(c) stipulates that Category 1 and II Alternative Investment Funds shall invest not more than 25% of the investible funds in one Investee Company. I have perused Annexure IV of the SCN (letter dated January 02, 2016 of Noticee No.1) at the heading "Investment Details" and observed that an amount of ₹ 299 crores was invested in Loop Mobile Holding India Limited which is 35% of total Investible Corpus. Further, it is also noted that an amount of ₹ 222 crores was invested in Essar Projects India Limited which is 26% of total Investible Corpus.
18. The Noticees contended that as per the committed corpus on 29th June 2015, the maximum investment that the Fund IGOF could make in a single entity was ₹ 315 crores and it had not made any investment exceeding said amount or 25% of the committed corpus on 29th June 2015. The Noticees also contended that it was only on 9th July 2015 that the Fund made distribution of capital and profit (amounting to ₹ 470 crores and ₹ 35 crores respectively) when 25% investment limit was breached. In support, Noticee had provided Annexure – B along with additional reply dated October 10, 2017.
19. The said contention of the Noticee cannot be accepted in view of aforesaid Annexure IV of the SCN wherein making investment of more than 25% limit has been clearly admitted by the Noticees. Moreover, it is also admitted by the Noticee that on 9th July 2015, the 25% investment limit was breached. Hence, the aforesaid annexure – B as relied by the Noticees cannot support them.
20. The Noticee also contended that when distributions are made to the contributors such limits are likely to get breached and for an ongoing investment Fund, it is very difficult to proportionately exit from all the investment at once and to maintain the 25% investment limit. In my opinion, the aforesaid contention portraying practical complexity cannot override the statutory requirement so specified especially taking into

account the protection of investor's interest into such Fund and Noticees are duty bound to comply the same.

21. From the above, it is established that the investment of more than 25% of the Investible fund in a single Investee Company at two instances was made by the Noticee(s) and accordingly they had violated regulation 15 (1)(c) of AIF Regulations.

ISSUE

Whether the Noticees had not acted in accordance with the decisions of the IC and also not followed the investment strategy as specified in the PPM in respect of amount of portfolio investment? If yes, then whether the same is in violation of SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015?

22. It is noted from the Annexure V (viz. PPM of SMIT-IGOF) wherein it was stated that Investment Manager shall constitute an Investment Committee (IC), which will be responsible for making investment decisions on behalf of the fund and the decision of the IC will be final and binding upon the Investment Manager. Also, it is noted from minutes of the Investment Committee meeting of SMIT-IGOF dated June 30, 2015 (Annexure VI of SCN) wherein it was decided that the loan assets acquired by SMIT from Srei Infrastructure Finance Limited, would generate yield in the range of 14-16%. However, it is observed from the records that SMIT / Noticees had given loans to Paradeep Steel Company Limited and Essar Satvision Limited at 12.5% and 12% respectively. Such details are also shown in table at para 3 (vi) of the SCN.

23. In respect to the allegation, the Noticees contended that though the interest rate in loan assets of said two Companies is less than 14-16%, however, the overall return of the portfolio of loan asset is higher than 14%.

Noticees also contended that IC minutes nowhere states about individual loan asset interest rate of 14% to 16%.

24. The above contentions are not accepted as in said minutes, the range of 14-16% was indicated to the all specific Investee Companies along with corresponding proposed amount. It is noted from records that for other companies the rate of interest was within the range of 14.5% to 18%, whereas for the said two companies (viz. Paradeep Steel Company Limited and Essar Satvision Limited) the rate of interest was only at 12.5% and 12% respectively. Also, I cannot ignore that said IC minutes does not specifically states that the yield range of 14% -16% is meant for overall companies as contended.

25. Further, I have noted that SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015 *inter-alia* prescribe at para 2 (C) that ;

(b) All managers shall:

(i) organize, operate and manage the AIF and its schemes in the interest of unitholders of the AIF/Scheme

ii. “carry out all the activities of the AIF in accordance with the placement memorandum circulated to all unit holders and the amended from time to time in accordance with AIF Regulations and circulars issued by SEBI.

(iii) Ensure that the placement memorandum is provided to the investors prior to providing commitment or making the investment in the AIF and ensure that an appropriate acknowledgement is received from the investor for such receipt.

(c) The AIF, manager, trustee and sponsor shall:

i. act in the interest of unit holders of the AIF/scheme and not take any action which is prejudicial to the interest of the unitholders and not place the interest of the sponsor/manager/trustee of the AIF or any of their associates above the interest of the unitholders of the scheme/AIF.

ii. Maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment”.

26. I have noted that as per aforesaid SEBI Circular, the Noticees are required to carry out all the activities of the AIF in accordance with the placement

memorandum circulated to all unit holders and to adopt due diligence in course of their activities/business. Needless to say that such stipulations under aforesaid SEBI Circular are meant for the protection of investor's interest and any deviation from the same may result adversely to the investor's interest.

27. In view of the foregoing, it is established that the investment made by the Noticees in said two companies (viz. Paradeep Steel Company Limited and Essar Satvision Limited) was not in accordance with the decision/approval of Investment Committee and therefore, the Noticees had failed to comply with SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015.

28. Further, as per aforesaid SEBI Circular dated October 01, 2015 in respect of guidelines on overseas investments and other issues/clarifications for AIFs/VCFs, it has been clarified that all managers shall carry out all the activities of the AIF in accordance with the placement memorandum circulated to all unit holders and as amended from time to time in accordance with AIF Regulations and circulars issued by SEBI. It was alleged that PPM of the SMIT-IGOF stated that the Fund will aim to make 10 to 15 investments ranging between ₹ 50 crores to ₹ 200 crores each, in Portfolio Investment and collectively the Portfolio Investments, however, SMIT/Noticees has given loan of ₹ 299 crores and ₹ 222 crores to Loop Mobile Holdings India Limited and Essar Projects India Ltd respectively, against the said limit specified in the PPM.

29. In respect to aforesaid allegation, it is contended by the Noticees that investment limit to ₹ 200 crore is only indicative and the statement made by the Fund says that it only aims to make investment in the range of ₹ 50-200 crores, therefore, they believed that any investment below ₹ 50 crore and above ₹ 200 crore, is not in violation of investment strategy of the Fund.

30. The aforesaid contention of the Noticee cannot be accepted as specific range of investment between (₹ 50 crores to ₹ 200 crores) has been clearly mentioned at page 7 of PPM and therefore, it is not merely an indicative figure, but, it is an investment strategy which has been specified. Needless to say that such PPM has been mandated under AIF Regulations and same is required to be complied with by the Noticees without any deviation. I am of the opinion that any deviation from the specified investment strategy (that too without intimation to the investors of such change / modification) is likely to cause prejudice to the interest of investors/contributors. Notably, it is also very strange that at one hand the Noticees had specified the limit range in PPM and on other hand stating that they are not clear about the limit and 'merely believed' to go beyond the limit. Also, it goes without saying that if the plea of Noticees are accepted, then, the purpose of specifying the investment strategy including the "limit of investment" would be defeated and ultimately have adverse bearing on the interest of contributors/investors.

31. In light of aforesaid, I am of the opinion that the loan of ₹ 299 crores and ₹ 222 crores to Loop Mobile Holdings India Limited and Essar Projects India Ltd respectively was not in accordance with the limit specified in the PPM and therefore, the Noticees had failed to comply with SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015.

ISSUE

Whether the Noticee(s) / Sponsor or Manager had failed to maintain specified continuing interest as per regulation 10(d) of AIF Regulations?

32. I have noted that regulation 10(d) of AIF Regulations requires that the Manager or Sponsor shall have a continuing interest in the Alternative Investment Fund of not less than two and half percent of the corpus or five crore rupees, whichever is lower, in the form of investment.

33. It was alleged that the Sponsor's / Noticee No. 2 initial contribution i.e. before June 29, 2015 was ₹ 5 crores in SMIT-IGOF, however, after June 30, 2015, it was reduced to ₹ 3.13 crore (as the amount of ₹ 1.87 crores was distributed to the Sponsor as repayment of capital). It was alleged that since the amount of funds raised by IGOF was ₹ 790 crores, hence, the amount of Fund contributed by the Sponsor should have been at least ₹ 5 crores, however, allegedly the Noticee(s) had failed to maintain specified continuing interest as per regulation 10(d) of AIF Regulations.
34. The Noticees submitted that such condition under regulation 10 (d) was maintained by the Investment Manager / Sponsor, till it received redemption from the Fund directly. The Noticee also submitted that as per PPM any distribution by the Fund amongst the Contributors shall be made pro rata to their individual Capital Contributors to the Scheme and as the Sponsor is also one of the contributors, hence, they have the right to income and capital distribution at the time of redemption.
35. The aforesaid submissions of the Noticees bears no merit as regulation 10(d) of AIF Regulations clearly specified the requirement of continuing interest of sponsor/manager which cannot be curtailed or deviated. The plea of pro rata distribution to sponsor/contributors and being sponsor being one of the contributor have the right to income at the time of redemption, is of no relevance as the said clause in PPM deals with distribution of capital and income on pro rata basis accrued from such Fund, but, that does not mean that such pro rata contribution would mitigate the requirement of keeping of continuing interest of Sponsor/Managers in Fund as specified above.
36. It is noted from the records that Noticee No. 2 initially contributed ₹ 5 crores in SMIT-IGOF (which is in accordance with stipulated norms), however, after June 30, 2015 such mandatory interest / contribution was reduced to 3.13 crores which is not in accordance with regulation 10(d) of

AIF Regulations. Since, it established on records that the amount raised was ₹ 790 crores after June 30, 2015, therefore, the Sponsor/Manager/Noticee No. 2 was required to have its interest / contribution at least 5 crores as required under regulation 10 (d) of AIF Regulations, which infact the Noticee No. 2 had failed to keep so.

37.No proof has been provided by the Noticees to prove that the Sponsors/Managers was having continuing interest of ₹ 5 crore in the Fund after June 30, 2015. Moreover, it is seen from Annexure– D provided by the Noticees along with their additional reply dated October 10, 2017 that IGOF was having total fund of ₹ 790.49 crores as on July 09, 2015 (after redemption) and the contribution of Manager/Sponsor/Noticee No. 2 was shown as 3.13 crores only. From the above, it is clear that Noticee No. 2 was not having continuous interest of ₹ 5 crores in the Fund as stipulated under regulation 10(d) of AIF Regulations.

38.Therefore, in light of aforesaid observations, it is concluded that the Noticee No. 2 being the Investment Manager and the Noticee No. 1 being the Fund, had failed to have a minimum required continuing interest in the Alternative Investment Fund and thereby had violated regulation 10(d) of AIF Regulations.

ISSUE

Whether the aforesaid violations/failure, if any, on the part of the Noticees, would attract monetary penalty under section 15 HB of the SEBI Act? AND If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

39.As it has been established that the Noticees being Fund / Investment Manager had violated regulation 15 (1) (c), 10(d) of AIF Regulations and SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015 and

keeping in view that such indulgence is against the regulatory framework under the AIF Regulations and serious in nature, I am of the view that the aforesaid violations makes them liable for penalty under section 15 HB of the SEBI Act which read as follows:

15HB.Penalty for contravention where no separate penalty has been provided.

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 may extend to one crore rupees.

40. Besides, I have also taken into account the following the well-known judgments of Hon'ble Supreme Court of India as under;

The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held 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"*.

41. It is relevant to mention here that said case of *Shri Ram Mutual Fund (supra)* was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of *Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008* on the issue related to income tax act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation and is mandatory and the *mens- rea* is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of *Shri Ram Mutual Fund (supra)* has been analysed in the legal position and in the correct perspectives.

42. While determining the quantum of penalty under section 15 HB of the SEBI Act, it is important to consider the factors stipulated in section 15 J of the SEBI Act read with rule 5 (2) of the Adjudication Rules, which reads as under:-

Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.”

43. Inspection did not reveal any specify disproportionate gains or unfair advantage made by the Noticees or the specific loss suffered by the investors. No past action against the Noticees has been revealed under the inspection report. However, as noted above that the mandatory provisions which are focused for the protection of investors / contributors must be complied by the Noticees *in toto* and any deviation from the specified investment strategy etc. may cause serious injury to the interest of investors/contributors. In my view, investment by the Noticees in companies beyond the limit specified and against the terms of decision of the Investment Committee and not keeping continuous interest in Fund by the Noticees etc., are certainly in the nature of causing adverse impact upon the interest of investors/contributors.

44. Further, I am of the opinion that basic premise that underlines the integrity of securities market is that persons connected with such market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws. Certainly, the provisions referred in the instant case has the material bearing and the Alternative Investment Fund and its Manager are duty bound to carry their profession following all the norms for safeguard of investor's interest / integrity of securities market.

Needless to say that the object and spirit of the Alternative Investment Regulations would get defeated if the violators are not dealt as per the spirit of Alternative Investment Regulations. Therefore, a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice

ORDER

45. After taking into consideration all the aforesaid facts / circumstances of the case, in exercise of the powers conferred upon me under section 15 I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticees as shown in table below;

Name of the Noticee	Amount of Penalty	Penalty Provisions and Violations
SREI Multiple Asset Investment Trust (Noticee No.1)	₹ 10,00,000/- (Rupees Ten Lakh only) The Noticees shall be liable to pay the penalty <u>jointly and severally.</u>	Under section 15 HB of the SEBI Act for violation of regulation 15 (1) (c) of AIF Regulations.
SREI Alternative Investment Managers Limited (Noticee No. 2)	₹ 10,00,000/- (Rupees Ten Lakh only) The Noticees shall be liable to pay the penalty <u>jointly and severally.</u>	Under section 15 HB of the SEBI Act for violation of regulation 10(d) of AIF Regulations.
	₹ 10,00,000/- (Rupees Ten Lakh only) The Noticees shall be liable to pay the penalty <u>jointly and severally.</u>	Under section 15 HB of the SEBI Act for violation of SEBI Circular No. CIR/IMD/DF/7/2/015 dated October 01, 2015.

46. I am of the view that the said penalty would commensurate with the violations committed by the Noticees.

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

through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

48. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in ₹)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

49. In terms of rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticees and also to the SEBI.

Date: November 29, 2017

Place: Mumbai

**(RACHNA ANAND)
GENERAL MANAGER &
ADJUDICATING OFFICER**