

**SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER CUM SHOW CAUSE NOTICE**

**Under Sections 11(1), 11(4) and 11B(1) of the Securities and Exchange Board
of India Act, 1992**

In respect of:

Name of the Noticee	PAN No.
Embassy Office Parks Management Services Private Limited, Manager to Embassy REIT	AADCE6193J

In the matter of Embassy Office Parks Management Services Private Limited

A. Background

1. Securities and Exchange Board of India ("SEBI") had passed an Order dated January 24, 2023 (hereinafter referred as '**SEBI Order**') against Coffee Day Enterprises Limited (herein after referred as '**CDEL**'), for violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**') and SEBI (Listing Obligations and Disclosure Requirements, Regulations, 2015 (hereinafter referred as '**LODR Regulations**') after investigations revealed diversion of funds by CDEL and its seven subsidiaries to a related entity of CDEL, i.e., Mysore Amalgamated Coffee Estates Limited ("**MACEL**"), which was controlled by the father of CDEL's Chairman and promoter, Late Shri V. G. Siddhartha.
2. The SEBI Order noted that Rs. 3535 crore were transferred from CDEL's subsidiaries to its related party, MACEL, without obtaining the necessary approvals from the Board of Directors or the Audit Committee of CDEL. Other violations by CDEL under the LODR Regulations included non-disclosure of material subsidiaries leading to glaring audit omissions, failure to maintain adequate internal controls over its finance functions, and failure to carry out adequate due diligence and exercise independent judgment. This resulted in

Interim Order in the matter of Embassy Office Parks Management Services Private Limited

the misuse and diversion of CDEL's funds through its subsidiaries for the benefit of promoter group entities.

3. The SEBI Order found that the books of account of CDEL did not provide a true and fair view of the state of affairs of the company and its subsidiaries. It was further found that the fraud, misstatements and other violations by CDEL were concealed from investors till the CDEL's Chairman's confession was published. Upon revelation of the fraud, CDEL's scrip price plunged, leading to losses being suffered by investors who were invested in CDEL shares. Consequently, the SEBI Order found CDEL guilty of violating the SEBI Act, PFUTP Regulations and LODR Regulations, and issued directions to ensure recovery of the funds diverted by CDEL. The said directions were upheld by the Hon'ble Securities Appellate Tribunal vide its order dated March 3, 2023.
4. In order to appreciate the role of the statutory audit firm in the fraudulent diversion of funds by CDEL, it is useful to note that CDEL had argued before SEBI that even its auditors did not note any exception in connection with identification of material subsidiary by CDEL during the relevant period. CDEL had also argued that its statutory auditors had certified the compliances made by CDEL in respect of transactions disclosed in its consolidated financial statements. Therefore, the SEBI Order indicates that the statutory auditor had a role in facilitating the fraud executed by CDEL, which was subsequently examined in detail by the National Financial Reporting Authority ("**NFRA**"), as detailed later.
5. Pursuant to the SEBI Order in the matter of diversion of funds by CDEL, NFRA undertook a *suo motu* examination of the professional conduct of the statutory auditors of CDEL during FY 2019, under section 132 (4) of the Companies Act, 2013. The apparent role of the statutory auditor led by its Engagement Partner, Mr. Aravind Maiya, in concealing a very large fraud by a listed company drew the attention of the NFRA tasked with, *inter alia*, monitoring and enforcement of accounting and auditing standards and the

quality of professions associated with ensuring compliance with such standards.

6. NFRA's examination revealed that CDEL's statutory auditor for audit of consolidated and standalone financial statements for the FY19 failed to meet the relevant requirements of the Standards on Auditing, the Standards on Quality Control and provisions of the Companies Act, 2013.
7. The [NFRA Order](#) dated August 19, 2024 (hereinafter referred as '**NFRA Order**') found that the statutory auditor, its Engagement Partner Mr. Aravind Maiya and its Engagement Quality Control Reviewer Mr. Amit Somani demonstrated serious lapses and absence of due diligence by, *inter alia*, failing to obtain sufficient audit evidence for audit opinion and gross negligence in verifying the business rationale of unusually high amount of Rs.2226 crore of loans/advances given to MACEL, a related party of CDEL, despite the auditor considering exposure to MACEL as an important audit area for CDEL. Consolidated Financial Statements showed a pattern of diversion of funds to MACEL which had minimal business activities, but the auditor failed to evaluate recoverability and other evident fraud risks. The statutory auditor was also held to have failed to exercise professional judgement during audit of loans of Rs. 2549 crore to CDEL's related entity, despite several false account balances portraying lower receivables achieved through book entries of repayment of intra group loans through cheques received but not encashed.
8. The NFRA recognised the seriousness of the violations committed by M/s BSR & Associates LLP, CA Aravind Maiya (presently CEO of EOPMSPL) and CA Amit Somani in the discharge of their professional duties while carrying out the audit of a listed company. Vide Order No. 020/2024 dated August 19, 2024 (hereinafter referred as '**NFRA Order**'), *in the matter of* M/s BSR & Associates LLP, CA Aravind Maiya and CA Amit Somani, under section 132 (4) (c) of the Companies Act, 2013 NFRA passed the following directions:

“Based on the proceedings under section 132 (4) of the Companies Act 2013 and after giving the Auditors an opportunity to present their case in person, we found the Audit Firm and its partners, who performed the audit as EP and EQCR, guilty of professional misconduct. Thus, this Order imposes a monetary penalty of Rs ten crores upon M/s BSR & Associates LLP; Rs fifty lakhs upon CA Aravind Maiya; and Rs twenty-five lakhs upon CA Amit Somani. In addition, CA Aravind Maiya is debarred for a period of ten years and CA Amit Somani is debarred for a period of five years, from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate. This Order will be effective after 30 days from its issuance.”

9. In view of the above NFRA Order, SEBI started examination of the status of compliance of Embassy Office Parks REIT (**“Embassy REIT”**) and its Manager, i.e., Embassy Office Parks Management Services Private Limited (**“EOPMSPL”/Manager**) (hereinafter also referred to as the **“Noticee”**) with the “fit and proper person” criteria under Schedule II of the SEBI (Intermediaries) Regulations, 2008 (**“Intermediaries Regulations”**).

B. About Embassy REIT

10. Embassy REIT was registered with SEBI on August 3, 2017, as a Real Estate Investment Trust (hereinafter referred as **‘REIT’**) having Registration Number IN/REIT/17-18/0001 in terms of SEBI (Real Estate Investment Trusts) Regulations, 2014 (hereinafter referred as **‘REIT Regulations’**). Axis Trustee Services Limited (hereinafter referred as **‘ATSL’**), a SEBI registered Debenture Trustee is the Trustee of Embassy REIT. Embassy REIT is an irrevocable trust settled by its then sponsors, i.e., Embassy Group and Blackstone Group under the provisions of Indian Trusts Act, 1882.
11. Consequent to the Investment Management Agreement executed between ATSL and Embassy Office Parks Management Services Private Limited,

Manager (hereinafter referred as '**EOPMSPL/Manager**') on September 20, 2018, the Noticee was appointed as Manager to the Embassy REIT. Currently, Mr. Aravind Maiya is the Chief Executive Officer ("**CEO**") of the Noticee.

C. The Present Case

12. Pursuant to the NFRA order dated August 19, 2024, imposing a penalty and the maximum statutorily permissible period of debarment of ten years on Mr. Aravind Maiya, SEBI vide email dated August 20, 2024, directed ATSL and EOPMSPL to assess the eligibility of Mr. Aravind Maiya in terms of Schedule II of the Intermediaries Regulations in the light of the NFRA Order, take appropriate action as necessary and inform SEBI about the same. EOPMSPL and ATSL vide emails and letters made submissions in this regard.
13. Submissions were received from EOPMSPL vide e-mails dated August 21, 2024, August 25, 2024, and September 13, 2024, and letter dated October 16, 2024. Similarly, submissions were received from ATSL vide e-mails dated September 2, 2024, September 11, 2024, and September 18, 2024.
14. SEBI held a meeting with ATSL and EOPMSPL on October 7, 2024 where it was communicated to the CEO, the General Counsel and the Compliance Officer of EOPMSPL that pursuant to the NFRA Order of August 19, 2024, Mr. Aravind Maiya, did not meet the "fit and proper person" criteria for acting as CEO of EOPMSPL and that appropriate action was required to be taken by EOPMSPL.
15. Further, SEBI vide letter dated October 8, 2024, directed EOPMSPL to take appropriate action as Mr. Aravind Maiya did not meet the "fit and proper person" criteria in the Intermediaries Regulations, and inform SEBI about the same.

16. The Noticee vide email dated October 16, 2024, submitted that NFRA Order did not impact the 'fit and proper person' status of Embassy REIT, and any action against its CEO, Mr. Aravind Maiya, was not warranted by Regulations. Further, on the direction of ATSL, the Noticee also disclosed details regarding the NFRA Order and SEBI's letter dated October 8, 2024, to the stock exchanges as a disclosure of material issue.

D. Submissions by the Noticee

17. The Noticee vide emails, *inter-alia*, made the following submissions with regard to applicability of 'fit and proper person' criteria in respect of the Noticee and its CEO Mr. Aravind Maiya -

17.1. Mr. Aravind Maiya was appointed as the CEO of EOPMSPL with effect from July 1, 2023. The NFRA Order relates to professional misconduct by the audit firm and its partners that performed an audit assignment during the FY 19. The NFRA Order does not pertain to the Embassy REIT, its portfolio, the Manager or the auditors of such entities.

17.2. Mr. Aravind Maiya's last working day at the Audit Firm was May 28, 2019, as noted in the NFRA Order. Thereafter, Mr. Aravind Maiya concluded his practice as a chartered accountant and has not since performed services as an auditor or internal auditor.

17.3. The NFRA Order does not make allegations regarding integrity, honesty, reputation, ethical behaviour, fairness or character of Mr. Aravind Maiya. Also, it is not an order in a matter concerning securities law or financial markets.

17.4. The monetary penalty imposed on Mr. Aravind Maiya under the NFRA Order does not impact his current employment with Embassy REIT. Similarly, the debarment from appointment as an auditor or internal auditor or undertaking any audit services does not impact Mr. Aravind Maiya's ability to act as key managerial personnel ("KMP") of the Manager. He is not performing any audit or internal audit services.

17.5. NFRA Order does not provide for any allegations or findings about the integrity, honesty, ethical behaviour, reputation, fairness or character of Mr. Aravind Maiya. Further, the NFRA Order relates to the professional

conduct of statutory auditors under the accounting standards and auditing standards, which are not administered by the SEBI under any of the above legislations, rules or regulations and cannot be an order in a matter of securities laws.

- 17.6. Financial markets relate to banks and other institutions such as mutual funds or asset management companies that buy or sell money and instruments for a profit and to their participation or investment in the money market, equity securities, debt securities or any other securities. Accordingly, the NFRA Order relates to alleged professional misconduct in an audit assignment and cannot be considered to be an order in a matter of 'financial markets'.
- 17.7. Further, it is not necessary that in every case where a restraint order is passed against any person, that person must be held to be not a fit and proper person. There are several decisions of the SEBI where despite a restraint order passed against a person, such person has not been held to be not a fit and proper person. In view of the same, conditions in Clause 3(b)(iii) of Schedule II of Intermediaries Regulations is also not applicable.
- 17.8. It would neither be reasonable nor proportional to consider the NFRA Order as a trigger for any of the criteria for 'fit and proper' with respect to Mr. Aravind Maiya or Embassy REIT.
- 17.9. EOPMSPL sought opinion from Retired Supreme Court Justice on the impact of NFRA Order on the 'fit and proper person' criteria and advice from counsel in the said matter.
- 17.10. REIT Regulations do not specify any criteria or requirements of the CEO of a manager to a REIT and do not provide any 'fit and proper person' criteria for the CEO of the manager of the REIT.
- 17.11. Regulation 4(2)(j) of REIT Regulations requires parties of the REIT to be 'fit and proper person'. However, CEO of the Manager is not party to the REIT.
- 17.12. Only Clause 3 of Schedule II of the Intermediaries Regulations is applicable in terms of the REIT Regulations.

- 17.13. REIT or its Manager are not intermediaries or applicants for the purpose of the Intermediaries Regulations.
- 17.14. During the SEBI registration process for REIT, confirmations on criteria for 'fit and proper person' for KMPs of the Manager are not required to be provided to SEBI.
- 17.15. REIT Regulations also require confirmation on fit and proper to be provided only by the REIT and the Parties to the REIT.
- 17.16. Upon advice from the counsel, EOPMSPL believes that Intermediaries Regulations do not apply in its entirety to REIT and, or parties to the REIT.
- 17.17. Order No. 020/2024 dated August 19, 2024 passed by the NFRA relates to the performance of the audit services rendered in the past to an entity unrelated to Embassy REIT. NFRA Order does not provide for any allegations or findings about the integrity, honesty, ethical behaviour, reputation, fairness or character of Mr. Arvind Maiya. NFRA Order is not -
- (a) Criminal complaint or information, a charge sheet or an order by a court;
 - (b) Proceedings for recovery or winding up.
 - (c) Order in a matter concerning securities law or financial markets.
 - (d) Order or declaration of winding up, insolvency, unsound mind, wilful defaulter or fugitive economic offender.
- 17.18. NFRA Order does not trigger any of the conditions for 'fit and proper person' criteria under para 3 of Schedule II of Intermediaries Regulations.
- 17.19. Mr. Arvind Maiya filed an appeal challenging the NFRA Order and the matter is *sub judice*. Further, any action taken during the pendency of the appeal would prejudice the outcome of the appeal and render a favourable outcome redundant.
- 17.20. No-show cause or other principles/proceedings have been followed before the SEBI has reached conclusion in the SEBI Letter.
- 17.21. EOPMSPL believes that it will be unfair to take action against the CEO which is not warranted by the regulations.
- 17.22. Order Relating to the performance of the audit services in connection with his employment in a previous organization does not adversely impact

his current employment, the 'fit and proper' status and eligibility of Embassy REIT.

17.23. Mr. Aravind Maiya was first associated with Embassy REIT as part of the management team of EOPSMPL during 2019-2022 and returned as CEO in July 2023. The Board of EOPSMPL recognised him as an exceptional leader who had played a pivotal role in the growth of Embassy REIT since its listing. Mr. Aravind Maiya has built strong relationships with institutional investors. Taking any action against Mr. Aravind Maiya will be detrimental to the interest of Embassy REIT and its unitholders.

E. CONSIDERATION OF ISSUES AND FINDINGS

18. The main issues before me for consideration are –

- (a) whether EOPMSPL as Manager of Embassy REIT was required to ensure that its CEO, Mr. Aravind Maiya, satisfied the “fit and proper person” criteria as per Clause 3 of Schedule II of the Intermediaries Regulations,
- (b) whether the NFRA Order dated August 19, 2024 disqualified Mr. Aravind Maiya, who was appointed CEO of Manager of Embassy REIT in July 2023, from being a “fit and proper person” in terms of the REIT Regulations read with Schedule II of the Intermediaries Regulations, and consequently
- (c) whether EOPMSPL in terms of the first proviso to Clause 6 of Schedule II of the Intermediaries Regulations was required to replace him within 30 days of the NFRA Order becoming effective

Issue I - Whether the Noticee was required to ensure that it's CEO was a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations

19. Regarding EOPMSPL's responsibility as Manager of Embassy REIT to ensure that its CEO was a fit and proper person in terms of Schedule II to the Intermediaries Regulations, it is noted that regulation 4 (2) (j) of the REIT

Regulations requires the REIT and parties to the REIT to be fit and proper persons based on the criteria specified in Schedule II of the Intermediaries Regulations.

20. The relevant legal provisions are reproduced below for reference -

REIT Regulations

“Conditions of certificate

7. The certificate granted under Regulation 6 shall, inter-alia, be subject to the following conditions, namely-

...

(c) the REIT and parties to the REIT shall satisfy with the conditions specified in Regulation 4 at all times;

....

2 (1) (zc) – “parties to the REIT” shall include the sponsor group(s), inducted sponsor(s), manager, and trustee;

4(2) Without prejudice to the generality of the foregoing provision, the Board shall consider the following, namely, -

...

(j) the REIT and parties to the REIT are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

21. Upon considering the regulatory provisions as reproduced above, I note that regulation 7(c) of REIT Regulations mandates that the REIT and Parties to the REIT shall satisfy the conditions specified in regulation 4 at all times. Regulation 2(zc) of the REIT Regulations includes the Manager of the REIT as one of the Parties to the REIT. Further, regulation 4(2)(j) of the REIT Regulations mandates that REIT and Parties to the REIT should be fit and proper persons based on the criteria as specified in Schedule II of the Intermediaries Regulations.

22. The REIT Regulations have expressly included the REIT and parties to the REIT, as entities to which the fit and proper person criteria in Schedule II apply. Clause 2 of Schedule II to the Intermediaries Regulations makes the fit and proper person criteria applicable to the applicant or the intermediary, principal officer, directors, managing partners, compliance officers, key management persons and

promoters or persons exercising control over the applicant or intermediary. Since the REIT Regulations mandate the Manager of a REIT to meet fit and proper person criteria, Clause 2 of Schedule II to the Intermediaries Regulations will extend to such manager as well. Therefore, by necessary implication, the key management persons of Manager to the REIT will also have to meet the “fit and proper person” criteria in Schedule II.

23. In this regard, the Noticee submitted that there was no requirement that key personnel of the Manager to the REIT need to comply with fit and proper person criteria in Schedule II. However, as noted above, the law is explicit as to the fit and proper status of personnel of the parties to the REIT.

24. One of the fundamental principles underlying the fit and proper criteria is that entities should not be run by individuals who are a source of weakness for the entity due to lack of integrity, competence or financial soundness. Therefore, artificially constricting the scope of the Intermediaries Regulations and the fit and proper criteria stipulated therein to exclude SEBI-registered REITs and their components will render Schedule II of the Intermediaries Regulations ineffective against REITs. Accordingly, the Noticee’s submission that a REIT or the Manager to the REIT are not governed by the Intermediaries Regulations, cannot be accepted. In this regard, I note the ruling of the Hon’ble Securities Appellate Tribunal (“SAT”) in Sahara AMC and Ors. v. SEBI, SAT Appeal No. 428 of 2015 dated July 28, 2017 in the case of mutual fund structure which is similar to REITs, it was held that the fit and proper criteria apply to the entire mutual fund as well as the promoters, directors and KMPs of any of the pillars of the mutual fund - the sponsor, trustee and AMC. The argument of the sponsor of Sahara MF that that the criteria apply only to the sponsor and not its KMPs, was rejected. Therefore, I find that the Noticee was required to ensure that its CEO was a ‘fit and proper person’ at all times in terms of Schedule II of the Intermediaries Regulations.

Issue II – Whether the NFRA Order qualified as a criterion to be taken into account for determining whether the CEO of the Manager to the REIT was

a “fit and proper person” in terms of Clause 3 to Schedule II of the Intermediaries Regulations

25. Regarding whether the NFRA Order was a criterion to be taken into account for determining whether the CEO of the Manager to the REIT was a “fit and proper person” in terms of Clause 3 to Schedule II of the Intermediaries Regulations, I note that Clause 3 (b) (iii) states that where “*an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force*” it would operate as a disqualification of such person under the fit and proper person criteria.
26. The relevant provisions of Schedule II of the Intermediaries Regulations are reproduced for reference as follows-

***SCHEDULE II SECURITIES AND EXCHANGE BOARD OF INDIA
(INTERMEDIARIES) REGULATIONS, 2008***

(1) ...

(2) The ‘fit and proper person’ criteria shall apply to the following persons:

- (a) the applicant or the intermediary*
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*
Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfil the ‘fit and proper person’ criteria.

Explanation– *For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

(3) For the purpose of determining as to whether any person is a ‘fit and proper person’, the Board may take into account any criteria as it deems fit, including but not limited to the following:

- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;
- (b) the person not incurring any of the following disqualifications:
 - (iii) **an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;**(emphasis supplied)

...

- (6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:

Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:

Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.

- (7) *The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria.*(underline supplied)

27. With respect to the issue under consideration, I find that the NFRA Order comprises order of debarment passed by a regulatory authority in a matter concerning securities laws or financial markets, as seen from the following facts.

28. It is undisputed that NFRA is a statutory body constituted on October 1, 2018, under section 132 of the Companies Act, 2013 with the responsibility to monitor and enforce the compliance with the accounting standards and auditing

standards. Therefore, NFRA is a “regulatory authority” and “enforcement agency” as mentioned in clause 3 (b) (iii) of Schedule II of the Intermediaries Regulations.

29. Secondly, I note that NFRA’s examination of professional misconduct of the statutory auditors of a listed company, i.e., CDEL, stemmed from a SEBI Order regarding diversion of funds from seven subsidiaries of CDEL to its related party. The role of Mr. Aravind Maiya as Engagement Partner in the statutory audit firm which audited the listed company, CDEL, has been examined in the NFRA Order. Further, it is pertinent to note that rule 3 (a) of the NFRA Rules, 2018 provides for NFRA’s power to regulate auditors of listed companies. Therefore, the NFRA Order pertained to audit of a listed company and was an “order concerning securities laws”.

30. Thirdly, Mr. Aravind Maiya’s professional misconduct resulting from serious audit lapses affected investors in securities markets. As per the NFRA Order, Mr. Aravind Maiya committed professional misconduct, *inter alia*, by failing to disclose material facts known to him but not disclosed in financial statements, failed to report material misstatements known to him, was grossly negligent in discharge of professional duties, and failed to invite attention to material departure from generally accepted audit procedure in the circumstances. As noted earlier, the NFRA Order found non-adherence to Standards of Audit, Quality Control Standards and Code of Ethics by CDEL’s Statutory Auditor due to deficiencies in audit, abdication of responsibility and issuance of a false and misleading audit report to the detriment of users of the financial statements. It would not be wrong to infer from the NFRA Order that Mr. Aravind Maiya’s lapses and infractions which were penalised in the NFRA order, caused losses to the shareholders and investors of CDEL who relied on the Financial Statements of CDEL certified by the statutory auditor.

31. In view of the above, I have no hesitation in holding that the NFRA Order regarding the grave audit lapses by Mr. Aravind Maiya in respect of a listed

company comprised an order concerning securities laws and financial markets in terms of Clause 3 (b) (iii) of Schedule II of the Intermediaries Regulations.

32. The fact that Mr. Aravind Maiya had already surrendered his license to practice as CA was noted by NFRA. However, NFRA chose to visit him with the debarment to signal the seriousness of the lapses made by Mr. Aravind Maiya.
33. The Noticee's submission that the NFRA Order has been challenged before the appellate forum does not affect the applicability of Clause 3 (b) (iii) of Schedule II to the Intermediaries Regulations, as by the Noticee's own admission, there is no stay on the NFRA Order and it remains in force in terms of the stipulation in Clause 3 (b) (iii) of Schedule II. Accordingly, I find that the NFRA Order qualifies as "*an order of restraint, prohibition or debarment... passed against such person by ... any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets*", and was a relevant factor required to be taken into account while determining as to whether the Manager to the REIT and its key management persons were fit and proper persons or not.
34. In this regard, on the relevance of 'an order of restraint, prohibition or debarment' for determining fit and proper person status of an entity, the Noticee submitted legal opinions which appear to rely heavily on a ruling of the Hon'ble SAT in Almondz Global Securities Ltd. v. SEBI (Appeal No. 275 of 2014, decision dated May 13, 2016) to show that it is not necessary that in every case where a restraint order is passed against a person, the person must be held to be not a fit and proper person, and that SEBI while declaring a person not fit and proper must be absolutely certain that by not doing so, irreparable harm would be caused to the securities market. While agreeing with this in-principle, I note that the facts of the case of Mr. Aravind Maiya before me as established by the NFRA Order indicate grave and serious misconduct impacting investors in the securities market which are different from the factual context of the Hon'ble SAT ruling in the Almondz case.

35. In the *Almondz* matter, SEBI had debarred the merchant banker in an IPO of a company for five years for failure to observe due diligence during the IPO of the company, leading to violations of the SEBI (Merchant Bankers) Regulations, 1992, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and Intermediaries Regulations. Hon'ble SAT found that the merchant banker was not guilty of any diligence lapses other than a minor lapse in judgement involving not checking bank account statements of the issuer company. Most of the omissions of the merchant banker in the *Almondz* case resulted from the issuer company withholding details from the merchant banker or took place after the IPO which the merchant banker handled, and hence were not so grave as to warrant a disproportionate debarment of five years. The Hon'ble SAT held – “A Merchant Banker cannot be expected to start a due diligence exercise with a presumption of fraud or mischief to be committed by a company whose IPO is to be issued through the Merchant Banker.” Further, in the facts of the *Almondz* case, multiple proceedings including debarment, suspension and rejection of request to continue as merchant banker had been initiated against the *Almondz* for the same set of facts, prompting the Hon'ble SAT to hold that debarment for five years and refusal to renew its registration as merchant banker was harsh and disproportionate. Thus, the facts of the case before me are distinguishable from the *Almondz* case.

36. In the case of Mr. Aravind Maiya, NFRA found glaring lapses in the audit carried out under his charge and relied on by the company, shareholders and investors. Mr. Aravind Maiya was seemingly aware of the relevant details and was in a position to have highlighted wrongdoing by CDEL/its subsidiaries/related entities/promoters. By not conducting a diligent audit and not ensuring the timely flagging of a large fraud, a disservice was done to public/investors at large. Considering the gravity of the violation, NFRA imposed a penalty of Rs. 50 lakh and the maximum possible debarment period of 10 years under section 132 (4) (c) (B) of the Companies Act, 2013 on Mr. Aravind Maiya.

37. The other cases cited by the Noticee – of the adjudication order in the case of *Enam Securities* and the Hon'ble SAT Order pertaining to broker fraud in *Keynote Capitals* - are also circumscribed by their own factual matrix. Accordingly, SEBI and Hon'ble SAT respectively considered the nature and extent of the violation by the respective intermediaries, and considering ameliorating circumstances such as small number of trades or inconsequential lapses, passed appropriate directions of penalty and suspension, without disqualifying the said entities based on the fit and proper criteria. Thus, the facts of these cases could be distinguished from the extant matter.

38. In this context, it is pertinent to refer to the judgment of the Hon'ble SAT dated September 6, 2006 in the matter of *Jermyn Capital LLC V. Securities and Exchange Board of India* (Appeal No. 21 of 2006), wherein the Tribunal, *inter alia*, upheld the wide discretion granted during determination of "fit and proper person", and observed as under:

"The Board can take into account any consideration as it deems fit for the purpose of determining whether an applicant or an intermediary seeking registration is a fit and proper person or not. The framers of the Regulations have consciously given such wide powers because of their concern to keep the market clean and free from undesirable elements...

... Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct...

... In this background, the Board may, in a given case, be justified in keeping a doubtful character or an undesirable element out from the market rather than running the risk of allowing the market to be polluted."

Thus, SEBI in exercise of its statutory duty is justified in taking into account relevant factors for determining fitness and propriety for functioning in the securities market, such as a person's integrity, honesty, ethical behaviour,

reputation, fairness and character, and punitive action taken against such a person by other regulators.

39. With regard to the contention sought to be advanced by EOPMSPL that fit and proper criteria must be interpreted as specific and limited to the relevant sector or role, it may be useful to refer to the principles underlying the “fit and proper” determination regime across industries and jurisdictions. Fit and proper criteria aim to identify persons unfit or not proper for roles, when they fail to measure up against certain general inviolable values – mainly of competence and integrity - which apply across roles. While guidelines have been crystallised in various jurisdictions to have some objective criteria to measure competence and integrity and objectively guide the entities for selecting right persons for the job, some general values granting necessary discretion for choosing such persons, have also been retained. In fact, it has been recognised that the behaviour and ethos of organizations is heavily influenced by the behaviour and ethos of its leaders, and that one problem relating to organizational failure was *“the ability of poorly performing managers and directors to move from Trust to Trust.”* I refer to a “Review of the Fit and Proper Person test” commissioned by the Minister of State for Health, U.K., in November 2018. The Review aptly notes – *“There has been understandable concern at the circumstances surrounding the departure from the Trust of the Chair and Chief Executive. While the business demands of the Trust may have required their swift departure and therefore a commercially understandable compromise, the public demand for accountability was left unsatisfied... Directors should be liable to disqualification from the role unless they are Fit and Proper persons for it... The test of fitness should include a requirement to comply with a prescribed code of conduct. A finding that a person is not a Fit and Proper person should disqualify a person from being a director of any healthcare organisation. Where a regulator is no longer satisfied that a director is a Fit and Proper person, there should be a power to remove or suspend that person from office after due process. Where a director’s employment or appointment is terminated in circumstances where there is reasonable cause to suspect he or she is not a Fit and Proper person, the organisation should be*

obliged to report that information to the regulator.”... The Government believes that the barring mechanism will be a robust method of ensuring that directors whose conduct or competence makes them unsuitable for these roles are prevented from securing them.” [underline supplied]

40. IOSCO’s “Guide to Fit and Proper Assessment – Best Practices” of 2009, *inter alia*, mentions that a person is not fit and proper whenever he/she “*has breached a fiduciary obligation, “has perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices”, “has been reprimanded, or disqualified, or removed by a professional or regulatory body in relation to matters relating to the person’s honesty, integrity or business conduct”, “was the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person’s competence, diligence, judgment, honesty or integrity*”. The Introduction states that the “*main aim (of fit and proper criteria) is to reduce the risk that responsible persons of the regulated institutions are not fit and proper for their roles.*”. Further, it states that maintenance of fit and proper standards is essential to ensuring that business activities in financial sector are conducted with high standards of market practice and integrity.

41. IOSCO’s Guide underscores the rationale behind “fit and proper person” criteria and makes a case for its application to the regulated institution. In the section on “*Who needs to comply with these Best Practices*”, it is stated that the fit and proper best practices may apply “*to the regulated institution as a whole and the individuals involved in its management and control, as well as to those who exercise significant power or discharge significant responsibilities in relation to the activities carried on by the business.*” Clause 3.2 of the IOSCO’s Guide states that “*The Financial Regulator may treat each candidate’s application on a case-by-case basis taking into account the seriousness of, and circumstances*

surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation". The Best Practices are designed to ensure that intermediaries providing financial services are soundly and prudently managed and directed and that none of the key persons may be a source of weakness to those entities.

42. A common thread which emerges across the regulations/guidelines prevalent in the aforesaid global jurisdictions or the IOSCO is that a person against whom any other regulatory authority has taken an adverse action for professional misconduct is usually not regarded as being a 'fit and proper person' for the purpose of carrying on business activities in the financial sector. Further, it is also observed that the 'fit and proper person' criteria in these jurisdictions apply not just to the applicant but also usually to the individuals involved in the management and control of such applicant. It is, therefore, evident that all individuals with the responsibility for the management and control of the business and key persons within the business, must prove and assure the financial regulator that they comply with fit and proper test. The purpose of the fit and proper criteria cannot be interpreted to restrict their application to particular components of an intermediary or fund, while allowing the entity which runs the intermediary to employ at its helm those people who do not meet the fit and proper criteria.

43. A few illustrations of the adoption of the 'fit and proper person' criteria across other jurisdictions for the sake of comparison are as follows:

(a) Singapore:

The Monetary Authority of Singapore (MAS) lists certain factors in determining a person's Honesty, Integrity and Reputation which will ultimately determine whether a person is fit and proper. Some of the relevant factors in this regard state that whether the relevant person "*has been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific license, registration or other authorisation is required by law in any jurisdiction*", "*has been censured, disciplined, suspended or refused membership or registration by MAS, any other regulatory authority, an*

operator of a market, trade repository or clearing facility, any professional body or government agency, whether in Singapore or elsewhere”, “has had any civil penalty enforcement action taken against it or him by MAS or any other regulatory authority under any law in any jurisdiction.” (underline supplied)

(b) Abu Dhabi:

One of the conditions for acquiring a licence for registering as a ‘Company Service Provider’ in the Abu Dhabi Global Market (ADGM) states that in determining whether an individual is a fit and proper person, regard shall be had to *“their record of compliance with legal obligations, with any professional obligations or with policies and procedures applicable to them”* (underline supplied)

(c) Mauritius:

The ‘Guideline on Fit and Proper Person Criteria’ issued by the Bank of Mauritius for financial institutions lists certain factors in determining a person’s Honesty, Integrity, Diligence, Fairness, Reputation and Good Character which will ultimately determine the fitness of the person applying for a licence. Some of the relevant factors in this regard include *“whether the person has engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct”, “whether the person, or any business in which he has controlling interest or exercises significant influence, has been investigated, disciplined, suspended or criticised, by a regulatory body, a supervisory authority or professional body, a court or a tribunal, whether publicly or privately”, etc. (underline supplied)*

44. Similarly, in India, Integrity, objectivity, professional competence and due care are fundamental principles built into the ICAI’s Code of Ethics applicable to every Chartered Accountant. Section 100 of the Code expressly states that *“A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest.”*

45. The NFRA Order brings out knowing violations of applicable audit norms which failed to flag a massive fraud at a listed company while Mr Aravind Maiya was in a special position to discern given his professional assignment and domain knowledge. The Order also leads to a reasonable inference that Mr. Aravind Maiya failed to act in public interest. Instead, he acted in a manner which harmed ordinary investors and shareholders in the securities market. The NFRA Order raises sufficient doubt regarding Mr. Aravind Maiya's competence, ethical behaviour and reputation to warrant disqualification under Clause 3 of Schedule II of the Intermediaries Regulations, at least till his name is cleared at an appellate forum, by way of overturning or stay of the NFRA Order.
46. Other Indian regulators such as the Insurance Regulatory and Development Authority of India ("IRDAI") have also recognised in their "Guidelines for Corporate Governance for insurers in India" dated May 18, 2016, that in line with international and domestic norms, *integrity demonstrated in personal behaviour and business conduct, and soundness of judgement*, are minimum criteria to be satisfied by Directors of insurers to be considered fit and proper for their role. The current fit and proper requirements for directors of insurance companies seek to ensure that the Director should not have been convicted or come under *adverse notice* of the laws and regulations involving *moral turpitude* or of *any professional body*. This too indicates a broad interpretation of disqualifications from being fit and proper in case of adverse notice taken by other regulators or professional bodies, when deciding whether a person is fit and proper to be appointed to the management of an insurance company.
47. After considering the NFRA Order in the context of SEBI's Order as upheld by the Hon'ble SAT and Mr. Aravind Maiya's involvement in the CDEL case, I find that given the large-scale transgressions which have cast a shadow on his professional competence, the punishment meted out by one regulator cannot be used by Mr. Aravind Maiya to claim immunity from legal consequences enforced by other regulators seeking to ensure good governance, risk management and quality control through fit and proper criteria in their respective regulatory domains.

48. SEBI is well within its mandate to ensure that Mr. Aravind Maiya serves out his debarment due to professional misconduct, instead of making a mockery of it by taking on other ostensibly unconnected leadership roles which require even greater professional competence and integrity in the financial field. The principles and values underlying fit and proper person determination would mean that such a person who committed grave misconduct closely connected to securities market fraud, is considered a *persona non grata* for leadership roles across organisations, especially large intermediaries handling significant investor funds, till his name is cleared.
49. The CEO of Manager of a REIT plays a key role in the operation of the REIT and various audit and disclosure related compliances stipulated in the REIT Regulations. SEBI as the regulator has a duty to ensure that risk is managed appropriately by intermediaries, by not allowing themselves to be managed by a person who is under a cloud of an operating NFRA order.
50. It is evident that Mr. Aravind Maiya's serious professional misconduct during the audit of a listed public company, as held by the NFRA, displays a complete failure to act in public interest. Therefore, he cannot be reasonably considered competent to supervise Embassy REIT as CEO of its Manager, which requires prudent discharge of fiduciary duties, protection of unitholders' interest, compliance with valuation and audit requirements and disclosure of material facts. The risk arising out of the NFRA Order needs to be mitigated and not remain in the system, to instil confidence in the ecosystem.

F. Need for Interim Order

51. In the light of the facts and findings detailed above, I find that the NFRA Order of debarment on Mr. Aravind Maiya qualifies as a case serious enough to warrant effective enforcement of fit and proper criteria under Schedule II of the Intermediaries Regulations. Mr. Aravind Maiya was debarred for the maximum permissible period by NFRA for serious lapses requiring SEBI to take note of the same in the context of his gross negligence resulting in securities market fraud

and warranting disqualification under SEBI's fit and proper person requirements. Allowing Mr. Aravind Maiya to continue to helm the affairs of Embassy REIT as CEO of its Manager, even after an NFRA Order in force that calls into question his professional conduct, integrity and competence, may cause harm to investors, exposing them risk.

52. Leadership accountability is a keystone of market confidence, and requires unimpeachable integrity. This is a case where SEBI is constrained to intervene in order to firmly enforce the fit and proper criteria in the interest of investors. 'Fit and Proper Person' criteria, *inter alia*, forms the basis of granting registration to an Intermediary by SEBI and the same is always viewed seriously as it filters out entities/persons who are not fit to interact with the financial market at large, thus safeguarding public interest.

53. I find that more than one month has passed since the NFRA Order became effective *vis-à-vis* Mr. Aravind Maiya. Despite SEBI's communication regarding Mr. Aravind Maiya being ineligible for appointment as CEO of the Manager to Embassy REIT due to disqualification in terms of the fit and proper person criteria, the Manager has refused to replace him. It is a matter of concern that irrespective of e-mails, meetings and a specific instruction in this regard, the Manager has tried all means to retain Mr. Aravind Maiya as CEO, citing various reasons as discussed above.

54. The complete abdication of responsibility and professional misconduct by the statutory auditors of CDEL, including Mr. Aravind Maiya who was Engagement Partner for the audit, frankly begets the question, "*Quis Custodiet Ipsos Custodes?*". As to who will guard the guards themselves, SEBI has a statutory duty to protect the interest of investors in securities market and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered SEBI to take such measures as it thinks fit for achieving its legislative mandate. Further, the issue acquires even more relevance for a sector as nascent in India as the REITs.

55. As regulator of the securities markets and to protect investors in Embassy REIT, SEBI is duty-bound to ensure that the management of a registered intermediary is not dependent on an individual who has been hauled up for professional misconduct which contributed to concealment of a very large securities market fraud of a listed company under his watch. The investors and shareholders of CDEL relied on its statutory auditor including Mr. Aravind Maiya to ensure that CDEL's accounts conveyed a true and fair view of the state of financial affairs of Coffee Day Enterprises Ltd.
56. Mr. Aravind Maiya thoroughly failed the listed company, users of its financial statements, standards of his profession as well as public interest, by failing to audit and report a fraud which was evident in all the financial information he was supposed to vet as Engagement Partner of the statutory auditor of the company. By failing to fulfil the fiduciary duties entrusted to him, he has displayed professional incompetence and lack of integrity. The NFRA examination and directions are limited to the remit of the Companies Act, 2013. However, that does not preclude SEBI from taking into account the seriousness of his violations and their implications for the securities laws and financial markets, while determining whether he is a fit and proper person to helm the management of Embassy REIT, a registered intermediary managing Rs. 40,000 crore of unitholders' money.
57. It is noted that the Noticee has argued that it obtained legal opinion regarding its obligation to comply with fit and proper person criteria. Further, it has contended that it is in compliance with all regulatory requirements. It must, however, be noted that NFRA in its order has unequivocally stated that Mr. Aravind Maiya was guilty of professional misconduct due to gross negligence, failure to exercise due diligence and failure to disclose material facts and report material misstatements known to him. It cannot be the case that an entity declared *persona non grata* by NFRA is able to claim diplomatic immunity from SEBI. Doing so would erode credibility of regulation.

58. I note that NFRA Order dated August 19, 2024, was effective after 30 days from the issuance of the said order. I note that as per the submissions of the Noticee, an appeal has been filed by Mr. Aravind Maiya against the NFRA order. However, it is also pertinent to note that the appeal is pending, and no stay has been granted on the NFRA Order.
59. Further, as per the clause 6 of Schedule II of Intermediaries Regulations, *inter alia*, invokes the assessment of 'fit and proper person' criteria against the very intermediary if an intermediary fails to replace a person with a disqualification within 30 days of such disqualification, I note that in this instant case, the said date was October 19, 2024. However, the Noticee has failed to take any remedial action regarding the same and has shown strong reluctance in doing the same.
60. In the face of persistent non-compliance by the Noticee as the operational arm of a registered intermediary, grave violations of law touching upon the competence and integrity of the CEO of the Manager of Embassy REIT, and considering that the interest of unitholders and investors is at stake due to deliberate retention of a source of weakness in the REIT ecosystem by the Noticee, I am of the view that SEBI is required to intervene urgently in the interest of investors and issue interim directions to stop the on-going non-compliance by the Noticee.

G. Order

61. Keeping in view the foregoing, I, in exercise of the powers conferred upon me under sections 11, 11(4) and 11B(1) read with section 19 of the SEBI Act, hereby issue the following directions, which shall be in force until further orders:
- a. The Noticee is directed to suspend Mr. Aravind Maiya from acting as its CEO and appoint an interim CEO with immediate effect, in compliance with applicable laws including 'fit and proper person' criteria, till further directions, or till the NFRA Order dated August 19, 2024 is stayed/set aside, whichever is earlier.
 - b. The Noticee is directed to ensure compliance with 'fit and proper person' criteria.

62. The above directions shall take effect immediately and shall be in force until further orders.

63. The findings contained in this Order, are made on the basis of the material available on record. The facts detailed in this Order shall be considered as a show cause notice and the Noticee is directed to show cause as to why suitable directions/prohibitions under sections 11, 11 (4) and 11B of SEBI Act, 1992 should not be issued against it. The Noticee may, within 21 days from the date of receipt of this Order, file its reply/ objections, if any, to this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed in that regard.

64. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the Noticee in accordance with law.

65. A copy of this order shall be served upon the Noticee for necessary action and compliance with the above directions.

DATE: NOVEMBER 04, 2024

PLACE: MUMBAI

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA