Jai Corp Limited

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November 02, 2022

The Listing Centre,
BSE Limited, Mumbai.

The Manager, Listing Department,
National Stock Exchange of India Limited, Mumbai.

Ref. : Regulation #30 of SEBI (LO&DR) Regulations, 2015.

Sub.: Order Passed by Whole Time Member, SEBI.

Dear Sir / Madam,

The Company is in receipt of an Order dated October 31, 2022 passed by the Whole-time Member of SEBI yesterday (copy attached).

The said Order has *prima facie* found the Chairman of the Company, who is also one of the promoters, and two wholly owned subsidiary companies to have violated certain provisions of the SEBI Act and the Regulations framed thereunder and has accordingly given certain directions.

Any further development in this matter will be brought to the attention of the Stock Exchanges.

Kindly acknowledge receipt.

Thanking you,
Yours faithfully
For **Jai Corp Limited**

Company Secretary

WTM/SM/AFD-1/AFD-1-SEC/20965/2022-23

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

Sr. No.	Name of Noticee	PAN
1.	Urban Infrastructure Trustees Limited	AAACU8060F
2.	P.K. Bansal	AAIPB1934G
3.	Sandeep Kedia	ABEPK6716C
4.	Jesal Sanghvi	ANYPS0872P
5.	R.A. Agarwal	AAMPA9291K
6.	Dharmesh Trivedi	AABPT5910F
7.	Urban Infrastructure Venture Capital Limited	AAACU8061E
8.	Parag Parekh	AAGPP4440H
9.	Anand Jain	AABPJ1890J
10.	P Krishnamurthy	AIYPK0416E
11.	Rajeev Bhandari	AAQPB8956N
12.	S S Thakur	AABPT5854A

(The entities mentioned above are individually known by their respective name or Noticee No. and collectively referred to as "Noticees")

In the matter of Urban Infrastructure Venture Capital Fund

Background:

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an inspection of Urban Infrastructure Venture Capital Fund (hereinafter referred to as "**UIVCF/Fund**") which was completed in the month of February 2021 for the period April 1, 2019 to March 31, 2020. The findings of the inspection which were based on analysis of sample test checking of various books of accounts and other records as well as on the basis of written/oral submissions of the Fund and its staff made before inspection team, are as under:

1.1. Urban Infrastructure Venture Capital Fund was set up in the nature of Trust by way of trust deed dated January 31, 2006 and was registered with SEBI as a

Venture Capital Fund on March 21, 2006 bearing SEBI Registration No. IN/VCF/05-06/081. The settler of the fund is Urban Infrastructure Venture Capital Limited (hereinafter referred to as "**UIVCL**").

1.2. The Fund had launched only one Scheme i.e. Urban Infrastructure Opportunities Fund (hereinafter referred to as "**Scheme**"). The details of the Scheme as on March 31, 2020 were as follows:

Table No. 1

Name of the Scheme	Target Corpus (INR in crores)	Corpus (INR in crores)	No. of investors	Investments made during tenure of the Fund (INR in crores)*	Investments outstanding as on March 31, 2020 (INR in crores)	Date of initial closing	Date of Final Closing	Total Tenure of scheme as per PPM
Urban Infrastructure Opportunities Fund	Minimum of 250	2,434	796 (as on March 31, 2020)	2,906.85	1,061	June 9, 2006	November 20, 2006	7 years from Initial closing plus two extensions of 1 year each

** investments made includes reinvestments by the Scheme*

1.3. Urban Infrastructure Venture Capital Limited is the Investment Manager to the Fund while Urban Infrastructure Trustees Limited (hereinafter referred to as "**UITL**") is the Trustee of the Fund. The Investment Manager had constituted an Investment Committee on May 5, 2006, which approved investment decision on behalf of the Investment Manager.

1.4. The summary financial statement of the Fund as on March 31, 2020 is tabulated below:

Table No. 2

	(INR in crore)
Source of Fund	
Capital Contribution	2,434
Less: Re-purchase of Units	(104)
Net Capital Contribution	2,330
Receipt of Income	1,160
Total Source of Fund	**3,490**

Application of Funds	
Investments (as on March 31, 2020)	1,061
Distributed to Investors	1,896
Expenses	463
Tax	63
Net Other assets	2
Bank Balance and Mutual Fund	6
Total Application of Fund	**3,490**

1.5. It was observed from the financial statements of the Scheme that it has not charged management fees from July 1, 2014.

1.6. It was noted that even though the term of the Scheme (including extensions) has expired on June 7, 2015, investments amounting to INR 1060.92 crore were yet to be liquidated by the Scheme and to be repaid to investors.

1.7. On an examination of SCORES, it was noted that three complaints have been received against the Scheme in SCORES during the inspection period. Two out of the three complaints received in SCORES were made by Mr. Santosh Kumar Maheshwari as the Scheme has not been able to wound up and his capital contribution invested in the Scheme has not been refunded. The third complaint was an anonymous complaint which was replied by SEBI to the complainant providing status of the Scheme.

2. Based on the afore stated factual findings revealed during the inspection, a common show cause notice dated June 7, 2021 (hereinafter referred to as "**SCN**") was served on the *Noticees* calling them to show cause as to why suitable directions under Section 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with regulations 29(c) and (d) of SEBI (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as "**VCF Regulations**") should not be passed against Trustee, Investment Manager and their respective Directors for the violation of provisions of regulation 23 (1) (a) of VCF Regulations and SEBI circular ref no. CIR/OIAE/1/2014 dated December 18, 2014.

3. In response to the SCN, UIVCL and UITL vide their common reply dated June 25, 2021 have submitted as follows:

3.1. The Scheme was launched to take advantage of opportunities in real estate space in India. The investment strategy of the Scheme was to invest in large and township projects at early stages of development.

3.2. Knowing the complex nature of its investments, the Scheme had documented risk factors associated with the investments in Chapter 8 of the Private Placement Memorandum (hereinafter referred to as "**PPM**") of the Scheme. The Investment Manager sought only sophisticated investors to invest in the Scheme of the Fund who could comprehend the risk and make an informed decision. Hence, the minimum ticket size of investment was kept at INR 1 crore, well above INR 5 lakh threshold prescribed under VCF Regulations.

3.3. There were several impediments viz. global financial crisis, delay and slow moving regulatory approval, short funding from developers, high interest rates and construction cost etc. as a result of which, by the end of the tenure of the Scheme in June 2015 the Scheme could return only INR 621 crore (25.5% of the Fund corpus) to the investors.

3.4. The Investment Manager has stopped charging any fees to the investors in the Scheme from July 1, 2014.

3.5. Jones Lang LaSalle Property Consultants India (Pvt.) Ltd. (hereinafter referred to as "**JLL**") which was engaged to expedite exit from the investments was of the view that any effort to sell investments within fixed timelines would cause severe erosion in value. It expected the market conditions to improve if interest rates fell with general improvement in liquidity. This would enable the Scheme to achieve reasonable valuation from its exit, if carried out in an orderly manner over a year or so from June 2015.

3.6. At the expiry of tenure, there was option to liquidate the investments in an orderly manner or wind up the Scheme by way of immediate liquidation or pursue *in specie* distribution of remaining investments to the investors. However, based on the observations of JLL, the Investment Manager and the Trustee were of the opinion that the second or third option were not in the interest of investors. Distressed sale would result in substantially depressed realization from the

investments and *in specie* distribution would have resulted in fractional stakes being held by numerous investors of the Scheme in non-listed entities with no board seats or special rights. Further, there were ongoing litigation with respect to certain portfolio investments.

3.7. In view of the best interest of the investors, the Investment Manager and the Trustee vide letter dated May 13, 2015 sought consent of investors for extension of Scheme tenure to December 31, 2016. Thereafter, positive consent was obtained from more than 76.63% of the investors of the Scheme by value for extending the term of the Scheme. SEBI was intimated about the said approval by the investors vide letter dated August 25, 2015.

3.8. The Scheme has subsequently distributed further amount of INR 632 crore to its investors from June 2015 till December 2016. In November 2016, the government's decision to ban circulation of high value currency further thwarted the efforts of the Scheme to conclude certain exits.

3.9. In 2017, to generate liquidity in the hands of the investors, the Investment Manager and the Trustee appointed JLL to run a bid process to identify potential buyers. However, the proposed liquidity offers with the identified buyers did not materialize. Thereafter, the Scheme offered to the interested investors to give them direct introduction to potential buyers in the secondary market. In this process, the Scheme could help 7 investors to directly offload their existing units to a third party buyer.

3.10. The environment of uncertainty continued in 2017 with the implementation of Real Estate (Regulation and Development) Act, 2016 and introduction of Goods & Services Tax. However, the Scheme was able to distribute an additional INR 701 crore to investors till July 2018.

3.11. Since January 2017, the Scheme of the Fund has been in liquidation stage for orderly exit to the extent as feasible as per PPM. As on March 31, 2021, the Scheme has returned INR 2,011 crore (83% of the corpus) to investors and only INR 423 crore is required to pay back the entire investors' contribution. The Scheme has an outstanding investment of INR 1,061 crore, against pending

capital contribution of INR 423 crore and the Net Asset Value of the investment on Fair Market Value basis as computed by E&Y is INR 273 crore as on September 30, 2020.

3.12. It is clear from the above that liquidation of investment in orderly manner after the Scheme tenure was over was the best outcome for investors rather than going through loss making winding up process given the available choices under the PPM. The abrupt closure of the Scheme would have been more beneficial to the Promoters of the portfolio companies rather than to the investors. No further investment activity is being undertaken by the Investment Manager other than securing exits.

3.13. The provisions of the PPM allowed the Scheme to pursue planned exits for its investments to the extent deemed feasible. By not winding up the Scheme at the end of its tenure, it has ensured fair realization from investments for its investors.

3.14. Out of the three complaints, one was made by an anonymous person. His complaint was responded to in the month of February 2021. The other two complaints were made by one person. Of the two complaints, the reply to only one complaint was delayed by one working day. The investor had complained that the Scheme had failed to repay back the capital contribution made by him. The Scheme cannot priorities exit for one particular investor. Hence, refunding the contribution to one particular investor was not possible. The complainant was given an exit on March 31, 2021.

3.15. It has been alleged that non-repayment of investors' contribution amounts to non-redressal of investor's grievances and therefore it constitutes a violation. However, it may be appreciated that the non-repayment to investors is an outcome of the non-winding up of the Scheme on time and as such it is submitted that this should not be viewed as a separate violation.

4. The Directors of UIVCL and Trustees of UITL have also replied on similar lines as that of UIVCL and UITL.

5. Subsequently, vide an email dated March 22, 2022, *Noticees* were advised to provide certain information on the subject matter. *Noticees* vide their email dated April 15, 2022 *inter alia* have submitted the following information:

5.1. The Scheme of the Fund had sought investors' consent for only one extension in May 2015. The list of investors who have provided their consent has been attached.

5.2. Various one to one meetings and calls have taken place with the investors since December 31, 2016 and details of some of such meetings have been provided in the attached list.

5.3. The Scheme has till now distributed INR 2,092 crore to the investors. The details evidencing the same have been attached.

5.4. The Scheme of the Fund holds investments in the companies that are developing real estate projects and the nature of investments is in equity shares, convertible debentures and debt instruments of these companies. The details in respect of the aforesaid investments are attached.

5.5. With respect to the question as to whether the unitholders have power to extend the tenure of the Scheme of the Fund beyond the original tenure, it is submitted that under the Contribution Agreement of the Fund, a unitholder has authorized the Trustee to extend the term of the Scheme of the Fund for two further periods of one year each (hereinafter referred to as "**Extended Tenure**") after the expiry of the original term in June 2013. The Trustees exercised the extensions in consultation with the Investment Manager to enable exit of all its investment and generate reasonable returns for its investor. As the unit holders are beneficiaries of the Scheme of the Fund, any extension beyond the aforesaid Extended Tenure can be done by mutual consent of the unitholders. In other words, the unitholders are entitled to extend the tenure of the Scheme of the Fund beyond the Extended Tenure. The Scheme documents mandate the Investment Manger to liquidate and sell the investments to the extent considered feasible. Post June 2015, the Scheme of the Fund has not made any new investment and is in the process of liquidation.

5.6. With respect to the query as to whether any exit opportunity was provided to investors, it is submitted that in the letter dated March 12, 2018, the investors were informed that the Scheme of the Fund would be happy to introduce the interested investors to the potential buyers to provide liquidity to the investor. A copy of the said letter along with a list of investors who sold their units to those buyers is attached.

5.7. Till date, the Scheme of the Fund has distributed INR 2,092 crore i.e. approximately 87% of the Fund Corpus. While 75% of the balance investments are locked in various stages of litigation, there are 7 other non-litigated investments which are pending exits due to lack of market opportunities, certain impediments with underlying investments etc. thereby making exit difficult.

6. Considering the facts and circumstances of the matter and after considering the aforesaid written submissions, an opportunity of personal hearing was granted in the instant matter on October 6, 2022. The Fund meanwhile vide its letter dated October 4, 2022 while reiterating all its earlier written submissions *inter alia* has also made the following submissions:

6.1. Few challenges faced by the Scheme at the investee company level which have further complicated its exit attempts, have been as follows:

6.1.1. There were restrictions on the transfer of shares of the investee companies held by the Scheme of the Fund due to 'Right of First Refusal' and/or 'Tag Along Rights' held by the Promoters-shareholders of these investee companies;

6.1.2. The Scheme had reserved certain rights for itself and imposed obligations on the Promoters-shareholders of the investee companies to safeguard its interests and make the investment values accretive at the time of exits. However, the Promoters-shareholders defaulted on their obligations and offered untenable terms to the Scheme to take exit from its investment taking advantage of the limited life of the Scheme;

6.1.3. As the rights of litigation of the Scheme are not transferable, in cases where the Scheme adopted legal recourse, if any change of ownership happens

without Promoters-shareholders' consent the same would compromise the legal rights under the agreement.

6.2. Overall, till date, the Scheme has returned INR 2,115 crore to the investors (including distribution to investors and repurchase of units).

6.3. The Net Asset Value (hereinafter referred to as "**NAV**") of the Scheme on Fair Market value basis, as computed by E&Y, as on March 31, 2022, is INR 222 crore. Of this, almost 64% of the NAV is attributable to those which are under litigation. The Scheme has exited from all such assets where monetization was possible and where an amicable resolution could be reached with the Promoters-shareholders of the investee companies. However, the litigating Promoters are the ones who have intentionally delayed any resolution with the Scheme in the hope that the Scheme would soon be dissolved, and they will be automatically absolved from all their obligations towards the Scheme.

6.4. In order to provide the investors with another avenue to exit and liquidate their investments, the Scheme, in its letter to investors dated March 13, 2018, had assured to introduce them to third party buyers who may be willing to purchase units of the Scheme from the exiting investors. Since the year 2018 Enam Securities, one of our existing investors, has been in the market to purchase the Scheme's units from other investors at NAV in secondary market transactions, however, till date only a handful of investors have exercised their option and availed this avenue to liquidate their investments in the Scheme.

6.5. Investors are unwilling to accept the offer being made to them as substantial portion of investment has already been realised through distributions made by the Scheme (given that 87.5% has already been returned) and as further realisation from this third-party sale of units looks insignificant to them in absolute terms. Investors are willing to hold on to their investments in anticipation of significant realization in future without any significant additional cost (as the Investment Manager has not been charging Management fees).

6.6. The Scheme has however, started the process of ensuring exit to all the investors, in the manner set out herein below.

6.6.1. The Scheme is in the final stages of appointment of a SEBI approved Merchant Banker to run a process to dispose of the assets of the Scheme and to realise a higher exit valuation for investors either by the way of sale of entire portfolio (all or none) or by way of introduction of new investor as a beneficiary of the Trust, whichever is higher. The Scheme shall ensure a transparent process which will result in full exit to all the investors and subsequently the VCF registration will be surrendered.

6.6.2. The above process will ensure that the best value of the Scheme's investments/units are realised, if they are to be exited now. Further, since the VCF certificate will be surrendered, VCF Regulations will no longer be applicable to the Scheme. Simultaneously the investors will also be paid, and Scheme will stand wound up.

6.7. Any direction by SEBI to dispose of assets, would result in value erosion and would not protect the interest of investors. On the contrary, the same will prejudice the interest of the investors, which would go against the very fundamental of SEBI i.e., to protect the interest of the investors. Thus, considering the extenuating circumstances summarized above, this is not a fit case for SEBI to pass an order under Section 11B of the SEBI Act.

7. On the day of the scheduled hearing that was held on October 6, 2022, *Noticees* appeared for the hearing through their authorized representatives (hereinafter referred to as "**ARs**") Mr. Ravi Kadam, Senior Advocate and AZB & Partners. The ARs reiterated the submissions already made by the *Noticees* vide letters dated June 25, 2021 and October 04, 2022. Mr. Ravi Kadam sought time to make certain additional submissions. Accordingly, he was granted 3 weeks' time to make post-hearing submissions.

8. *Noticees* vide an email dated October 11, 2022 have submitted a few shareholders' agreements signed by the Fund with the Promoter of the investee companies highlighting the restrictive clauses on transfers of shares which are part of such agreements that are posing challenges to effect transfer of shares of such companies.

9. Subsequent to the conclusion of personal hearing, certain additional explanations / information were sought from the *Noticees* vide an email dated October 12, 2022 to

which the *Noticees* vide their email dated October 18, 2022 have furnished those information in question and answer format as follows:

9.1. Question: When was the last investment made by the Scheme of the Fund?

Answer: Last payment towards investment was made on May 8, 2014.

9.2. Question: Has the Scheme of the Fund given any intimation to SEBI under regulation 23 (3) of VCF Regulations?

Answer: The Scheme of the Fund has not given any intimation under Section 23(3) of VCF Regulations for winding up of the Fund.

9.3. Question: When was the anonymous complaint received by the Scheme of the Fund (reference may be made to paragraph 6 B (ii) of the SCN at page 4)?

Answer: The Fund has not received the anonymous compliant directly. The Fund was informed about the anonymous complaint by SEBI's email dated January 15, 2021. The Fund responded to the aforesaid complaint by its letter dated February 3, 2021 and SEBI was intimated about the same by email dated March 25, 2021. The Fund has not received any reply to its aforesaid letter till date.

9.4. Question: Provide a list of all the Directors of the Trust and the Investment Manager along with their tenure till date.

Answer: Directors of UIVCL since April 1, 2014 are as follows:

Table No. 3

Name of the Director	Designation	Date of Appointment	Date of Resignation
Parag Parekh	Managing Director and CEO	14/12/2005	-
Anand Jain	Director	02/05/2006	-
P Krishnamurthy	Director	30/09/2006/ Appointed back on 03/11/2020	20/05/2019 -
S S Thakur	Director	30/09/2006	20/05/2019
Rajeev Bhandari	Director	20/05/2019	03/11/2020

Directors of Urban Infrastructure Trustees Limited since April 1, 2014 are as follows:

Table No. 4

Name of the Director	Designation	Date of Appointment	Date of Resignation
R.A. Agarwal	Director	02/05/2006	17/09/2016
Lalit Basin	Director	30/09/2006	13/04/2015
P.K. Bansal	Director	07/09/2012	-
Sandeep Kedia	Director	13/04/2015	-
Jesal Sanghvi	Director	20/09/2016	09/02/2021
Dharmesh Trivedi	Additional Director	09/02/2021	-

9.5. Reference may be made to paragraph 12 (b), (d) and (e) of the reply dated October 4, 2022. Following information with respect to the same may be provided:

9.5.1. Question: Outstanding investments falling specifically under each category may be provided along with the relevant documents.

Answer: In response, *Noticees* have annexed the details of the outstanding investments under each category along with the relevant documents.

9.5.2. Question: What is the legal provision or legal principle which prohibits the Scheme of the Fund from exiting its position from the pending projects, including by way of distress sale? The same may be provided for each category mentioned under sub-paragraph 12 of the reply dated October 4, 2022 supported by case laws, if any.

Answer: There is no legal provision or principle which prohibits the Fund from exiting all its outstanding investments by way of distress sale. However, the Trustees, as per Section 15 of Indian Trust Act, 1882 is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own. In view of this, the Trustee has a fiduciary responsibility to act in the best interest of the investor.

Given the illiquid nature of investments and other challenges as enumerated in the supplemental reply dated October 4, 2022, a distress sale of investments is only expected to realize negligible value for investors while at the same time, making a windfall gain for defaulting Promoters.

9.6. Question: Reference may be made to paragraph 26 of the reply dated October 4, 2022. It has been submitted that if the Scheme of the Fund ceases to exist, all litigations, except those in respect of which awards have been received, may come to an end. In this regard, the Fund has been advised to submit as to how and under what legal provision, an ongoing litigation is barring the Fund to transfer its right / interest / shares etc. in the property to a (third party) Buyer(s), as the pending suit does not pertain to the title of the property?

Answer: The shareholders' agreements executed between the Fund and the Promoters-shareholders of the investee companies include a clause on "assignment" of rights. The said clause prevents the Scheme of the Fund (as a shareholder) from transferring or dealing with the respective agreement and any rights thereunder without the prior written consent of the other parties, including the Promoter-shareholders of the investee companies. Thus, there is a contractual bar that prevents the Fund from transferring its rights / interest in the respective agreement to a third party buyer without the consent of other parties. Considering this, it is very likely that the defaulting Promoters-shareholders will not give consent to the assignment of rights by the Fund to a third-party buyer. Consequently, the assignees (without the consent of the Promoters-shareholders) would be barred from continuing the litigations initiated by the Fund.

A typical "assignment" clause in the aforesaid shareholders agreement which prohibits such a transfer is as under:

"*Except as permitted by the Agreement, no Party shall assign all or any of its rights or obligations hereunder to any person, without the written consent of the other Parties*".

Further, as mentioned in the supplemental reply dated October 4, 2022, the Fund is in litigation with Promoters-shareholders of various investee companies / SPVs. The respective share purchase agreements executed between the Fund and the Promoters-shareholders of the said investee companies include a 'right of first refusal' clause, as well. The said clause gives the shareholders of the investee companies (i.e., the Promoters-shareholders) a first right to purchase the offered

shares from the Fund at the terms and conditions of the proposed transfer by the Fund. If the Fund wants to transfer its investment in the investee company / SPV to a third party, it will require the consent of the Promoter-shareholders. Even if the litigant Promoter does not exercise its 'right of first refusal'; due to the on-going litigations, the defaulting Promoter is likely to create problems and refuse to execute the Deed of Adherence and/or admit a new buyer of shares of the investee company / SPV company as a shareholder in the respective investee company / SPV.

Further, the third party buyer may insist on having the consent of the Promoter-shareholders of the investee companies who are parties to the respective agreements, before allowing the transfer of shares by the Fund. Considering this, it is unlikely that at the time of the transfer of shares by the Fund, the third party buyer will prefer to undergo a legal process to transfer the on-going litigations against the same Promoter-shareholders whose consent is being sought to effect the transfer of shares in its name.

Hence, upon transfer / sale of shares by the Fund or upon the assignment of rights of the Scheme under any agreement entered with the investee companies in favour of a third party buyer, the ongoing litigations will effectively come to an end. Consequently, the Scheme of the Fund will be unable to realise the amounts from the defaulting Promoters-shareholders, to the detriment of the investors.

Consideration of Issues and Findings

10. I have carefully perused and considered the findings of SEBI's inspection and have also considered the above noted submissions made by *Noticees* both written and oral, the contents of which have already been highlighted in the preceding paragraphs. After going through all the material, as aforesaid, available on record, I find that essentially, following two issues arise for determination in the present matter:

10.1. Whether the Scheme of the Fund has been wound up as per the terms and conditions and the period of maturity as mentioned in the PPM?

10.2. If answer to the aforesaid question is in negative, whether the conduct of the *Noticees* have resulted in violation of provisions of VCF Regulations and SEBI

circular dated December 18, 2014 which warrants issuing of directions under Section 11B (1) of the SEBI Act read with regulations 29 (c) and (d) of VCF Regulations?

11. Before adverting to the aforesaid issues, it is relevant to first refer to the provisions of VCF Regulations and SEBI circular dated December 18, 2014, that have been either allegedly violated by the *Noticees* or are otherwise relevant for the present proceedings. The said provisions are reproduced hereunder for ready reference:

VCF Regulations

Winding-up.

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

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

Communication of findings etc., to the venture capital fund.

29. The Board may after consideration of the investigation or inspection report and after giving reasonable opportunity of hearing to the venture capital fund or its trustees, directors issue such direction as it deems fit in the interest of securities market or the investors including directions in the nature of: —

(a)...

...

(c) requiring the person connected to dispose of the assets of the fund or scheme in a manner as may be specified in the directions;

(d) requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme;

SEBI circular having reference number CIR/OIAE/1/2014 dated December 18, 2014: *Redressal of investor grievances through SEBI Complaints Redress System (SCORES) platform*

...

9. All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

...

12. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.

13. Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

12. Adverting to the first issue, I note that the Fund which was organized as a contributory trust was launched in June 2006. As per the PPM, the primary objective of the Scheme was to take advantage of the opportunities in urban infrastructure and real estate space. From para 2.2 under the chapter 2 of PPM, it is observed that the Scheme of the Fund was a close ended Fund and would terminate on the expiry of a period of seven (7) years from the date of initial closing which was in this case falling on June 9, 2006 i.e. the Scheme of the Fund was to come to an end on June 8, 2013. The terms of the PPM have further provided that the Trustee, upon the recommendation of the Investment Manager, may elect to extend the term of the Scheme of the Fund for two further periods of one (1) year each, which in the instant case was done. The term of the Scheme of the Fund post two periods of extension of one (1) year each, has finally come to an end by efflux of tenure on June 8, 2015. It is however, noted from the submission of the *Noticees* that post receiving consent from more than 76.63% of the investors of the Scheme of the Fund by value, the term of the Scheme of the Fund was further extended to December 31, 2016. Thus, the first question that needs to be answered here is, could the Trustees or the Investment Manager of the Fund have extended the period

of maturity of the Scheme beyond the term of the Scheme of the Fund as set out in its PPM for which a reference to the relevant provisions of the VCF Regulations is necessary.

13. In this regard, a perusal of regulation 16 (1)(a) of VCF Regulation would indicate that the Venture Capital Funds will issue a Placement Memorandum which shall contain details of the terms and conditions subject to which monies are proposed to be raised from investors. Regulation 17 (1) of VCF Regulations prescribes the requisite contents of Placement Memorandum including specifying the period of maturity, if any, of the Fund. Regulation 23 of VCF Regulations provides guidance to the Fund for the winding up of the scheme set up under different provisions of law and in this respect, regulation 23 (1)(a) of VCF Regulation provides that the scheme of the Venture Capital Funds set up as a trust, shall be wound up when the period of the scheme mentioned in the Placement Memorandum comes to an end. In this regard, it is further noticed that sub clauses (b), (c) and (d) of regulation 23(1) of the VCF Regulations provide that a scheme of a Fund may also be wound up if the trustees are of the opinion that winding up is in the interest of the unit holders; where 75% of the investors of the scheme pass a resolution for winding up the scheme and where the Board/ SEBI so directs in the interest of investor, respectively and such winding up can be effected even before the tenure of the scheme of the Fund.

14. It is also relevant to note that regulation 17 (1) of VCF Regulations which prescribes the requisite contents of Placement Memorandum, uses the word *"namely"*. The said regulation is quoted hereunder:

> ***"Contents of placement memorandum.***
>
> *17. (1) The placement memorandum or the subscription agreement with investors referred to in sub-regulation (1) of regulation 16 shall contain the following, namely: — (a) details of the trustees or trustee company and the directors or chief executives of the venture capital fund;*
>
> *(b) (i) the proposed corpus of the fund and the minimum amount to be raised for the fund to be operational;*
>
> *(ii) the minimum amount to be raised for each scheme and the provision for refund of monies to investor in the event of non-receipt of minimum amount;*

(c) details of entitlements on the units of venture capital fund for which subscription is being sought;

(d) tax implications that are likely to apply to investors;

(e) manner of subscription to the units of the venture capital fund;

(f) the period of maturity, if any, of the fund;

(g) the manner, if any, in which the fund shall be wound up;

(h) the manner in which the benefits accruing to investors in the units of the trust are to be distributed;

(i)details of the fund manager or asset management company if any, and the fees to be paid to such manager;

(j) the details about performance of the fund, if any, managed by the Fund Manager;

(k) investment strategy of the fund;

(l) any other information specified by the Board."

From the above in the context of this proceedings, it is now a crucial point for consideration as to whether by using the word "*namely*" in the aforesaid regulation, the legislative intent was to consciously restrict the scope and ambit of provision to rigidly prescribe the contents which can be a part of the PPM or the contents of PPM specified in the Regulation are merely illustrative in nature. In other words, can a PPM contain any other item which is not enumerated in the regulation 17 (1) of VCF Regulations. In order to answer the above, it will be appropriate to refer to the order of the Hon'ble High Court of Andhra Pradesh in the matter of *Balaji General Stores* vs. *Deputy Commissioner of Commercial Taxes* decided on December 19, 1986 wherein it was held as follows:

"8. ... The meaning of the word "namely" is given in the Webster's Third New International Dictionary as "that is to say: to wit, specifically, especially, expressly. In Stroud's Judicial Dictionary (Fourth Edition) "namely" means "by name" or "that is to say". It is stated that the word "namely" indicates "what is included in the previous term" in constradistinction to the word "including" which imports "addition, i.e., indicates something not included". Explaining the meaning of the words "namely" it is stated in Venkatramaiya's Law Lexicon, 2nd Edition, 1983 that

"it is restrictive in the sense that the general expression which precedes the word 'namely' is confined to the itemised expressions that follow the word 'namely'. Consequently, the meaning of the word 'namely' can only be restrictive and can be neither illustrative nor expansive."

...

10. Following that decision, another Division Bench of that court reiterated in a case arising under the provisions of the Tamil Nadu General Sales Tax Act, 1959 that the meaning of the word "namely" can only be restrictive and can be neither illustrative nor expansive. The learned Judges emphasized that "there can be no doubt about the meaning of the word 'namely', that is, it is restrictive in the sense that the general expression which precedes the word "namely" is confined to the itemised expressions that follow the words 'namely'". (vide State of Tamil Nadu v. Kasiraja Nadar [1981] 47 STC 337.

..."

The Hon'ble High Court continued to state that -

"Having regard to the plain and natural meaning of the word "namely", the various decisions referred to above and the contents of entry 36 of the First Schedule to the Act, there can be no doubt that the legislature intended to restrict the category of goods answering the description of "cosmetics and toilet preparations" only to those articles that were distinctly specified in the entry following the word "namely" used immediately after the general expression "cosmetics and toilet preparations". To hold otherwise will amount to obliterating the distinction between the two words "namely" and "including". As is evident from some of the entries in the First Schedule itself, the legislature bore in mind the distinction between the two words "namely" and "including" and used deliberately the word "including" in some of the entries such as 11, 14, 26, 48, etc. In entry 36 itself the word "namely" was replaced in the year 1983 by the word including. Thus, where it was intended that the enumerated goods specified after the general expression were to be only illustrative but not exhaustive, the word "including" was used and where the intention of the legislature was that the enumerated commodities should be exhaustive, they used the word

"namely" or "that is to say". In those circumstances, we have no hesitation in holding that the word "namely" followed by the enumerated commodities was incorporated in the entry to clearly covey the intention of the legislature that the enumerated list of goods was exhaustive and not illustrative."

15. In the light of the aforesaid observation of the Hon'ble High Court of Andhra Pradesh, I note that the contents of a Placement Memorandum cannot be different from what has been mentioned under regulation 17 (1) of VCF Regulations. Therefore, when regulation 17 (1) of VCF Regulations does not provide for making any amendment of the period of operation of the Fund, once the period of maturity has been fixed including the extension of period of maturity of the Fund (i.e. two extensions of one year each) as specifically provided under the Regulation, it is not open for the Trustees or the Investment Manager of the Fund to further extend the period of maturity of Fund by taking the consent of the unit holders / beneficiaries. Moreover, neither there is any provision under the VCF Regulations which provides for obtaining such further extension of the period of maturity of a scheme of a Fund post the expiration of its term nor any situation has been envisaged under VCF Regulations so as to enable the Trustees or the Investment Manager of the Fund to further extend the term of the Scheme of the Fund, post expiry of its maturity period as declared under its PPM including the Extended Period as permissible in terms of the PPM. Once the period of maturity as declared in the Fund's PPM is over, the Fund has to compulsorily wind up the Scheme under regulation 23 of the VCF Regulations. There is no scope for the Trustees or the Investment Manager of the Fund to seek refuge behind an argument that they have obtained the consent of more than 3/4th unit holders by value to extend the term of the Fund beyond its period of maturity as declared in the Fund's PPM. Interestingly, in the instant matter the PPM also does not contain any provision for increasing the term of the Fund beyond its period of maturity. Thus, to answer the question raised as aforesaid i.e. could the Trustees or the Investment Manager of the Fund have extended its period of maturity beyond the term of the Fund as set out in its PPM, the answer is certainly negative, as the same is legally untenable.

16. The *Noticees* have submitted that under the Contribution Agreement of the Fund, a unit holder has authorized the Trustee to extend the term of the Fund for two further

periods of one year "Extended Tenure" after the expiry of the original term in June 2013. It is further argued that since the unit holders are beneficiaries of the Fund, any extension beyond the aforesaid Extended Tenure can be done by mutual consent of the unitholders. In other words, according to the *Noticees* the unitholders are entitled to extend the tenure of the Fund beyond the permissible Extended Tenure based on their majority consent for any length of period. In this regard however, the reason as to why the tenure of the Fund could not have been extended under law / SEBI Regulation has been discussed in the preceding paragraphs. Nevertheless, considering the submission of the *Noticees* from another perspective of unit holders' consent to continue the Scheme beyond its period of maturity, I find that the aforesaid submission of the *Noticees* is factually incorrect and legally not sustainable. under the extant Regulatory framework prescribed under the VCF Regulations, it was the venture capital fund who had issued the PPM (regulation 16 (1)(a) of VCF Regulations) and keeping in mind the objective of the Scheme of the Fund (for which PPM was issued) and their proposed investment strategy, the Trustees and the Investment Manager had pre-decided the term of the Fund including any probable extensions to the term of the Fund that may be required for closure of the Scheme. The unit holders had agreed to the said terms and conditions of the PPM as the same suited to their investment objective. One should be clear in mind that the unit holders had no say in deciding the term of the Fund at the initial stage of launching of the Scheme and they only subscribed to the Scheme as because the terms of the Scheme suited their investment objective. It is fallacious to argue that the unit holders are supreme authority to decide the tenure of the Scheme of the Fund, even beyond the further period of two years of extension permitted as per the applicable Regulation read with the terms of PPM. Having gone through the records including the terms of PPM, I see that the unit holders have initially consented for two extensions of one year each at a time, beyond the normal schedule of tenure of the Scheme of the Fund of seven years. However, I find no clause in the agreement or in the PPM or in any provision in the law as applicable to this case so as to hold that the argument advanced by the *Noticees* is in order or as proper as per law. There is no denying the fact that being a beneficiary to the Scheme of the Fund, does give some rights to the unit holder of the Scheme, but the same cannot be stretched to mean that it also gives a right to the unit holders to alter the very material document of the Fund, especially when the VCF

Regulations do not give any such right to the unit holders of a Scheme floated by a VCF. In any case, it is an admitted position of the *Noticees* that the tenure of the Scheme of the Fund was extended beyond June 8, 2015 not to make further investments but only to gain some more time so as to liquidate the assets of the Scheme of the Fund. The same was deliberately done, as the Trustees and the Investment Manager were fully aware that once the tenure of the Scheme of the Fund (including the Extended Tenure) gets over, they will have to compulsory liquidate the assets of the Scheme of the Fund within three months. Therefore, it can be clearly seen that in order to be ostensibly show that they are in compliance with the mandatory obligation to wind up the Scheme but at the same time to avoid immediate winding up, the term of the Scheme of the Fund was extended by restoring to consent of unit holders for which no provision is there either in the PPM or in the VCF Regulations. Thus, from a bare perusal of the relevant clauses of the PPM and provisions under the VCF Regulations, I see no merit in the above submission of the *Noticees* that unwillingness expressed by the investors / unit holders to seek exit at this stage would amount to according extension of the Scheme of the Fund in perpetuity. Such a twisted interpretation of PPM and VCF Regulations would not only render the law redundant but would also further amount to deliberate circumventing the existing provisions that require mandatory winding up of the Scheme of the Fund in terms of regulation 23(1) of the VCF Regulations.

17. It is noted from the records that even before the expiry of the Extended Tenure of the Scheme of the Fund in June 2015, the Fund had distributed INR 632 crore (26% of the Fund corpus) to its investors. Post June 2015, as per *Noticees* submissions, the Fund had made numerous efforts to liquidate the assets of the Scheme of the Fund including exploring the possibility of *in-specie* distribution amongst the investors / unit holders. The Fund had also hired JLL to identify potential buyers. However, the Fund faced a lot of impediments in the form of demonetization, implementation of Real Estate (Regulation and Development) Act, 2016, introduction of Goods & Services Tax, litigation, Covid-19 etc. due to which the Fund was unable to liquidate its assets.

18. As noted above, as per regulation 23 (1) of VCF Regulations, a scheme of a Venture Capital Fund set up as a trust shall be wound up, when the period of the scheme, mentioned in the Placement Memorandum comes to an end. Admittedly, the Scheme

came to an end on June 8, 2015. It is the stated position of the *Noticees* that the Fund is under liquidation since June 2015 and no new investments have been made by the Scheme of the Fund. Last payment by the Scheme of the Fund towards investment was made on May 8, 2014. Regulation 24 (2) of VCF Regulations provides that within three months from the date of intimation of the intention to wind up the scheme under regulation 23(3) of VCF Regulations, the assets of the Scheme shall be liquidated and the proceeds accruing to investors shall be distributed. Thus, on a conjoint reading of the aforesaid provisions of VCF Regulations, it becomes clear that the Scheme of the Fund was required to be wound up within three months from the date of intimation of the intention to wind up the Scheme. It cannot be overlooked that in view of the express provision of regulation 24(2) read with regulation 23(1)(a) of VCF Regulations, the inability as shown by the Scheme of the Fund to wind up cannot be taken as a reason to continue the Scheme beyond the period specified in PPM read with the VCF Regulations. At this juncture, it will be apt to refer to the order of the Hon'ble Supreme Court of India in the matter of *Narmada Bachao Andolan and Ors.* vs. *State of Madhya Pradesh and Ors.* MANU/SC/0599/2011 wherein it was held as follows:

> *"The Court has to consider and understand the scope of application of the doctrines of "lex non cogit ad impossibilia" (the law does not compel a man to do what he cannot possibly perform); "impossibilium nulla obligatio est" (the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law Nemo Tenetur ad Impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide: Chandra Kishore Jha v. Mahavir Prasad and Ors. MANU/SC/0594/1999: AIR 1999 SC 3558; Hira Tikkoo v. Union Territory, Chandigarh and Ors. MANU/SC/0337/2004: AIR 2004 SC 3648; and Haryana Urban Development Authority and Anr. v. Dr. Babeswar Kanhar and Anr. AIR 2005 SC 1491).*

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

19. Drawing strength from the aforesaid observation of the Hon'ble Apex Court, I note that in the given fact and circumstances of the matter the reason which has been cited as having prevented the Scheme of the Fund to liquidate its investments, was that it was not getting a fair value of its investments. It is not a case of *force majeure* but rather economic / financial hardship. The circumstances surrounding the liquidation of the assets of the Fund was not in the realm of impossibility but it was in the realm of economic undesirability. According to the *Noticees* if the Scheme of the Fund had to liquidate its assets within three months from June 8, 2015, it would have led to substantial loss. Thus, winding up of the Scheme by the Trustees of the Fund or the *Noticees* herein was not virtually impossible but it was economically unfeasible and undesirable. Therefore, I find that avoidance of loss cannot be a valid ground for not complying with the mandatory obligation prescribed under VCF Regulations with respect to winding up of the Scheme of the Fund at the expiry of its term. Moreover, the Fund in its PPM under Chapter 8 had already foreseen and had disclosed all the relevant risk factors associated with the Scheme including the following:

"Additional risks and uncertainties not presently known to the Investment Manager, or that it currently deems immaterial may also have an adverse impact on the Fund's prospects and business. There can be no assurance that the Fund's investment objective will be achieved or that a Contributor will not lose all of his investment in the Fund."

Some of the risk factors which were specifically disclosed in the PPM and are relevant in the instant matter are as follows:

- Entitlement Risk and Development Risk
- Cost Overruns
- Market Cycles
- No control in Portfolio Companies
- Distributions in specie

- Political, Economic and Social Risk

The disclosure of adequate and material risk factors in the PPM coupled with the fact that the investors in the Scheme of the Fund were sophisticated (individual investment of minimum INR 1 crore or more) who had invested in the Scheme knowing very well the associated risks involved in a real estate scheme, leads to an undeniable inference that the investors had read the terms and conditions of the PPM and then have made an informed decision to invest in the said Scheme of the Fund. Consequently, the investors were aware that there was a possibility that they may incur loss for the investment made by them including the likelihood of incurring total loss (principal amount becoming zero) for which the investors should not have a legally valid grievance against the Scheme of the Fund. In this regard, it is further observed from the material on records including the PPM that though the objective of the Fund was to capitalize on the market potential in the real estate space, at the same time since it was pre-determined by the VCF to launch a close ended Scheme that did not assure any guaranteed returns, it is very much implied that investment in the said Scheme was subject to market risk that was well known to the Fund as well as to the unit holders and the Scheme did not in any way provide for assured return of any nature in any manner whatsoever. Therefore, I see no reason as to why the Fund did not wind up the Scheme in its entirety within the time frame stipulated under regulation 24(2) read with regulation 23(1)(a) of VCF Regulations.

20. After having gone through the explanations offered by the *Noticees*, it is observed that the central theme of all the submissions of the *Noticees* is that the winding up of the Scheme would be the detriment to the interest of its investors and that would go against the very fundamental objective of SEBI i.e., to protect the interest of the investors. In this regard, it may be noted that investments in big urban infrastructure and real estate projects are inherently fraught with various unforeseen risks especially when the investments are made in the earlier stages of development of a project. There is no doubt that if things would have gone as per the investment objective of the Scheme, investors might have made a reasonably good return from their investments in such urban infrastructure and real estate projects, but the same investors, while making their investment decision were well aware of the inherent risks of the Scheme which were

adequately disclosed to them in the PPM. Thus, these unit holders are informed investors who have made a conscious and informed decision to invest in the said Scheme. At the same time, I cannot close my eyes to the fact that in the normal course, the Scheme was to be wound up by June 2013 and post the two extensions obtained by it as proposed in the PPM, the tenure of the Scheme of the Fund came to an end in June 2015. The Extended Tenure after the completion of the initial seven years, in the consideration of any reasonable prudent person would be considered as sufficient time for a scheme to get wound up and closed down after distributing the proceeds to its investors in terms of the relevant laws. However, the *Noticees*, despite the lapse of more than another seven years after the expiry of Extended Tenure of the Scheme in June 2015, have not made any material shift in their stance as far as the closure and winding up the Scheme of the Fund is concerned. It is observed that the *Noticees* are still making the same excuses even today and have not been able to place any concrete and firm proposal on table supported by any plausible explanations, which might be useful and helpful in arriving at a reasonable solution within the confines of the applicable laws. At this stage, I cannot close my eyes to the fact that the said Fund is registered with SEBI and it is on the strength of this registration along with the conditions attached to the registration, it has received investment/s from the investors. The Fund had at the time of launching executed necessary documentation to ensure that the investment made by the unit holders shall be carried out in due compliance with the provisions of law. The relevant laws governing the registration of the Fund / Scheme read with the documents executed by the *Noticees* to invite investment in the Scheme of the Fund certainly provide for a fixed tenure of the Scheme of the Fund. The expiry of the tenure of the Scheme of the Fund was neither conditional nor was made subject to any eventuality which has to be necessarily considered and upon completion of which only the process of winding up of the Scheme would commence. Under the circumstances and in the absence of any provision in law or any compulsion under any customary / market practice, it may not be an appropriate interpretation of the law to state that a scheme that has invited investors to invest in the fund promising it to have a definite lifespan, can be permitted to continue to exist in perpetuity only on the ground that any exit that may be provided to the unit holders, may not be profitable to them at the time of their exit. Under the circumstances, in case a scheme of a VCF has not been wound up in terms of the law or

the terms of PPM, it would not only render the provisions governing the investment made in the said scheme otiose but also at the same time, will set up an illegitimate precedent which has neither been conceived nor is permissible under the law. If SEBI is not able to implement the mandatory obligations of any registered intermediary under the securities laws then that itself would go against its objective of development and regulation of securities market, the consequence of which would have far reaching adverse impact on the interests of the investors in the securities market since leaving the enforcement or application of statutory obligation under securities laws to the convenience and whims of the intermediaries or few of its investors, would result in impairment of market integrity and over all loss of confidence of the investors in the market regulator. Such a scenario does not augur well for the development of the market and its growth. Hence in the present matter, the interests of the investors of the Scheme has to be subservient to the overall development of the market and to the protection of interests of investors at large and wishes of some of the unit holders to keep the Scheme alive for indefinite period until they get a profitable exit, cannot be entertained in the name of the protection of interest of investors by sacrificing the very legal edifice on which the VCF Fund was registered and the Scheme was launched.

21. Looking from another perspective, I note that the Hon'ble Securities Appellate Tribunal in the matter of *Cinema Capital Advisory Private Limited et. al.* vs. *SEBI* and other connected appeal decided on September 14, 2021 held as follows:

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

admittedly the entire proceeds has not been distributed to the investors nor the scheme has been wound up. Assuming that the regulations 23 and 24 are directory in nature, nonetheless, the appellants were required to wind up the scheme and distribute the proceeds at the earliest. Five years is a long time and therefore it is clear that the appellants bonafides is doubtful."

22. In the light of the aforesaid observation of the Hon'ble Tribunal, it is noted that the Scheme of the Fund has been under liquidation since June 2015. Last payment towards investment from the Scheme was made on May 8, 2014. However, the repayment to the investors has not been completed and has remained pending even after seven years of completion of the Extended Tenure of the Scheme of the Fund mainly because the assets of the Scheme have not been liquidated thereby preventing the Scheme of the Fund to be wound up. In this respect, after having gone through the submissions of the *Noticees*, it is observed that the focus of the justification currently being advanced by the *Noticees* for not winding up the Scheme is that liquidating the assets of the Scheme is not commercially viable and is against the interests of its investors. Taking note of such a reason as advanced by the *Noticees*, I see no merit in the stand taken by the *Noticees* for the reasons that have been mentioned earlier, viz., that the Scheme itself was a close ended scheme; the investors do not belong to the ordinary class of innocent or uninformed investors / retail investors; the investment was not made by them to gain any assured returns; PPM itself disclosed that the investment made would be subject to various market and *force majeure* risks and lastly, by no stretch of imagination, it can be said that seven years of period after the end of the Extended Tenure of the Scheme is not a reasonable time to wind up a scheme when the regulation provides for only three months to a Scheme for getting wound up from the date of giving intimation to SEBI under regulation 23 (3) of VCF Regulations, which in any case has not been done by the Fund in the instant matter. Therefore, even though the Fund has made some efforts to provide exit to its investors in the past, it cannot be considered as a valid ground to allow the Scheme to remain open *sine die* just because it is not possible to give profitable exit to the investors since the same will be against the basic tenets of the applicable law and will render the mandatory character of regulation 24 (2) of VCF Regulations, a perfunctory provision which can be easily bypassed by any Fund.

23. It has also been advanced before me that considering the restrictive clauses in the agreement entered into by the Fund with the Promoter-shareholders of the investee companies whereby it is necessary to first obtain the consent of the parties before rights of the Fund / Scheme in the investment made in the investee companies are assigned to any third parties, it is not a fit case for passing of any directions to the *Noticees* under Section 11B of SEBI Act. In support of such a contention, it has been submitted that any direction to liquidate the assets of the Scheme would not be in the interest of the investors of the Scheme of the Fund. However, I find no merit in the above submissions. It has been argued that there is a contractual bar that prevents the Scheme of the Fund from transferring its rights / interest in the investee companies to a third party buyer without the consent of Promoter-shareholders of the investee companies. However, from the records, I see no evidence to suggest if at all any efforts whatsoever were made by the Fund to seek such prior consent of the Promoter-shareholders of any of the investee companies. I also can't ignore the fact that the Scheme of the Fund was initially scheduled to be completed by the year 2013 and was subsequently extended up to the year 2015. Therefore, it is appropriate to assume that the investments were made by the Scheme of the Fund with a clear objective to recoup those investments made in such investee companies prior to the completion of the tenure of the Scheme of the Fund. There cannot be any ambiguity over the fact that the Scheme was a close ended scheme and the Trustees and the Investment Manager were duty bound to liquidate all the investments of the Scheme prior to the expiry of the Scheme period. It is also not in dispute that more than seven years have since lapsed from the year (i.e. 2015) during which the Scheme was to be wound up. However, I find there has been no action to seek consent of the other parties such as Promoter-shareholders of the investee companies in which the investments were made and who are already at default in performing their part of the contract, has been made by the *Noticees* for effecting the transfer of the rights of the Scheme favouring any third buyer party. Therefore, it may not be right on the part of the *Noticees* to submit that there is an absolute bar on them from transferring their rights to third party buyers. Further, as submitted by the *Noticees* in the supplemental reply dated October 4, 2022 stating that the respective share purchase agreements executed between the Scheme of the Fund and the Promoter of the said investee companies include a 'right of first refusal' clause, which vests in the shareholders of the

investee companies (i.e., the Promoters-shareholders) a first right to purchase the shares / interest being offered by the Scheme of the Fund at the terms and conditions of the transfer of shares as may be proposed by the Fund. Even in this respect also, no cogent and tangible evidence has been brought before me to suggest that such a proposal to sell their part of the shares has ever been placed by the *Noticees* before the Promoters-shareholders of any of the investee companies / entities. Under the circumstances, I see no strength in the aforesaid submission which the *Noticees* want to use as a ground for the undue delay that has been caused primarily due to their gross negligence and inaction to complete the pending refunds to the remaining investors of the Scheme so as to ensure expeditious winding up of the Scheme of the Fund in letter and spirit of law within a given timeline, instead of keeping the Scheme in a state of suspended animation for years together.

24. I have observed above that as per original terms of the Scheme, it was incumbent upon the *Noticees* to complete the Scheme around June 2013 and all the investments were made by the Scheme with the same objective and after the completion of tenure of the Scheme, the assets were supposed to be liquidated so that the Scheme of the Fund would stand wound up in terms regulation 24 (2) of the VCF Regulations. Being very well aware of the above fact and the relevant law governing the winding up of the Scheme of the Fund on expiry of its fixed tenure, the Trustees in their own wisdom have entered into agreements with the Promoter-shareholders of the investee companies containing such restrictive clauses which on the face of it, appears to be tilted against the interest of investors of the Scheme of the Fund. It is not explained to me as to why in the first place the *Noticees* allowed such restrictive covenants to be included in those share purchase agreements with the Promoter-shareholders of the investee companies, knowing very well that such restrictive provisions would impede their ability to liquidate their stakes in those investee companies at the time of / prior to the expiry of the Scheme and Promoter-shareholders of the investee companies could use such clauses in the share purchase agreements to their advantage forcing the *Noticees* to make distress sale of their shares / interest in those companies. The aforesaid observations coupled with the poor conduct of the *Noticees* post completion of the tenure of the Scheme of the Fund, to take steps for making timely repayment and winding up of the

Scheme of the Fund, constrain me to hold that there is no merit in the argument of the *Noticees* to suggest that liquidation of assets of the Scheme of the Fund is not in the interest of the investors of the Scheme, even at such a belated stage after seven years of the expiry of the Extended Tenure of the Scheme. Looking at the aforesaid poor conduct of the *Noticees* along with practically no efforts made by them to liquidate the assets of the Scheme so as to make repayment to the investors apart from ensuring winding up of the Scheme of the Fund, I am again compelled to record that the submission of the *Noticees* stating that direction to liquidate the assets to wind up the Scheme of the Fund is not warranted even after seven years of completion of the Extended Tenure of the Scheme of the Fund is devoid of any merit and is an illegitimate request that is bereft of any justification or support of law. In fact, considering the legal and factual position as discussed aforesaid and keeping in mind the settled position in law that does not require any reiteration at length, it is incumbent upon me to follow the settled position in law because as there is no ambiguity of application of law to the existing fact and circumstances of the matter, hence any deviation from the regulatory provision to justify the inordinate delay committed by the *Noticees* in the winding up of the Scheme under the garb of certain restrictive clauses as mentioned above or certain circumstances as advanced by the *Noticees* to justify such delays, would amount to circumventing the existing governing laws and going against the very concept of close-ended schemes as envisaged under the VCF Regulations of SEBI.

25. From the submission of the Noticees, it has been noticed that the Fund has distributed INR 2,092 crore (initial corpus was INR 2,434 crore) to its investors till date. Further, 75% of the balance investments are locked in various stages of litigation (with the investee companies) and there are seven other non-litigated investments which are pending exits due to lack of market opportunities. Hence, it is clear that the Fund has failed to wind up the Scheme as per regulation 24(2) read with regulation 23(1)(a) of VCF Regulations which has led to violation of regulation 23(1)(a) of VCF Regulations.

26. Another allegation against the *Noticees* is that it has failed to redress three investors' grievances. One complaint was received anonymously while the other two complaints were made by one investor named Mr. S K Maheshwari. The first complaint of Mr. S K Maheshwari pertained to finding a resolution for his investment made in the

Scheme while his second complaint pertained to taking action against the Fund by SEBI including prescribing a deadline for recovery of his dues from the Scheme of the Fund.

27. The anonymous complaint which was received by the Fund on January 15, 2021 was responded to by the Fund on February 3, 2021, implying that the Fund did respond promptly to the complaint. With respect to the first complaint of Mr. S K Maheshwari, it is noted that the Fund had received the complaint on August 2, 2019 and had responded to the complainant on August 9, 2019 by providing him with an updated status of the Fund. SEBI treated the complaint as closed on August 21, 2019. The second complaint was received by the Fund on October 22, 2019 and was responded to by the Fund on November 25, 2019, implying that there was a delay of four days in responding to the complaint. SEBI treated the complaint as closed on December 3, 2019. As per paragraph 12 of SEBI circular CIR/OIAE/1/2014 dated December 18, 2014, a complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Under the circumstances, considering the fact that SEBI itself had closed the complaint, it can be treated as adequate redressal by the Fund of the investor grievances. However, for the second complaint of Mr. S K Maheshwari there was a delay of four days in responding to his complaint by the Fund. In this regard, it has been submitted by the Fund that there was a delay of only one working day. It will be relevant here to quote the order of the Hon'ble Supreme Court of India in the matter of *Delhi Airport Metro Express Pvt. Ltd.* vs. *Delhi Metro Rail Corporation* decided on May 5, 2022 wherein it was held as follows:

> *"... S.A. Bobde, J. in his judgment, has referred to various authorities of this Court as well as Maxwell on the Interpretation of Statutes. He emphasized that the Court must give effect to the plain, clear and unambiguous words of the legislature and it is not for the Courts to add or subtract the words, even though the construction may lead to strange or surprising, unreasonable or unjust or oppressive results."*

In view of the above, if the submission of the *Noticees* has to be considered as tenable, it will tantamount to reading the word "*working*" in the aforesaid SEBI circular, which goes against the basic tenet of the principles of statutory interpretation which has been highlighted above in the Hon'ble Apex Court order. Therefore, the submission of the *Noticees* on this issue does not hold good.

28. *Noticees* have further submitted that in the SCN it has been alleged that non-repayment of investor's contribution amounts to non-redressal of investors' complaints. Since non-repayment to investors by them was an outcome of non-winding up of the Fund, the non-redressal of investors' complaints should not be treated as a separate violation. In this connection as noted in the preceding paragraphs, SEBI has already closed the complaints and as per paragraph 12 of SEBI circular CIR/OIAE/1/2014 dated December 18, 2014, the same can be treated as resolved. However, as pointed out above, there was a delay of four days in responding to the complainant by the Fund and non-response to the complaint on time is not the same thing as one of the consequences of non-winding up of the Fund. Thus, not redressing the investor grievance within the timeline prescribed under the aforesaid circular is a separate and distinct violation from the violation involving non-winding up of the Scheme of the Fund. It has been held time and again by the Hon'ble Securities Appellate Tribunal that timely redressal of the investors' grievances by the companies is of utmost importance. Hence, violation of such an important regulatory measure cannot be taken lightly.

29. In view of the aforesaid discussion, it is held that the Fund has violated the provisions of SEBI circular CIR/OIAE/1/2014 dated December 18, 2014 in so far as it has not been able to promptly respond to and timely redress the investor complaint.

30. Moving towards the specific conduct of the individual *Noticees*, I note that *Noticees No. 2, 3* and *6* are the Directors of UITL while *Noticee No. 4* was a Director of UITL till February 9, 2021. From the records it is noted that *Noticee No. 5* who was also a Director of UITL has passed away on January 27, 2017. *Noticees No. 8* to *10* are the Directors of UIVCL while *Noticee No. 11* was the Director of UIVCL till November 3, 2020 and *Noticee No. 12* was the Director of UIVCL till May 20, 2019.

31. With respect to the role of the *Noticees,* I note from the Chapter 2 of PPM of the Scheme that the Fund is being managed by the Investment Manager (UIVCL) pursuant to the terms of the Investment Management Agreement entered by it with UITL. Under the Investment Management Agreement, Investment Manager will make investments on behalf of the UITL in Portfolio Companies. UITL had all the powers in respect of the assets of the Scheme including the power to manage the assets, which was delegated by it to the Investment Manager (UIVCL) under the said Investment Management Agreement.

Thus, the Fund was run and operated by UITL in consultation with UIVCL and both of them are incorporated under the Companies Act, 1956.

32. I note from the record that none of the *Noticees* who were on the Board of UIVCL and UITL post June 8, 2015 has taken any specific plea to state that he was not in charge or was not responsible for the day to day functioning of the Fund. It has to be acknowledged that all the acts which are executed in the name of an incorporated entity, are done by the natural persons who by their own minds and wisdom, are controlling the affairs and management of such an artificial juristic person (company) in the capacity of its Directors. The company, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Directors who are controlling the overall functioning of the company. I note that the position of a 'Director' in a company comes along with various onerous responsibilities and compliances under law that are associated with such position, which have to be adhered to by such Directors and in case of any default to adhere to any applicable law, he / she has to face the consequences thereof. The Directors of a company are the persons who are appointed to direct and supervise the management of the affairs of the company. They are expected to diligently perform their duties with honesty, fairness, skill and care in administering the affairs of the company. Such a duty requires the Directors to devote adequate time and attention to the affairs of the company so as to be able to take decisions that do not expose the company to unnecessary risks / actions by enforcement agencies. This implies a high degree of accountability and knowledge of the overall functioning of the company. Therefore, the Director cannot wriggle out from his / her liability arising out of any wrongdoing by the company.

33. In the instant matter, *Noticees* have not made out a case that even though they were the Directors of UIVCL and UITL, they were not managing and directing the affairs of the aforesaid companies or that their responsibility as a Director was such that it did not involve overseeing the day to day functioning of UIVCL and UITL and consequently, the day to day affairs of the Fund. Additionally, no material has been made available on record which would show that the aforesaid *Noticees* have carried out their duty in administering the affairs of the Fund as the Directors of UIVCL and UITL, diligently with skill and care as the fact of non-winding up of the Scheme of the Fund for the last seven

years is not in dispute. In the absence of the aforesaid, I am constrained to hold that the aforesaid *Noticees* have abdicated their responsibility and duty as a Director of UIVCL and UITL and consequently were not diligent enough in managing the affairs of the Fund, which is not permissible under law.

34. In view of the aforesaid, I am constrained to hold that *Noticees No. 2* to *6* and *8* to *12* are liable for the violations of securities laws that have been committed by the Fund during their tenure as alleged in the SCN and are also accountable in equal measure along with UIVCL and UITL for not taking any concrete steps to liquidate the assets of the Scheme or to wind up the Scheme as per the terms of the Scheme read with the VCF Regulations.

35. After finding the Fund along with its Trustee i.e. UITL and Investment Manager i.e. UIVCL and the Directors of UITL and UIVCL equally and concurrently guilty of contravening various provisions of VCF Regulations and SEBI circular dated December 18, 2014, the next step would be to evaluate what directions, if any, should be issued against the Directors of UIVCL and UITL which would be commensurate with the violations committed by them. I note that Section 11 of SEBI Act confers a duty on the Board to protect the interests of investors in securities market and to promote the development of and to regulate the securities market. For achieving the aforesaid statutory mandate, it has been authorised to take such measures as it deems fit. Thus, the power to take all measures as may be necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble of SEBI Act, has been conferred in its widest amplitude. By not winding up the Scheme of the Fund within the prescribed time frame, UIVCL and UITL and their respective Directors have not only impaired the rights of its investors but the protracted and never ending time taken by UIVCL and UITL and their respective Directors to wind up the Scheme of the Fund by taking various pleas, completely oblivious to their obligation to do so quickly and promptly in compliance with the VCF Regulations, sends a wrong signal to the other market entities / intermediaries. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and protect the integrity of the securities market. Since the conduct of UIVCL and UITL and their respective Directors, is not in the interest

of investors in the securities market, appropriate directions need to be issued against them, else it may lead to loss of investors' trust in the securities market.

36. Before proceeding further, I note from records that *Noticee No. 5,* Mr. R A Agarwal has passed away. Therefore, the extant proceedings against him stands abated.

Directions

37. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 29 of VCF Regulations, pass the following directions:

37.1. *Noticees* (except for *Noticee No. 5)* shall ensure that the Scheme of the Fund is wound up by providing exit to its investors / unit holders within a maximum period of 3 months from the date of this Order in the following manner:

37.1.1. Two separate valuations of all the remaining assets of the Scheme of the Fund (as on October 31, 2022) shall be obtained from two independent reputed valuers;

37.1.2. The NAV of the Scheme of the Fund as on October 31, 2022 shall be determined based on the aforesaid valuation reports by adopting higher of the valuation arrived at in the aforesaid two valuation reports;

37.1.3. Exit to the investors shall be provided first, by offering an option to the existing investors / unit holders to take exit by way of *in specie* distribution of interest / rights / stakes/shares, etc. in the investee companies/projects;

37.1.4. The investors / unit holders who do not exercise their option for *in specie* distribution, shall be given exit on the basis of the NAV determined as per directions stated in paragraph 37.1.2 above.

37.1.5. It is clarified and directed that the entire process of winding up of the Scheme of the Fund and providing exit to the investors / unit holders as per the above stated directions, shall be completed within a maximum period of 3 months from the date of this Order i.e. latest by January 31, 2023.

37.2. The *Noticees* (except for *Noticee No. 5)* shall file a report certified by a CA declaring that all the investors of the Scheme have been provided an exit and the Scheme of Fund stands wound up. The said report shall be filed within a period of three weeks after completion of the exit and repayment to the investors/unit holders of the Scheme i.e. by February 21, 2023.

37.3. *Noticees No. 2* to *4, 6* and *8* to *12* are hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner, either directly or indirectly, for a period of 1 year from the date of this Order.

37.4. *Noticees No. 1* to *4,* and *6* to *12* are hereby restrained from associating themselves, directly or indirectly with any SEBI registered intermediaries including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investors' money in any manner for a period of 1 year from the date of this Order.

38. The Order shall come into force with the immediate effect.

39. A copy of this order shall be forwarded to the *Noticees,* all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

Date: October 31, 2022
Place: Mumbai

S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA