

MOOT PROBLEM

1. Aglow Limited (“Aglow”/ “Company”) is engaged in operating beauty salons and providing other related services. The Company operates 50 salons-cum-spa centers across 37 locations across the country and has the highest market capitalization in its business sector. The Company has its headquarters in Mumbai and is listed on the BSE Limited (“BSE”) and the National Stock Exchange of India Limited (“NSE”) since January 2007.
2. The financial overview of the Company for FY 2021-22 and FY 2022-23 is tabulated below:

(Rs. In Lakh)

| Particulars | FY 2020-21 | FY 2021-22 |
|--|------------------|----------------|
| Total Income | 6,719.66 | 11,561.32 |
| Total Expense | 9,265.19 | 11,114.88 |
| Profit/(Loss) before exceptional items & tax | (2,545.53) | 446.44 |
| Exceptional items | (557.03) | 1882.93 |
| Profit / (loss) before tax | (3,102.56) | 2,329.37 |
| Profit / (loss) after tax | (2747.55) | 1805.73 |

(Source: Annual Reports of the Company)

3. On September 04, 2008, a Memorandum of Understanding (“MOU”) was executed amongst
 - a) Aglow; b) Sundarya Private Limited (“Sundarya”); and (c) Vandana Agarwal, Amber Agarwal and Pooja Agarwal (“Agarwal Group”) to build and operate three salon-cum-spas centres (hereinafter referred to as “Saloons”) under the Aglow brand in Mumbai, Maharashtra. A copy of the MOU is attached herein as “Annexure A”.

4. Consequent to the above MOU, three salons were constructed in Mumbai, currently being owned and operated by Sundarya. The Agarwal Group and Aglow each hold 50% of the total shareholding in Sundarya, which is a private unlisted company incorporated in 2001.
5. Aglow received a notice of the EGM meeting from Sundarya on January 10, 2022, regarding proposal for appointment of two Independent Directors (“IDs”) for meeting on January 29, 2022. Accordingly, an impact analysis was made by Aglow’s management regarding the legal, compliance and financial implications on the appointment of IDs.
6. On January 31, 2022, by way of a notice to the stock exchanges, Aglow inter alia announced, after market closing hours, that Sundarya was no longer a subsidiary of Aglow and was classified as a joint venture/associate company. Prior to January 31, 2022, Sundarya was classified as subsidiaries of Aglow. It was further informed that as per the MoU executed between Aglow and the Agarwal Group, the Board of Directors of Sundarya would consist of five (5) Directors, out of which three (3) would be nominated by Aglow and two (2) by the Agarwal Group. Aglow also informed that at the Extraordinary General Meeting (“EGM”) of Sundarya held on January 29, 2022, two Independent Directors were appointed. So, the Board of Sundarya post-January 29, 2022, comprised of seven Directors, of which only three were the nominees of Aglow. So, the number of Directors that Aglow had the power to nominate did not constitute the majority on the Board of Sundarya. On this basis Aglow through its notice dated January 31, 2022, informed that Sundarya had ceased to be a subsidiary company of Aglow and was classified as a joint venture company of Aglow.
7. Pursuant to the above announcement, Aglow considered Sundarya as an associate company w.e.f. January 29, 2022 and accordingly prepared and published its consolidated financial statements for Financial Year (“FY”) 2021-22, excluding the financials of Sundarya as a subsidiary from its financial statements.
8. Securities and Exchange Board of India (“SEBI”) received a complaint dated June 30, 2022 (“Complaint”) against Aglow wherein it was *inter alia* alleged that Aglow, despite having control over Sundarya, did not include Sundarya as a subsidiary company in its consolidated

financial statements for the FY 2021-22, and by doing so, Aglow had overstated its profit for the said FY.

9. Subsequent to the above complaint, SEBI directed BSE to appoint an independent audit firm to conduct forensic audit in light of the Complaint received. Thus, BSE appointment Pawan LLP (“**Forensic Auditor/Pawan**”) as forensic auditor to conduct forensic audit of Aglow for the period between April 01, 2021, to March 31, 2022. During the forensic audit, Aglow made the following submissions:

(i) Mr. Sameer Amal, the Chief Financial Officer (“**CFO**”) of Aglow did detailed research and intimated to Pulkit Sharma (“**Pulkit**”), Chairman and Managing Director (“**CMD**”) of Aglow that as per IND AS 110, the Holding-Subsidiary relationship between Aglow and Sundarya would end, and Sundarya was required to be treated as an associate company during the consolidation of financial statements. For this, two opinions were sought, one from a law firm, namely LegalSense and another from Mr. Nagarjuna, a practicing Company Secretary both of which were received to Aglow on the January 28, 2022. The said opinions inter alia state the following:

- With respect to the voting rights, Aglow and Agarwal Group both held equal stake of 50% in Sundarya. So, they had similar voting rights and quantum of shares.
- The Article of Association (“**AoA**”) of Sundarya, did not have a clause which provided any right to any party, to remove a director. Aglow, before January 29, 2022, through Board majority, had the right to appoint/remove Key Managerial Personnel (“**KMP**”) like General Manager and Finance Controller. However, from January 29, 2022, onwards, Aglow did not have majority in the Board, and hence, would not have unanimous power to appoint/remove KMPs. Power of appointment of KMPs/Directors was with the Board in accordance with the AoA of Sundarya.

- Aglow was not in a position to enter/veto any decision as it did not have the majority in Sundarya's Board of Directors. Accordingly, it did not have rights to direct Sundarya to enter into or veto any changes to, transactions for the benefit of Aglow.
- The composition of the Board of Sundarya forms the basis of Holding-Subsidiary relationship between Aglow and Sundarya. The appointment of IDs was the event which resulted in loss of control by Aglow and accordingly, Aglow did not hold majority in the Board to direct the relevant activities of Sundarya. As per the AoA of Sundarya, Aglow had a right to appoint a maximum of five Directors and the Agarwal Group to appoint a maximum of four Directors, however, Aglow still will not have a majority of the Board as it would have only five Directors out of total 11 Directors (i.e., Aglow-5, Agarwal Group-4 and IDs-2).
- So, from the effective date of appointment of two IDs i.e., January 29, 2022, the Holding-Subsidiary relationship between Aglow and Sundarya would cease to exist.

(ii) Based on the above, the CMD of Aglow, concluded that Sundarya would cease to be a subsidiary of Aglow and be treated as an associate company under joint venture category w.e.f. January 29, 2022. The stock exchanges were, accordingly, intimated vide notice dated January 31, 2022.

10. The Forensic Audit Report (“**FAR**”) was received by SEBI on October 22, 2022, the findings of which are as follows:

“Considering section 2(87) and section 2(27) of Companies Act, 2013, clause 66 of Articles Of Association of Sundarya and IND AS 110, it appears that Aglow has power and ability to use its power over Sundarya and earns variable returns from its involvement in Sundarya. Thus, Sundarya should have been consolidated by Aglow in FY 2021-22.”

11. Subsequent to the above, a First Information Report (“**FIR**”), was filed against Mr. Pawan Gupta (lead auditor in the present matter), along with two other auditors as accused for allegations of corruption relating to the audit made for some other company. In November 2022, the two other accused got arrested in Mumbai for certain allegations against them. Mr. Pawan Gupta also applied for an anticipatory bail in respect of which the Bombay High Court vide its order dated February 01, 2023, passed an interim direction wherein the authorities have been directed not to arrest him till next date.
12. Considering the findings in FAR, SEBI initiated its investigation for the period FY 2021-22, the focus of which was to ascertain if Aglow had misrepresented its consolidated financial statements while accounting for one of its subsidiary companies (i.e., Sundarya) for FY 2021-22 and whether the said misrepresentation/misstatement, if any, was in violation of the provisions of Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”). Thereafter, a Show Cause Notice (“**SCN**”) was issued by Mr. Amit Shyamlal, Deputy General Manager, SEBI on November 01, 2022, against Aglow and its directors/KMP. The brief allegations in the SCN are as follows:

Holding-Subsidiary Relationship between Aglow and Sundarya –

13. Aglow considered composition of the Board of Directors of Sundarya as the trigger point for its decision to consider it an associate company instead of a subsidiary company.
14. From the assessment of section 2(87) and 2(27) of the Companies Act, 2013 and IND AS 110, the following factors need to be considered for assessing whether Sundarya is still a subsidiary of Aglow even after appointment of two IDs on the Board of Directors of Sundarya:
- i. Aglow’s control/power over the composition of the Board of Directors of Sundarya;
 - ii. Aglow’s current ability to direct the relevant activities of Sundarya;
 - iii. Aglow’s exposure/rights to variable returns from involvement with Sundarya;

- iv. Aglow's ability to use its power over Sundarya to affect its returns.

The said factors are discussed and examined in detail in the subsequent paragraphs.

Aglow Control/Power Over the Composition of the Board of Directors of Sundarya:

Voting Rights of Aglow:

15. Clause 9 of the MOU provides that the Board of Directors of Sundarya will have a Chairman from Aglow. Further, clause 39 of the AoA of Sundarya stipulates that in case of an equality of votes, the Chairman shall be entitled to a second or casting vote. The copy of the AoA is annexed herein as "**Annexure B**".
16. Thus, the MoU executed between Aglow and Sundarya and further, the AoA of Sundarya inter alia state that the right of appointment of Chairman of Sundarya's Board shall be with Aglow, and the Chairman, appointed by Aglow, shall be entitled to a second or casting vote in case of an equality of votes in the meeting of Board of Sundarya. In this regard, it is observed that Aglow appointed its CFO (i.e., Mr. Sameer Amal) as the Chairman of the Sundarya. Notably, he is still designated as Chairman even after Aglow had ceased to consider Sundarya as its subsidiary.
17. Therefore, it is alleged that Aglow, in addition to 50% voting rights, holds second or casting vote through its CFO, who is still designated as Chairman of Sundarya which enables Aglow to exert decisive power/control over Agarwal Group in respect of Sundarya.

Aglow's Rights to Appoint Majority of the Directors and Removal of Directors:

18. Clause 65 of the AoA of Sundarya provides that "*The company may from time to time by ordinary resolution change the number of Directors.*" So, change in board composition can be made through an ordinary resolution. Further, Section 114 (1) of the Companies Act, 2013 inter alia provides that a resolution shall be an ordinary resolution if the notice as per the Companies

Act, has been duly given. Such resolution is required to be passed by the votes cast in favour of the resolution, including the casting votes of the members and the Chairman who is also entitled to vote, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

19. The AoA of Sundarya empowers Aglow to nominate/appoint majority of Directors on the Board of Sundarya. In this regard, Clause 66 of the AoA is reproduced below:

“66. Board of Directors shall constitute of five Directors of which three Directors shall be nominated by Aglow and two Directors shall be nominated by Agarwal Group. The number of Directors can be increased to nine Directors, of which five Directors shall be nominated by Aglow, and 4 Directors by Agarwal Group. However, if and when any need arises, then Independent Directors per se or of any Financial Institution/ PSU Bank/ Private Bank may be taken on the Board of Directors”

20. With regards to removal of Directors, Section 169(1) of the Companies Act, 2013, which deals with the removal of Directors inter-alia provides that a company may, by ordinary resolution, remove a Director. Therefore, in terms of the abovementioned Clause 9 of the MoU and Clause 39 of the AoA of Sundarya read with the provisions of Section 114(1) and Section 169(1) of the Companies Act, 2013, it is observed that Aglow, by exercising the second or casting vote through the Chairman of Sundarya, who holds decisive voting right, has the power to pass an ordinary resolution, enabling Aglow to remove a director from Sundarya’s Board at its discretion.

21. In light of the above, Aglow holds the right to remove as well as appoint majority of Directors on the Board of Sundarya.

Aglow's Current Ability to Direct the Relevant Activities of Sundarya:

22. As per the MoU, a brief summary of the rights/controls in respect of the various activities/aspects of the three salons exercised respectively by Aglow and the Agarwal Group is provided hereunder:

| S. No. | Nature of activities/operations | Rights/control | |
|--------|---|----------------|---------------|
| | | Aglow | Agarwal Group |
| 1. | Cost of commercial conversion of land for salon use | | √ |
| 2. | Aglow will do construction in consultation with Agarwal Group. In case of difference of opinion, final decision would be taken by Aglow | √ | |
| 3. | Architect will be decided by | √ | |
| 4. | Completing the construction of Saloons in all aspects and enabling commencement of operations | √ | √ |
| 5. | Technical fee of 0.9% of project cost, excluding the cost of land | √ | |
| 6. | Appointment of Chairman | √ | |
| 7. | Appointment of Managing Director | | √ |
| 8. | Statutory Auditor Appointment | | √ |
| 9. | Internal Auditor Appointment | | √ |
| 10. | After completion of Saloons, management will be with Aglow | √ | |
| 11. | Management Fee 0.9% of Turnover and 5% of Gross Profit to be earned by | √ | |
| 12. | Surplus remaining after payment of management fees and after reducing reasonable allowance of working capital to be transferred to | | √ |
| 13. | Operations and management of the Saloons | √ | |
| 14. | Supervisory Services | | √ |
| 15. | Repairs and maintenance | √ | |

23. In view of the above, it is observed that Sundarya's operations are significantly in the hands of Aglow as decisions/rights on critical and significant portion of the activities viz. operations, management, services, repair, maintenance, etc. are taken by Aglow. Thus, Aglow being the operator of the Saloons was evidently capable to direct the relevant activities of Sundarya. Hence, Aglow has existing rights that give it ability to direct the relevant activities, i.e., activities that significantly affect Sundarya's returns.

Aglow's exposure/rights to variable returns from involvement with Sundarya:

24. As per the MoU, Aglow has rights/exposure to get management fee of 0.9% of the turnover and further earning of 5% of the gross profit. Also, as noted above, Aglow has the rights on the Saloon's operations and management. As the returns from the Saloons business have potential to vary, Aglow is exposed or has rights, to variable returns from its involvement with Sundarya.

Aglow's ability to use its powers to affect returns:

25. The list of rights vested with Aglow clearly indicate that it has greater amplitude of rights/powers, variability with its economic interests in respect of the Saloons being operated by Sundarya in the name of 'Aglow'. The same also establishes Aglow as a principal entity and therefore, a decision maker. Further, Aglow has also the ability to use its power (removing/appointing Director) over Sundarya to affect the amount of its returns/profitability.

Impact on Aglow's Profit/Loss due to Change in the status of Sundarya:

26. It is observed that Sundarya had incurred losses in preceding three financial years prior to FY 2021-22. In the Annual Report of Sundarya for FY 2020-21, under the note: '*Material uncertainty with respect to going concern of a subsidiary*', the following was inter alia stated:

"Sundarya Private Limited ("subsidiary company") has suffered a loss of Rs. 392 lakhs during the FY 2021-22. The subsidiary company's current liabilities exceed its current assets by ₹2,798.05 lakhs as on the Balance Sheet date. While these factors would normally indicate the existence of a material uncertainty which may cast significant doubt about the Company's ability to continue as a going concern, the Company is

taking steps towards improving operating cash flows through term loan restructuring plan for improving operating cash flows through cost synergies, exploring avenues of enhancing revenues, operational and financial support from its shareholders....”

27. Thus, pursuant to the announcement made by Aglow on January 31, 2022, of not considering Sundarya as its subsidiary, Aglow de-recognized all the assets and liabilities of Sundarya from the date of loss of control i.e., January 29, 2022. It is observed that for FY 2020-21, Aglow had consolidated losses after tax of Rs. 27.47 crores. However, for FY 2021-22, it declared a net profit after tax of Rs. 18.05 crore. This significant improvement, i.e., 165.72% rise in the net profit was majorly attributable to re-measurement gain of Rs. 17.77 crore on account of treating Sundarya as an associate company instead of a subsidiary. A brief impact analysis on Aglow’s consolidated financial statements is given below:

(Rs. In Lakh)

| Particulars | Sundarya as Subsidiary (A) | Sundarya as Associate (B) | Difference (B-A) |
|---|----------------------------------|---------------------------------|---------------------|
| Total Revenue | 11,729.69 | 11,561.32 | -168.37 |
| Total Expenses | 11,283.22 | 11,114.88 | -168.34 |
| Profit Before exceptional Item and Tax | 446.47 | 446.44 | -.03 |
| Exceptional Item | 105.48 | 1882.93 | 1,777.45 |
| Profit /loss for the year | 28.32 | 1805.73 | 1,777.41 |

28. Thus, the Aglow failed to make proper and fair accounting treatment by derecognizing Sundarya’s assets & liabilities and recording net re-measurement gain on the loss of control over Sundarya as subsidiary. As Sundarya was a loss-making subsidiary, its exclusion as subsidiary enabled Aglow to overstate/ inflate its profit to the extent of Rs. 17.77 crore in the consolidated financial statements for FY 2021-22. In light of the same, it is alleged that Aglow was under obligation to consolidate its accounts with Sundarya as a subsidiary instead of an

associate company. However, it failed to do so, which led to misrepresentation/misstatement of its consolidated net profit/loss for FY 2021-22.

29. It was observed that pursuant to declaration of misrepresented consolidated profit by Aglow, the scrip price surged from Rs. 40 to Rs. 100.00, i.e., a jump of 150% within a short span of 11 months (from January 31, 2022, to December 30, 2022).

30. The promoters' shareholding in Aglow reduced from 73.23% in January 2022 to 70.05% in December 2022. Mr. Pulkit and Ms. Anjali Arora (“**Anjali**”) (both being promoter & director of Aglow) offloaded large number of their shares between February 2022 to December 2022.

31. The details of quantum of gains made by Mr. Pulkit and Ms. Anjali are specified below:

Pulkit Sharma Gains:

| Date | Buy/sell | Total quantity (A) | Weighted Average Price (Rs.) (B) | Price on January 31, 2022 (Rs.) (C) | Price difference (Rs.) (D)=(B-C) | Gain (A*D) (Rs.) |
|--------------------|-----------------|---------------------------|---|--|---|-------------------------|
| February 04, 2022 | Sell | 28,764 | 53.79 | 40 | 13.79 | 3,96,656 |
| June 05, 2022, | Buy | (30,100) | 59.86 | 40 | 19.86 | (5,97,786) |
| June 16, 2022 | Sell | 3,95,241 | 77.36 | 40 | 37.36 | 1,47,66,204 |
| September 17, 2022 | Sell | 1,65,818 | 90 | 40 | 50 | 82,90,900 |
| December 12, 2022 | Sell | 3,00,000 | 95.38 | 40 | 55.38 | 1,66,14,000 |
| Total | | 8,59,723 | | | | 3,94,69,974 |

Anjali Arora Gains:

| Date | Buy/ sell | Total quantity (A) | Weighted Average Price (Rs.) (B) | Price on January 31, 2022 (Rs.) (C) | Price difference (Rs.) (D)=(B-C) | Gain (A*D) (Rs.) |
|------------------|----------------------|-----------------------------------|---|--|---|-----------------------------|
| July 01, 2022 | Sell | 5,00,000 | 78 | 40 | 38 | 1,90,00,000 |
| Total | | 5,00,000 | | | | 1,90,00,000 |

32. Thus, it is alleged that Mr. Pulkit and Ms. Anjali offloaded their shares at a price which benefited because of Aglow's announcement made on January 31, 2022, by not treating Sundarya as a subsidiary. Hence, it is alleged that Aglow's act of wrongly classifying Sundarya as an associate resulted in misrepresented/misstated financial statements (of Aglow) for FY 2021-22. Aglow's promoters offloaded their shares on steep prices, thus revealing that they knowingly misrepresented/manipulated the financial statements to implement a scheme to derive personal benefit, thereby impacting the investors at large and shaking the integrity of the securities market.

Alleged Violation by the Company and Promoters:

33. As discussed above, Aglow wrongly classified Sundarya as an associate company instead of a subsidiary and published financial statements for FY 2021-22, thereby showing an overstated/inflated consolidated profit of Rs. 18.05 crore instead of Rs. 0.28 crore. Hence it is alleged that Aglow misrepresented/misstated/manipulated its consolidated financial statements for FY 2021-22 to defraud the investors for implementation of a plan, device, and artifice in violation of Section 12A (a), (b), (c); Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations; and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of LODR Regulations.

34. Mr. Pulkit is the promoter and MD of Aglow since 2012 and attended all board meetings of Aglow during the IP. Ms. Anjali has been Non-Executive Director in Aglow since 2019 and

attended all board meetings during the IP. Both of them are signatories to the consolidated financial statements for FY 2021-22.

35. Further, Mr. Pulkit also signed the Certificate as required under Regulation 17(8) of SEBI (LODR) Regulations, 2015, stating that financial statement presents true and fair view and is in compliance with existing accounting standards, applicable laws and regulations. It is alleged that being directors on the Aglow's Board, they were in-charge of operations and decision-making process, it is therefore their responsibility to ensure that the Company's financial statements present true and fair picture of the company's financial status and that correct financial statements are published. However, preparation and publication of misreported financial statements reflecting substantial overstated/inflated consolidated profit in the financial statements, which could not have taken place without their approval (either written or oral) or knowledge, provide that they failed to perform their duties and obligations.
36. It is pertinent to note that the misreported and inflated profits resulted in increase in the price of the scrip of Aglow and taking advantage of the significant surge in price, both the Promoters/Directors, Mr. Pulkit and Ms. Anjali offloaded huge volumes of shares at high price, earning profit at the cost of retail investors.
37. In view of the above, it is alleged that Mr. Pulkit and Ms. Anjali, were involved and responsible for furnishing incorrect/misstated financial statements to the Board of Directors of Aglow which led to publication of misleading financials of the Company. Further, it is alleged that they made total gain of Rs. 5.84 crore by selling their shares at prices which were impacted/influenced by the misstated financials of Aglow. Thus, it is alleged that both Mr. Pulkit and Ms. Anjali implemented a plan, device, and artifice to defraud the investors by manipulating/misrepresenting the financial statements.
38. Hence, it is alleged that Mr. Punit has violated Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003, Section 12A(a),(b),(c) of SEBI Act, 1992 and Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7), 4(2)(f)(iii)(7) and 17(8) of the SEBI (LODR) Regulations 2015 r/w Section 27 of SEBI Act, 1992 and

Regulations 4(1), 33(1)(a),33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, 2015.

39. Also, it is alleged that Ms. Anjali has violated Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003, Section 12A(a),(b),(c) of SEBI Act, 1992 and Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2),4(2)(f)(ii)(6),4(2)(f)(ii)(7),4(2)(f)(iii)(7) r/w Section 27 of SEBI Act, 1992 and Regulations 4(1), 33(1)(a),33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, 2015.
40. Mr. Sameer Amal, the CFO of Aglow, certified the consolidated financial statements of the Aglow as required under Regulation 17(8) of LODR Regulations, stating that the financial statements presented a true and fair view of the Company's affairs and were in compliance with the existing accounting standards, applicable laws and regulations. He was one of the signatories to Aglow's financial statements for FY 2021-22.
41. In addition to being the CFO of Aglow, Mr. Sameer Amal is the Chairman of the Sundarya, holding casting/second/decisive voting right. Having been vested with such right, Mr. Sameer Amal was well aware of the fact that Aglow has control over Sundarya. Thus, Mr. Sameer Amal failed to perform his duties and obligations diligently which resulted in publication of misstated and misleading financial statements of Aglow. This shows that he was in collusion with the Aglow's promoters/directors' scheme for wrong classification of Sundarya as an associate company and the consequent inflation of the consolidated profit of Aglow.
42. Therefore, Mr. Sameer Amal, CFO of Aglow is responsible for furnishing misstated and manipulated financial statements to the company's Board as required under Regulation 17(8) of the LODR Regulations, 2015. Hence it is alleged that Mr. Sameer Amal, has violated Regulations 3(b),3(c),3(d),4(1),4(2)(e),4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003, Section 12A(a),(b),(c) of SEBI Act and Regulation 17(8) of SEBI (LODR) Regulations 2015 r/w Section 27 of SEBI Act, 1992 and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations.

43. Based on the SCN and after considering the submissions made by the parties, the Whole Time Member of the SEBI, in exercise of the powers conferred under sections under sections 11(1),11(4), 11(4A), 11B(1), 11B(2) and 15I of the SEBI Act read with Rule 5 of the Securities And Exchange Board Of India (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 (“**AO Rules**”), passed an order (“**Impugned Order**”) wherein the above-mentioned charges against the Aglow, Pulkit, Anjali and Sameer Amal were upheld. The directions/penalty levied in the Impugned Order are as follows:

| Noticee No. | Name of Noticee | Provisions under which penalty imposed | Penalties (In Rs.) |
|-------------|-----------------|--|--|
| 1. | Aglow Limited | Sections 15HA of the SEBI Act, 1992 | Rs. 50,00,000 (Rupees Fifty Lakhs Only) |
| | | Section 15HB of the SEBI Act, 1992 | Rs. 15,00,000 (Rupees Fifty Lakhs Only) |
| 2. | Pulkit Sharma | Sections 15HA of the SEBI Act, 1992 | Rs. 30,00,000 (Rupees Fifty Lakhs Only) |
| | | Section 15HB of the SEBI Act, 1992 | Rs. 10,00,000 (Rupees Fifty Lakhs Only) |
| 3. | Anjali Arora | Sections 15HA of the SEBI Act, 1992 | Rs. 30,00,000 (Rupees Fifty Lakhs Only) |
| | | Section 15HB of the SEBI Act, 1992 | Rs. 10,00,000 (Rupees Fifty Lakhs Only) |

| | | | |
|----|-------------|-------------------------------------|--|
| 4. | Ameer Samal | Sections 15HA of the SEBI Act, 1992 | Rs. 30,00,000 (Rupees Fifty Lakhs Only) |
| | | Section 15HB of the SEBI Act, 1992 | Rs. 10,00,000 (Rupees Fifty Lakhs Only) |

44. The directions imposed vide the Impugned Order are as under:

- The Noticee nos. 1 to 4 shall place a copy of the Impugned Order before its Audit Committee and Board of Directors to review the decision of classification of Sundarya and the consolidated financial statements for FY 2021-22 in terms of the applicable provisions of the Companies Act, 2013 and IND-AS.
- The Noticee nos. 1 to 4 shall ensure that the consolidated financial statements for FY 2022-23 are prepared in line with the directions of the Impugned Order and incorporate the details of the revisions/changes made to consolidated financial statements for FY 2021-22.
- Noticee 2, 3 and 4 are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, for a period of 1 year after passing of the order;
- Noticee 2, 3 and 4 are restrained from holding the position as director or key managerial person of any listed company;
- Disgorge the wrongful gain of Rs. 3,94,69,974 crores made by Noticee No. 2 by dealing in the shares of Aglow along with interest rate at 12% from the date of selling of shares;
- Disgorge the wrongful gain of Rs. 1,90,00,000 crores made by Noticee No. 3 by dealing in the shares of Aglow along with interest rate at 12% from the date of selling of shares.

45. Against this order by the Whole Time Member of SEBI, all the Noticees have, in compliance of and under section 15T of the SEBI Act, preferred an appeal before the Securities Appellate Tribunal, Mumbai (“SAT”). The SAT has agreed to hear the appeal.

Annexure A

Excerpts of the Memorandum of Understanding dated September 04, 2008, between Aglow Limited, Sundarya Private Limited, and Agarwal Group

1. The shareholding pattern of Aglow Limited and Agarwal Group in Sundarya Private Limited will be in the ratio of 50:50.
2. Agarwal Group will bear the cost of commercial conversion of land for salon use.
3. After initial work in connection with approval of the project is completed, construction will be done by Aglow in consultation with Agarwal Group. However, the final decision in case of any difference of opinion regarding construction would be of Aglow Limited.
4. Architects will be decided by Aglow Limited. However, the local architect would be appointed by the Agarwal Group who will function in co-ordination with the Architects of the Company.
5. It shall be the joint responsibility of Aglow Limited and Agarwal Group to complete the salon project in all respects and enabling the commencement of salon operations within a period of 18 months from obtaining all the necessary approvals.
6. Board of Directors in Sundarya Private Limited will constitute 3 Directors from Aglow Limited and 2 Directors from Agarwal Group. The number of Directors shall be increased to 5 Directors of Aglow Limited and 4 Directors of the Agarwal Group. It is also agreed between all the parties that if and when any need arises, then Independent Directors per se or of any Financial Institution/PSU Bank/Private Bank may be taken on the Board of Directors of Sundarya Private Limited. Articles of Association of Sundarya Private Limited to be amended accordingly.
7. Immediately, upon formalization and execution of this understanding, Joint Account will be opened in the name of Pulkit Sharma representing Aglow Limited and Vandana Agarwal representing the Agarwal group, where each of them initially contributes Rs. 4 Crore (Rs. Four

Crore) for initial expenses, construction of the salon structure, and for purchasing and installing various equipment.

8. Any other issues which do not get resolved in the Board of Directors, shall be placed before the members and shareholders in the AGM, whereupon decision taken in the AGM shall be implemented accordingly.
9. The Board of Directors will have a Chairman from Aglow Limited and Managing Director from Agarwal Group. Role and responsibilities of the Chairman and Managing Director to be clearly outlined.
10. Statutory Auditors and Internal Auditors of Sundarya Private Limited will be appointed by Agarwal Group.
11. The supervision of the operations and working of the salons will be with the Agarwal Group.
12. After the completion of salon, management will be with the Aglow Limited. The Management fee shall be 0.9% of Turnover and 5% of Gross Operating Profit. Total turnover will not include any statutory levy or tax.
13. Surplus remaining after payment of management fees and after reducing reasonable allowance of working capital to be transferred to Agarwal Group.
14. The repair and maintenance of the salons shall be the responsibility of Aglow Limited.

Annexure B

Relevant Excerpts of the Articles of Association of Sundarya Private Limited

1. DEFINITIONS

1. (i) In these Articles, unless there be something in the subject or context inconsistent therewith or unless context otherwise requires:
 - (a) "The Company" means is Sundarya Private Limited ("Sundarya").
 - (b) "The Act" means the Companies Act, 1956 (Central Act No. 1 of 1956) as for the time being in force and as amended from time to time or any other Act or Acts relating to Joint Stock Companies in India.
 - (c) "Ordinary Resolution" means a resolution shall be an ordinary resolution, when at a general meeting of which the notice required under the Companies Act has been duly given, the votes cast (whether on a show of hands, or on a poll, as the case may be), in favour of the resolution (including the casting vote, if any, of the Chairman) by members, who, being entitled so to do, vote in person, or when proxies are allowed, by proxy, exceed the votes, if any, cast against the resolution by members so entitled to vote.
 - (d) "Special Resolution" means a resolution shall be a special resolution when:
 - (i) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the Company;
 - (ii) the notice required under the Companies Act has been duly given for the general meeting; and
 - (iii) the votes cast in favour of the resolution whether on a show of hands, or on a poll, as the case may be), by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are not* less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.
 - (e) "Capital" means the capital for the time being raised or authorised to be raised or as altered or reduced in accordance with the regulations of the Company.
 - (f) "Shares" means the shares into which the Capital of the Company is divided and shall also include shares which may have been reconverted from stocks of the Company.

- (g) "Members or Shareholders" means the duly registered holders of shares as entered in the register of members of the Company.
- (h) "Register of Members" means the register of members or shareholders kept pursuant to Section 150 of the Companies Act.
- (i) "These presents" means and include the Memorandum of the Company and the Articles of Association with any modification or alteration thereof.
- (j) "Director" means a director for the time being of the Company and includes any person occupying the position of a director by whatever name called.
- (k) "Board of Directors" means the directors assembled at a meeting duly called and constituted.
- (l) "The Office" means the Registered Office for the time being of the Company.
- (m) "Secretary" includes any person appointed to perform the duties of a secretary whether temporary or otherwise.
- (n) "Proxy" shall include a proxy-holder or a member appointed as an attorney duly constituted in a power of attorney.
- (o) "Seal" means the common seal for the time being of the Company.
- (p) "Company's regulations" means the regulations for the time being of the Company.
- (q) "Rules" means the rules as framed by the Board of Directors for the conduct of the business of the Company under these presents.
- (r) "Dividend" includes bonus.
- (s) "Debenture" includes Debenture Stock.

(ii) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modifications thereof in force on the date on which these regulations become binding on the Company.

6. GENERAL MEETING

31. The provisions contained in Sec 171-186 of the Act shall not apply to the Company.
32. All General Meetings other than the Annual General Meeting shall be called Extraordinary General Meetings-

- (i) Seven days clear notice shall be given for calling a General Meeting but the Directors may call such meeting by a shorter Notice. It shall also not be necessary for Directors to annex explanatory statement to the Notice calling General Meeting under Section 173 of the Company Act.
- (ii) The Board may, whenever it thinks fit, call an Extraordinary General Meeting.
- (iii) If at any time there are not within India Directors capable of acting, who are sufficient in number to form a Quorum for a meeting, any Director or any member of the Company may call an Extra Ordinary General Meeting in the same manner or as nearly as possible, as that in which a meeting may be called by the Board.
33. No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Two members present shall be a quorum.
34. The Chairman if any, of the Board shall preside as Chairman at every General Meeting of the Company.
35. If there is no such Chairman or if he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as Chairman of the meeting, the Directors shall elect one of their members to be the Chairman of that meeting.
36. If at any meeting no Director is willing to act as Chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of the members to be the Chairman of the meeting.
37. (i) The Chairman may, with the consent of any meeting, at which a quorum is present, shall, if so, directed by the meeting, adjourn the meeting, from time to time and from place to place.
- (ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place, unless notice of other business is given as required for calling a general meeting.
38. Save as aforesaid, it shall not be necessary to give any notice of an adjourned meeting of the business to be transacted thereat. However, if a meeting is adjourned for a period of more than 30 days a fresh notice will be issued.
39. In the case of an equality of votes, whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which a poll is demanded, shall be entitled to a second or casting vote.

40. Any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

10. RETIREMENT AND ELECTION OF DIRECTORS

64. Directors shall not be liable to retire from office by rotation unless otherwise decided by the General meeting.
65. The Company may from time to time by ordinary resolution increase or reduce the number of Directors.
66. Board of Directors in the company shall constitute of 5 Directors of which 3 Directors shall be nominated by Aglow Limited and 2 Directors be nominated by Agarwal group. The number of Directors can be increased to 9 Directors of which 5 Directors shall be nominated by Aglow Limited and 4 Directors by Agarwal Group. However, if and when any need arises, then Independent Directors per se or of any Financial Institution / PSU Bank / Private Bank may be taken on the Board of Directors of the Company.
67. The Directors shall have the power at any time and from time to time to appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Director but so that the total number of Directors shall not at any time exceed the number fixed in accordance with these regulations. Any Director so appointed shall hold office only until the next following Annual General Meeting and shall than be eligible for re-election but shall not be taken into account in determining the Directors if any, who are to retire by rotation at such meeting.
68. The Company may by ordinary resolution of which special notice has been given in accordance with Section 190 of the Companies Act remove any Director including the Managing Director, if any before the expiration of his period of office notwithstanding anything in these regulations or in an agreement between the Company and such Director.
69. The Company may by ordinary resolution appoint another person in place of a Director removed from office under the immediately preceding regulation and without prejudice to the powers of the Directors under Article 70, the Company in General Meeting may appoint any person to be Director either to fill a casual vacancy or as additional Director. A person appointed in place of a Director so removed or to fill such a vacancy shall be subject to retirement, if any, at the same

time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected as a director.

11. VACATION OF THE OFFICE BY DIRECTOR

80. The office of a Director shall be vacated in accordance with the provisions of Section 283 of the Act.

12. POWERS OF DIRECTOR

81. The management of the business to the Company shall be vested in the Director and the Directors may exercise all such powers and do all such acts and things as the Company is by its Memorandum of Association or otherwise authorised to exercise or do and as are not by statute directed or required to be exercised or done by the Company in General Meeting but subject nevertheless to the provision of the Companies Act and of these presents, and to any regulation, from time to time made by the Company in General Meeting not being inconsistent with provisions of these presents: PROVIDED that no such regulations shall invalidate any prior act of the Directors which would have been valid if such regulations have not been made.
82. All cheques, promissory notes drafts, hundis, bills of exchange and other negotiable instruments and all receipts for money paid to the company, shall be signed, drawn accepted, endorsed or otherwise executed as the case may be, by one of the Directors or by such person and in such manner as the Board shall from time to time by resolution determine.
83. The Directors shall have, subject to the provisions of Section 292 of the Act, the right to delegate all or any of their powers to such managers, agents or other person as they may deem fit, from time to time, and, may at their own revoke such powers.

13. MANAGERIAL PERSONNEL

84. Subject to the provisions of Section 267 of the Act or any statutory modification thereof and, also subject to Regulation 71, the Board may from time to time appoint one or more of them to be Managing Director or whole-time Director of the Company for such period and on such terms and conditions as the Board may think fit.

85. The Board may entrust and confer upon the Meeting Director or the whole-time Director any powers of management which would not otherwise be exercised by him upon such terms and conditions and with such restrictions as it may think fit but subject always to the general superintendence, control and direction of the Board which may from time to time also revoke, withdraw after or vary all or any such powers. The Board of Directors may also remunerate a Managing Director or whole-time Director or Directors either by way of monthly remuneration or by way of percentage on net profit or otherwise as they may from time to time determine and in addition thereto may provide for him or them out of the Company's funds for such other amenities and perquisites as the Board may deem fit.

14. PROCEEDINGS OF DIRECTORS

86. The Board of Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they may think fit. A Director may, at any time, summon a meeting of the Board.
87. Every question or resolution submitted to or arising at any meeting of the Board shall be decided by a majority of votes and in case of an equality of votes the Chairman shall have a second or casting vote.
88. The continuing Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the quorum fixed by these articles for a meeting of the Board, the continuing Director or Directors may act for the purpose of increasing the number of Directors to that fixed for the quorum or for summoning a General Meeting of the Company, but for no other purpose.
89. The quorum necessary for the transaction of the business of Directors shall be two or one third of the total number of Directors, whichever is higher.
90. The Board may elect its Chairman and determine the period for which he is to hold office, if no such Chairman is elected or if at any meeting the Chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their numbers to be Chairman of the meeting.
91. Subject to the relevant provisions of the Act, all acts done by any meeting of the Board or Committee thereof or by any person acting as a Director shall, notwithstanding that it may be

afterwards discovered that there was some defect in the appointment of any one or more of such Directors or of any person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such Director or such person had been duly appointed and was qualified to be a Director.

92. A resolution in writing, circulated amongst all the members of the Board or of a Committee thereof and approved either by such of the Directors or by a majority of such of them as are entitled to vote on the resolution; shall be as valid and effectual as if it had been passed at a meeting of the Board or Committee duly convened and held.

