**July 16, 2021**

**To,**

**BSE Limited,**
P.J.Towers,
Dalal Street,
**Mumbai – 400 001**

**Scrip Code: 531260**

**Dear Sir/Madam,**

**Sub: Intimation under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.**

This disclosure is pursuant to Regulation 30 read with Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

This is with reference to the SEBI Interim Order dated February 15, 2021, restraining SunEdison Infrastructure Limited (hereinafter referred to as "Company") from acting further on the Framework Agreement, dated June 23, 2020.

For reviewing the proposed transactions of the Company as per the Framework Agreement, 'BDO India LLP' ("hereinafter referred to as "Auditor") was appointed as the Forensic Auditor by BSE on the directions of SEBI to examine the books of accounts of the Company for the period April 1, 2019 to December 31, 2020.

The Auditors commenced the Forensic Audit and in the meanwhile the Company and Fenice Investment Group LLC (hereinafter referred to as "Fenice") (parties to the Framework agreement) submitted their responses and applications in response to SEBI's interim order, vide emails dated April 26, 2021 and March 24, 2021 respectively. On receipt of submission of the said responses, an opportunity for personal hearing was granted to both Company and Fenice on April 27 and April 30, 2021 wherein, both the Company and Fenice appeared through their authorised representatives (ARs). The ARs reiterated the submissions made by the

Company and Fenice respectively in their written submissions, and also reiterated their prayers for withdrawal of the interim directions.

After an enquiry/examination of the responses filed by the Company, SEBI has passed a Confirmation Order dated 15th July 2021 vide WTM/SM/CFID/43/2021-22 which is attached herewith.

We request you to take the Confirmation Order on record.

**Thanking you,**

**For SunEdison Infrastructure Limited**


**R.V.Suresh Babu**

**Company Secretary**

SunEdison Infrastructure Limited
(Formerly YKM Industries Limited)
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T. Nagar, Chennai - 600017. CIN No: L40100TN1994PLC028263
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**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER SECTION 11(1), 11(4) AND 11B(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

**IN THE MATTER OF SUNEDISON INFRASTRUCTURE LIMITED**

1. SunEdison Infrastructure Limited (hereinafter referred to as '**SIL**'/'***Company***') is a company promoted by Mr. Anil Jain and Mr. Pasupathy Shankar Gopalan and the equity shares issued by it are listed on Bombay Stock Exchange (hereinafter referred to as "**BSE**"). The *Company* had entered into a share subscription and shareholders' agreement (hereinafter referred to as "**SSHA**") dated May 19, 2020 with its wholly owned subsidiary SILRES Energy Solutions Private Limited (hereinafter referred to as "**SILRES Energy**"), Mr. Dinesh Kumar Agarwal, Mr. Anil Jain, Mr. Pashupathy Shankar Gopalan and Fenice Investment Group LLC (hereinafter referred to as "**Fenice**") by way of which, Fenice agreed to invest US $2,500,000 in SILRES Energy to subscribe to Compulsorily Convertible Preference Shares (hereinafter referred to as "**CCPS**") of SILRES Energy at a face value of INR 10/- per CCPS.

2. Subsequently, amendments were carried out in the abovementioned SSHA and as per the amended SSHA, another investor namely, South Lake One LLC ("**South Lake**") also agreed to invest US $10,000,000 in SILRES Energy in the form of CCPS at a face value of INR 10 per CCPS. For the purpose of this order, Fenice and South Lake are collectively referred to as '***Strategic Investors***'.

3. Pursuant to the said SSHAs, the *Company* entered into a Framework Agreement dated June 23, 2020 (hereinafter referred to as '**Framework Agreement**') with an objective to restructure and transfer the under construction Commercial and Industrial (hereinafter referred to as "**C&I**") customers' business and certain

other businesses of the *Company* to a promoter entity namely, Sherisha Technologies Private Limited (hereinafter referred to as "**STPL"**), or to another related entity of the *Company* namely, SunEdison Energy Solutions Private Limited (hereinafter referred to as "**SESPL"**) in terms of the corporate restructuring agreed upon in the said Framework Agreement. The same was also disclosed by the *Company* to BSE *vide* its letter dated June 24, 2020. Subsequently, the Framework Agreement was approved by shareholders of the *Company* in an Extraordinary General Meeting ('**EGM**') dated December 11, 2020.

4. It is observed from the annual report for the Financial Year 2019-20 of the *Company* that the following companies are its subsidiaries:

   4.1. Ishaan Solar Power Private Limited (hereinafter referred to as "**Ishaan**")

   4.2. SEI Tejas Private Limited (hereinafter referred to as "**SEITPL**")

   4.3. SEI Solartech Private Limited (hereinafter referred to as "**SEISPL**")

   4.4. SILRES Energy

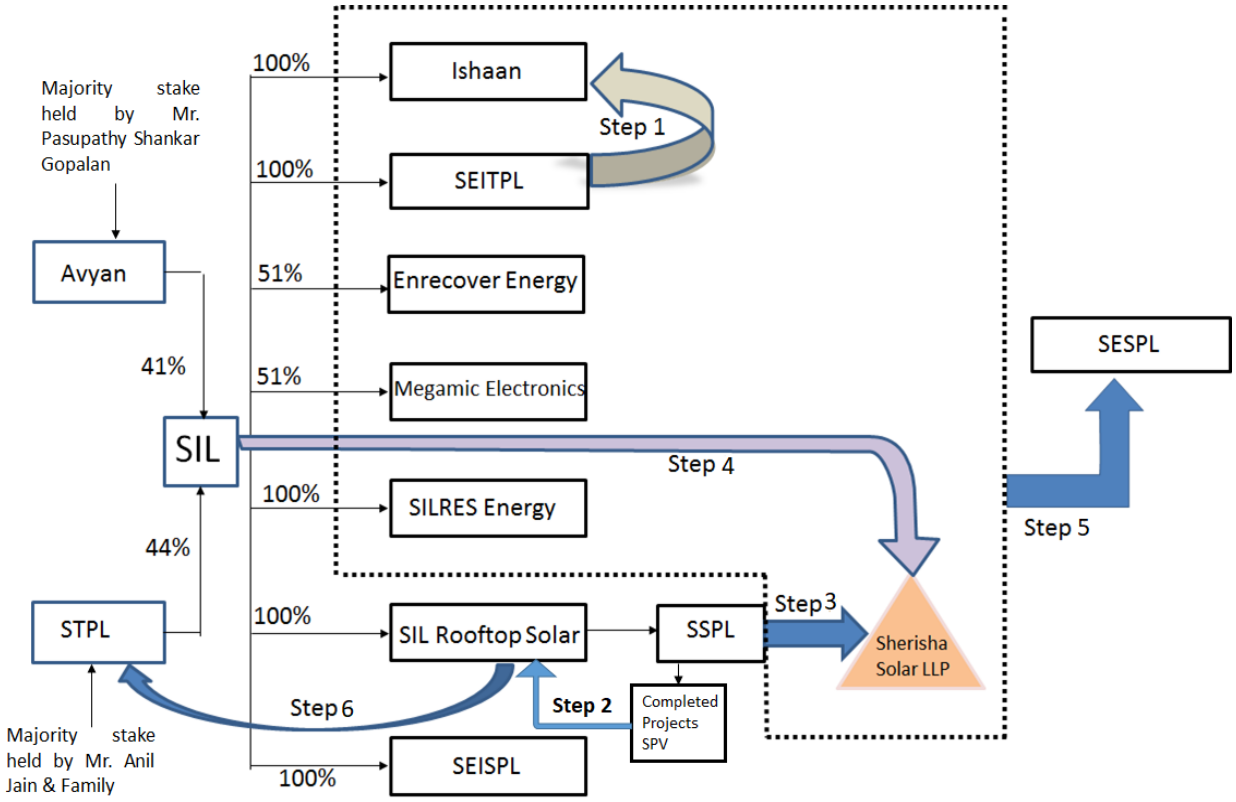
   4.5. SIL Rooftop Solar Power Private Limited (hereinafter referred to as "**SIL Rooftop**")

   4.6. Megamic Electronics Private Limited (hereinafter referred to as "**Megamic Electronics**")

   4.7. Enrecover Energy Recovery Solutions Private Limited (hereinafter referred to as "**Enrecover Energy**")

   It is further noted that out of the above-named subsidiaries, the first 5 companies are wholly owned subsidiaries of SIL and in the entities listed at Sl. No. 4.6 and 4.7, SIL holds 51% shareholding in each of the said two companies.

5. The initial structure of SIL as it existed before entering into the Framework Agreement and the step-by-step corporate actions leading to the final corporate structure, as envisaged in terms of the Framework Agreement, has been exhibited in the below diagram:




Wherein,

**Step 1**: Transfer of 100% shareholding of SIL in SEITPL to Ishaan.

**Step 2:** Transfer of Completed project SPVs from Sherisha Solar Pvt. Ltd. ('**SSPL**') to SIL Rooftop at a consideration of INR 114,87,52,516.

**Step 3**: Conversion of SSPL into Sherisha Solar LLP

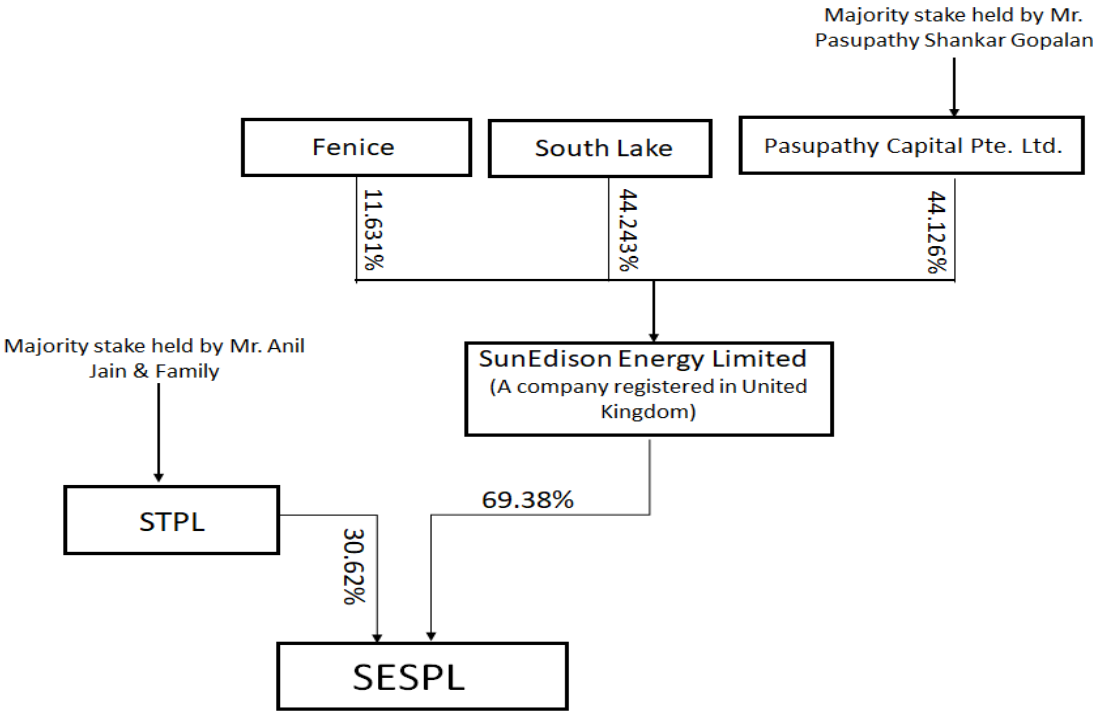
**Step 4**: Investment of INR 18.67 Crores by SIL in Sherisha Solar LLP leading to acquisition of 36% of partnership interest and 99.99% economic interest in it by SIL. It is important to note here that the amount to be invested by SIL into Sherisha Solar LLP was disclosed to shareholders only on December 16, 2020 i.e. subsequent to the EGM (held on December 11, 2020). The details of impact and probable consequences of such investment has been discussed and dealt with later on in this order.

**Step 5**: Transfer of Ishaan (along with SEITPL), Enrecover Energy, Megamic Electronics, SILRES Energy and Sherisha Solar LLP (36% partnership interest

with 99.99% economic interest) to SESPL for a consideration of INR 26.42 Crores.

**Step 6**: Conversion of a loan of INR 8.98 Crores from STPL to SIL Rooftop, into 89,86,639 equity shares at par making STPL a 99.89% shareholder of SIL Rooftop.

In the present matter, it is also relevant to know the ownership structure of SESPL, wherein majority of the subsidiaries of SIL along with the majority of ongoing project SPVs are proposed to be transferred in terms of the Framework Agreement, and the same entity (SESPL) has also been declared as a related party by the *Company*. I note that the present promoters of SIL as well as the *Strategic Investors* hold their respective stakes in SESPL in the following manner:




6. Upon receipt of a complaint alleging sale of assets of the *Company* at erroneous and unfair valuation, Securities and Exchange Board of India (hereinafter referred to '**SEBI**') commenced conducting an examination into the matter of SIL during which, it was *prima-facie* observed that the *Company* was selling assets to related entities at a valuation appearing to be not fair values and rather appearing to be lower than their fair values, thereby committing a fraud on the

shareholders of the *Company*. At the same time, the *Company* had made many wrong/delayed disclosures and allegedly had concealed disclosure of material information at the time of taking shareholders' approval to the aforesaid Framework Agreement. A preliminary examination of the materials on record revealed that various acts of the *Company* were *prima-facie* in violation of the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the "**LODR Regulations**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

7. In the light of these *prima-facie* observations and looking at the urgency of the matter so as to protect the interest of the shareholders of the *Company*, *vide* an *ex-parte ad- interim* order dated February 15, 2021 (hereinafter referred to as "***Interim Order"***), pending the completion of detailed enquiry/examination, the following directions were issued *inter alia*, restraining the *Company* from proceeding with the implementation of the aforesaid Framework Agreement, so as to avoid irreparable loss to shareholders:-

7.1. *SIL is restrained from disposing, selling or alienating its assets including effecting the transactions agreed upon under the Framework agreement dated June 23, 2020.*

7.2. *The stock exchange (BSE) is directed to appoint a forensic auditor to examine the books of accounts of the Company for the period from April 1, 2019 to December 31, 2020 ('Audit Period'). The forensic auditor/audit firm so appointed shall verify, inter alia, the following –*

*7.2.1. Manipulation of Books of Accounts including authenticity of item wise details of grouping/ re-grouping of assets (segment wise and division wise) ascertaining the details of the values and corresponding liabilities etc.;*

*7.2.2. Misrepresentation of facts including of financials and/or business operations;*

*7.2.3. Wrongful diversion/siphoning of Company's funds;*

*7.2.4. All related party transactions carried out during the Audit Period;*

*7.2.5. Whether the valuation of the assets proposed to be transferred via slump sale and also under the Framework agreement dated June 23, 2020 as per recognized valuation methodology and such*

*valuation represent the true fair market values of those assets and are in agreement with the transaction value agreed to by the Company*

*7.2.6. Any other related matter.*

*The forensic auditor/ audit firm so appointed as per this Order shall submit a Report to BSE within three months from the date of this Order.*

7.3. *SIL, its management and all the signatories to the Framework agreement dated June 23, 2020 are directed to extend necessary co–operation to the forensic auditor/audit firm appointed and to furnish all information/documents sought from them from time to time.*

7.4. *SIL, its management and all signatories to the Framework agreement dated June 23, 2020 are directed to maintain status-quo in respect of all transactions and shall not undertake any act in furtherance of the Framework agreement till further direction in this matter.*

7.5. *The Stock Exchange (BSE) is directed to submit the forensic audit report (including all annexures) along with its recommendation within 15 days from the date of receipt of the forensic audit report.*

8. Along with the abovementioned directions, the *Company* was also provided with 14 days' time to submit its reply to SEBI with respect to various allegations and observations made in the *Interim Order*.

9. The *Interim Order* was served upon the *Company vide* email dated February 15, 2021 in response to which, an email confirming receipt of the aforesaid order was received from one Shri Suresh Babu R V, company secretary of SIL on the same day i.e. on February 15, 2021. SIL, *vide* email dated February 27, 2021, sought an extension up to March 22, 2021 to submit its reply in respect of the observations and allegations made in the *Interim Order*, which was acceded to. Subsequently, SIL, *vide* email dated March 22, 2021, sought another extension up to March 31, 2021 to make its submissions in respect to the *Interim Order*. The second extension request of SIL was also acceded to, however, no reply was received from SIL within the said date as stipulated by the *Company* in its email.

10. Finally, *vide* email dated April 26, 2021, SIL filed its written responses to the *Interim Order vide* which it has attempted to explain the transactions carried out by it pursuant to the above stated Framework Agreement, which have been highlighted in the following paragraphs:-

10.1. To start with, the *Company* (SIL) has explained in detail, the investments made by the promoters in the *Company*, the subsequent crisis of funds faced by the *Company*, the rationale behind inviting investments from the *Strategic Investors* and the objectives behind the complex corporate re-structuring chosen by it within the Framework Agreement, as warranted by the business requirements of the *Company*.

10.2. Due to the capital intensive nature of the solar projects, the *Company* had initially attempted to raise funds from the State Bank of India and Indian Renewable Energy Development Agency. However, the lenders required that the debt to equity ratio for such projects should be at least at 70:30. However, due to promoters' shareholding being already beyond 75% of the total paid-up equity shareholding of the *Company*, there was no further scope for the promoters to infuse more funds into the *Company*. At the same time, due to negative net worth, the other modes of seeking investment from public investors was found not feasible. An attempt was also made to bring more public capital into the *Company* for which discussions were held with various investors, but the said attempt did not turn out to be fruitful.

10.3. Thereafter, in March 2020, the *Company* engaged in discussions with South Lake and Fenice for investment who showed interest to invest in a new line of business with the Promoters; i.e. Retail Solar Projects; which required installing solar projects for residential units through a new company, to be incorporated in the U.K. and not in India. The *Company* did not have any Retail Solar Projects but SILRES Energy was incorporated as a wholly owned subsidiary, with the objective of commencing Retail Solar business, but it had never commenced such business till that time.

10.4. The *Company* has submitted that the *Strategic Investors* agreed to invest in SILRES Energy to start a new business of Retail Solar Projects with the current promoters of SIL. Therefore, Fenice invested $2.5 million and South Lake invested $10 million in SILRES Energy, a wholly owned

subsidiary of SIL having no business of its own. SILRES Energy used a part of these funds to advance loans to other group companies so that they could fund their respective projects.

10.5. The *Company* has submitted that SIL Rooftop was incorporated in 2019 as a wholly owned subsidiary of SIL with an initial capital of INR 1 Lakh. Thereafter, SSPL, a wholly owned subsidiary of a promoter group entity viz. STPL, having various completed and ongoing projects under it, was acquired by SIL Rooftop for a consideration of INR 146.16 Crores in a non-cash transaction *in lieu of* which, SIL Rooftop issued redeemable preference shares (hereinafter referred to as "**RPS**") to STPL for the said amount.

10.6. The *Company* has further stated that SIL Rooftop was having an outstanding loan of INR 8.98 Crores towards STPL as on August 31, 2020. Adding to that, RPS worth of INR 146.16 Crores were outstanding towards STPL whereas, the equity net worth of SIL Rooftop was approximately (-)INR 80 Lakhs as on August 31, 2020. While the RPS of INR 146.16 Crores are due for compulsory redemption in 2039, the present value of the total gross cash flows of all the Completed Project SPVs together, projected up to 2039, would be at best about INR 127.42 Crores at the SPVs level, which would be further reduced to INR 104.39 crores after taking into account the tax implications.

10.7. However, as a result of the said Framework Agreement, the debt of STPL to SIL Rooftop (loan of INR 8.98 Crores) was proposed to be converted into equity, making STPL 99.89% shareholder of SIL Rooftop and all the liability arising out of conversion of the RPS would be removed from the books of accounts of the *Company*.

10.8. In addition to the earlier submitted valuation report (prepared by M/s VPTP & Co), the *Company* has submitted another valuation report of the assets being transferred out to SESPL as a result of the Framework Agreement, prepared by Libord Advisors Private Limited (hereinafter referred to as '**Libord**'), a SEBI Registered Merchant Banker. In the said

valuation report, Libord has valued all the assets to be transferred to SESPL as a part of slump sale at a book value of INR 17.40 Crores and a fair value of INR 26.99 Crores. In the light of this, the *Company* has stated that the consideration of INR 26.42 Crores determined for the said assets is fair.

10.9. The *Company* has submitted that the difference between valuation of the assets by VPTP & Co. and Libord is minor and also due to the fact that the VPTP Report prepared earlier was based on projections, whereas the Libord Report is based on the actual financial statements prepared for the quarter ended December 31, 2020.

10.10. The *Company* has also submitted that the EPC contracts entered by the *Company* in relation to three ongoing and completed projects, would continue with the *Company* and are not being transferred to SESPL under the Framework Agreement.

10.11. Further, the fresh capital received pursuant to the impugned transactions would be used for the purpose of work in EPC projects such as construction of roads, flyovers, developing electrical transmission lines, developing overhead lines for the Indian Railways etc. The *Company* will also use the expertise of its management in the power sector to provide operation, maintenance and power plant services to other Independent Power Producers and Small Power Producers and thereby generate profits and create value for the *Company* and its shareholders.

10.12. Thus, the *Company* has submitted that after implementing the said Framework Agreement, it will be left with some engineering, procurement and construction (hereinafter referred to as "**EPC**") Contracts, a new business, a wholly owned subsidiary SEI Solartech and 0.11% shareholding of SIL Rooftop. Rest of the assets, including all the ongoing and completed projects, would be transferred out either to a transferee company namely SESPL or to STPL, both of which are admittedly related parties of the *Company*.

10.13. The *Company* has submitted that as a result of the said transactions, the net worth of the *Company* would improve substantially from (-) INR 8.83 Crores on a standalone basis and (-) INR 18.09 Crores on a consolidated basis to (-) INR 2.48 Crores on standalone basis and (-) INR 3.52 Crores on consolidated basis. At the same time, due to transfer of all the ongoing projects to a separate new entity, the *Company* would get rid of certain penalties and invocation of performance bank guarantees in case of default or delayed performance under various power purchase agreements.

10.14. The *Company* has submitted that it had disclosed SIL Rooftop's net worth at INR 129.27 Crores which SEBI has taken cognisance of. However, at the same time, SEBI has overlooked the fact that the *Company* had originally invested a sum of only INR 1 Lakh as equity capital in SIL Rooftop and STPL holds RPS worth INR 146.16 Crores in SIL Rooftop, being the consideration value for the aforementioned transfer of SSPL to SIL Rooftop. The said RPS, being a long term liability, was not completely incorporated in net worth of the said company due to the provisions of IndAS-32. If completely incorporated, net worth of SIL Rooftop, attributable to shareholders would come to (-) INR 1.03 Crores as on December 31, 2020.

10.15. The *Company* has admitted the fact of making an inadvertent error in the segment wise reporting which it has claimed to have subsequently rectified and filed the rectified report with the BSE. The *Company* at the same length has submitted that the said inadvertent error was inconsequential since it was only related to classification of the assets under different headings and it did not affect the overall valuations of the Identified Business proposed to be transferred to the transferee company. The net worth remained the same as the error was purely on account of incorrect grouping and for no other reason.

10.16. The *Company* has admitted that the valuation reports of M/s VPTP & Co. and Mr. Pitam Goel were both signed by Mr. Pitam Goel. However, it

contended that Mr. Pitam Goel is also separately registered as a valuer and there is no violation committed by him in signing one report as a partner of M/s VPTP & Co. and another report as an independent valuer. At the same time, both the reports were made for different purposes and it was never contended by the *Company* that M/s VPTP & Co. and Mr. Pitam Goel are independent of each other. Further, the valuation reports were kept available for inspection to all the shareholders of the *Company*.

10.17. The *Company* has attempted to explain the difference between the net worth mentioned in the disclosure filed by it in connection with the Framework Agreement and the net worth mentioned in the Notice issued for the EGM, by stating that at the time of signing the Framework Agreement, the net worth of the assets proposed to be transferred was INR 42.94 Crores and therefore an indicative consideration of INR 45 Crores was provided for in the Framework Agreement, subject to working capital adjustments to be undertaken at the time of valuation. The subsequent act of reduction in net worth was committed due to the fact that the liabilities proposed to be transferred as part of the Business Transfer were in excess of those estimated as per the Framework Agreement, due to incurring of working capital expenditure by the *Company* and its subsidiaries subsequent to the execution of the said Framework Agreement.

10.18. The *Company* has contended that SEBI has made contradictory statements in the *Interim Order* wherein on the one side, it is alleged that the *Company* was selling assets by undervaluing them; on the other hand, it has alleged that the *Company* has failed to explain why the purchasing entity has agreed to pay more than the book value of those assets.

10.19. The *Company* has submitted that, after the corporate restructuring, the ongoing project-SPVs would be transferred to SESPL by way of transfer of Sherisha Solar LLP to SESPL while the completed project-SPVs would be transferred to STPL by way of transfer of SIL Rooftop to STPL. The adjustment of INR 104 Crores of capital from SIL Rooftop to Sherisha

Solar LLP was to be done as a non-cash transaction and it was done by way of permissible accounting entry as neither SIL Rooftop nor Sherisha Solar LLP had cash balance of INR 103 Crores.

10.20. The *Company* has submitted that, while the contracted consideration for the trade mark 'SunEdison' acquired from SunEdison LLC was $3,25,000, the *Company* has paid a sum of only $1,05,000 to SunEdison LLC. The balance amount of $2,20,000 was not paid by the *Company* and therefore only a sum of $1,05,000 was capitalised in the books of the *Company*.

11. In the meantime, Fenice has filed its intervention application *vide* email dated March 24, 2021, wherein Fenice has made the following submissions:

11.1. Fenice has invested $ 2,500,000 in SILRES Energy on May 22, 2020 and it holds 1,88,54,943 CCPS of SILRES Energy as a result of the said transaction. This was followed by an investment by South Lake of USD 10,000,000 in SILRES Energy on July 22, 2020 by virtue of which South Lake has also subscribed to 7,41,99,940 CCPS of SILRES Energy.

11.2. Prior to such investments, SIL was holding 99.99% shareholding of SILRES Energy with rest 0.01% being held by Nominee shareholders. Upon conversion of the CCPS, the shareholding of SIL would reduce to 0.11% and Fenice and South Lake would be respectively holding 20.24% and 79.65% shareholding of the said company.

11.3. The terms of CCPS provide that the *Strategic Investors* would have a right to convert the CCPS into equity shares of SILRES Energy if various steps as contemplated under the Framework Agreement and the transfer of the Identified Businesses was not completed by March 31, 2021. This conversion effectively would give the *Strategic Investors* a collective equity shareholding of 99.89% in SILRES Energy.

11.4. Fenice has submitted that despite having contributed to the majority of the capital in SILRES Energy, it has limited rights in SILRES Energy which includes certain information rights and limited investor protection rights in the form of right to cast an affirmative vote on identified matters

under the Framework Agreement, the SSHA and the articles of association of SILRES Energy. This includes Fenice having the right to appoint a director in terms of the Amended SSHA.

11.5. Fenice has submitted that due to the *Interim Order*, its various rights under the Framework Agreement and the amended SSHA have been severely and adversely affected, which includes its rights to convert the CCPS into equity shares on April 1, 2021 carrying voting rights pursuant to such conversion.

11.6. Fenice has also submitted that SILRES Energy was incorporated in October 2019 and it had negligible business as on the date of the investment by Fenice. Therefore, SIL's value of the equity shares held in SILRES Energy is negligible which means that, the economic value of the public shareholders of SIL in SILRES Energy is negligible and conversion of the CCPS into equity shares of SILRES Energy will not result in any value deprivation to the public shareholders of SIL.

11.7. Further, SILRES Energy is in the process of commencing its operations in the residential solar business and requires substantial cash infusion for its working capital and general corporate expenditure. SILRES Energy has also, over the last few months, hired several employees for its business. In order to grow its business at the required pace as expected, the current funds in SILRES Energy are inadequate and will be exhausted soon requiring further infusion of funds into SILRES Energy. Due to the *Interim Order*, Fenice is unable to infuse any further capital, in the form of equity capital or loan to SILRES Energy to support its working capital and general corporate expenses, unless Fenice (along with South Lake, if South Lake chooses to convert its CCPS) gets its CCPS converted into equity shares and becomes equity shareholders of SILRES Energy.

11.8. Fenice has also submitted that due to the *Interim Order*, the rights of Fenice as a CCPS holder have been disproportionately affected and it has the propensity to hamper the legitimate functioning of SILRES Energy and also to act to the detriment of Fenice, for no fault of its own. The *Interim*

*Order* affects the information rights available to the *Strategic Investors* under clause 5.1 of the Framework Agreement. Similarly, it also affects right to consent of the *Strategic Investors* for certain actions given at clauses 5.3 and 5.4 of the Framework Agreement which was granted to them in order to protect the loans provided by SILRES Energy to the Identified Businesses.

11.9. Fenice has prayed for modification of the directions contained in paragraphs 54(a) and 54(d) of the *Interim Order* and has requested to vacate the *status quo* imposed on the transactions under Framework Agreement insofar as it relates to SILRES Energy, including specifically, the right of the *Strategic Investors* to convert their CCPS into equity shares on April 1, 2021 in terms of Schedule 2 – Paragraph 2.3 of the amended SSHA.

11.10. Fenice has also prayed for modification of the directions contained in paragraphs 54(a) and 54(d) of the *Interim Order* with a request to vacate the *status quo* imposed on SILRES Energy and to permit SILRES Energy to conduct business in ordinary course and to enter into other businesses, including but not limited to the ability of Fenice to infuse capital or loan directly or through other investors and lenders.

11.11. Fenice has also prayed for modification of the directions contained in paragraphs 54(a) and 54(d) of the *Interim Order* and to vacate the *status quo* imposed on SILRES Energy with respect to the following rights of Fenice under the Framework Agreement and the amended SSHA:

11.11.1. Information Rights – clause 5.1 of the Framework Agreement and clause 10 of the amended SSHA; and

11.11.2. Consent Rights – clause 5.3 and 5.4 of the Framework Agreement; and

11.11.3. Board Representation – clause 6 of the amended SSHA; and

11.11.4. Use of funds – clause 7 of the amended SSHA; and

12. Pursuant to the receipt of the afore-stated written submissions made by the *Company* and Fenice, an opportunity of personal hearing was granted to both SIL

and Fenice on April 27 and April 30, 2021 wherein, both SIL and Fenice appeared through their authorised representatives (**ARs**). The ARs reiterated the submissions already made by SIL and Fenice respectively in their written submissions as highlighted above, and also reiterated their prayers for withdrawal of the interim directions.

## CONSIDERATION OF ISSUES AND SUBMISSIONS

13. I have considered the oral and written submissions made by both SIL and Fenice. I note here that based on the examination of the materials available on record and having observed that various acts of the *Company* were not appearing to be above board, the transfer of assets pursuant to the said Framework Agreement was *prima-facie* observed to be shrouded with ambiguities and the process followed by the *Company* to give effect to the said Framework Agreement was also noticed to be not fair and transparent enough to be viewed in the interest of its shareholders. Therefore, pending completion of a detailed investigation, it was thought fit and proper that the *Company* should be restrained from proceeding with the said Framework Agreement. Accordingly, having considered the materials on record and the details as made available by the *Company*, an *Interim Order* was passed on February 15, 2021 restraining the *Company* from acting further on the said Framework Agreement. The *Company* was also offered an opportunity to file response to the observations made in the said *Interim Order*. In the aforesaid background, the *Company* and one of the *Strategic Investors* have been personally heard and based on their oral and written representations, the limited scope of the instant proceeding is to examine and consider as to whether, under the facts and circumstances of the matter, the directions issued under the *Interim Order* deserve to be revoked, altered or modified in the interest of the *Company* and/or its shareholders.

14. Before moving ahead, I note that the *Company* has extensively explained the rationale behind adopting various layering and corporate restructuring activities as part of the transactions executed in pursuance of the Framework Agreement. The *Company* has also explained the objective behind investment made by the *Strategic Investors*. In this regard, it is not in dispute and there is no quarrel on the

issue that each entity is free to choose any business structuring or restructuring activities so long as they do not violate any provisions of law. Even in the present matter, SEBI doesn't have a *prima-facie* objection as far as the structuring of the transactions is concerned. I find the issues necessitating intervention of SEBI in this case are broadly pertaining to non-disclosure of relevant information, reliability of valuation of assets being transferred to related parties, selling of majority business by the *Company* on the basis of such alleged non-disclosure/delayed disclosures and alleged undervaluation of the assets that were proposed to be sold to its related parties under the Framework Agreement.

15. The *Company* has submitted that the aforesaid business restructuring executed through the Framework Agreement was undertaken because it was facing liquidity crunch and acute shortage of funds to meet its contractual and other liabilities especially in respect of certain power purchase agreements. However, I note that even during the said period of alleged liquidity crunch, SIL has provided loans and advances to certain promoter related entities viz. Refex Energy Limited, SunEdison Energy India Pvt. Ltd. etc. I further note from the examination of Annual Report for the Financial Year 2019-20 and from the Forensic Audit Report of the *Company*, which has been received from the stock exchange, that certain loans were extended to these related parties viz. Refex Energy Limited and SunEdison Energy India Pvt. Ltd. which have not been recovered and have remained outstanding as on March 31, 2021. These acts on the part of the SIL are seen to be not consistent with the argument of liquidity crunch as put forward by the *Company* before me. In the normal course, any reasonably prudent business entity that is facing liquidity crunch, would first strive to reduce the cash outflow before looking outwards for bringing more funds into it. However, in the present case, the actions of SIL do not suggest that it had attempted to preserve its cash balance and instead, it has apparently extended loans and advances to its related parties during the said period in which it has entered into the Framework Agreement with various other entities to tide over its funds scarcity. Under the circumstances, the claim of the *Company* that it was undergoing a severe liquidity crunch is observed to be not strongly supported by sufficient evidence so as to impart much credibility to the

justification given by it for entering into the aforesaid Framework Agreement under financial duress. On the contrary, the fact of *Company* providing loans to the promoter related entities during the said period of liquidity crisis, appears to be suspicious in nature which requires further investigation by SEBI.

16. I further note that the *Company* has not been successful in explaining the *prima facie* allegations made in the *Interim Order* as to how, the *Company* which was so successful in bringing projects/business worth INR 146 Crores in its fold by the end of 2019 itself, started facing liquidity crunch so much so as to compel itself to sell out majority of its business assets at a reduced valuation within such a short span of time. It further raises a serious question mark on the due diligence conducted by the *Company* while undertaking solar projects, since in this case, the *Company* has admittedly acknowledged that although it was owning business assets whose valuation stand at INR 146 Crores, the assets had a potentiality of yielding in a 20 years combined net cash flow of only INR 104 Crores, meaning thereby, the cost of business assets was far more than the revenue potentiality of those assets over a long period of 20 years.

17. The *Company* has strenuously argued that the observation made in the *Interim Order* pertaining to valuation has been made without taking liabilities of SIL and its subsidiaries into considerations. In this respect, it is noted that none of the data/information considered by SEBI during the preliminary examination was ascertained/acquired/received independently by SEBI and rather, all the figures and data have been extracted from the disclosures made by the *Company* to BSE or from the details furnished by it to SEBI in course of the preliminary examination. Without prejudice to the same, in my view, it would not be appropriate at this stage to make observation of any nature on the claim of fairness of valuation as claimed by the *Company*, when investigation into those valuation and transactions is in progress.

18. The *Company* has stated that SIL Rooftop, which is at the center of the whole valuation issue, has a negative net worth. However, I don't find the said claim convincing enough for the ensuing reasons. First of all, I find it uncanny that the valuation of a company has turned into negative within months of acquiring

business worth INR 146 Crores from STPL. In any case, I note that in the corporate announcement dated November 19, 2020 made by the SIL through the Stock Exchange, the net worth of SIL Rooftop was disclosed as INR 129.27 Crores and such a net worth of INR 129.27 Crore was disclosed against the head "*The amount and percentage of the turnover or revenue or income and net worth contributed by such unit or division of the listed entity during the last financial year*". Apart from the above, there was no other disclosure/source that was publicly available to draw anyone's attention to the contention of the *Company* that the said net worth also included the value of the RPS held by the promoter entity STPL in SIL Rooftop.

19. It is a well-established principle that the net worth of an entity is calculated only after taking both the assets and the liabilities into consideration. Even if I accept the submission of the *Company* on its face-value with respect to the valuation of the RPS in terms of IndAS-32, there was no restriction on the *Company* to disclose the said valuation of RPS, which it has now produced before me, to its shareholders as well so as to justify its claim that SIL Rooftop had a negative net worth. The fact remains that the said valuation was not disclosed to the shareholders, which could have made appropriate impact in the minds of the investors. The *Company*, by such an act of non-disclosure, has *prima-facie* prevented its shareholders from taking an informed decision with respect to the *Company*. I find the aforesaid act of omission and non-disclosure has been an important source of suspicion about the conduct of the *Company* in the *Interim Order*, which warrants further investigation to unearth the complete picture.

20. The *Company* has admitted the allegation of making wrong disclosure of segment wise revenue in its filing with stock exchange on September 15, 2020 and November 12, 2020 for the quarters ended March 2020 and September 2020 respectively However, the *Company* has contended that the same was rectified in February 2021. It has been further submitted that even the said wrong disclosure would have no impact on the overall valuation of the assets as the same was done entity wise in the place of segment wise. Hence cumulatively, the said segment-wise disclosure had no adverse impact, except for the fact that the said disclosure was not in true spirit and compliance of the law and procedure.

21. In this regard, I note from a comparative examination of the earlier disclosures (dated September 15, 2020 and November 12, 2020) and the rectified disclosures (of February 2021) that in the earlier disclosure, the *Company* had wrongly classified certain 'C&I segment' liabilities as 'other liabilities' in the quarter ending March 2020. Further, majority of the assets of 'C&I segment' and a large chunk of assets of 'Rural segment' were classified as 'other assets' in the said quarterly disclosure of segment wise revenue for the quarter ended September 2020. At the same time, liabilities of 'C&I segment' were reported more than the actual liabilities while those of 'Rural segment' were reported less than actual. Due to such wrong and disorderly disclosures of assets and liabilities of the two segments, the net assets of 'C&I segment' for quarter ended March 2020 appeared to be more than actual while those for the quarter ending September 2020, were effectively underreported. At this stage, it would be sufficient to observe that the possibility of creation of a misleading perception and confusion in the minds of the shareholders of the *Company*, as to how the valuation of the assets of the *Company* was reduced to such a large extent in quarter ending September 2020 as compared to those in the quarter ending March 2020, can't be ruled out, due to such faulty and varying disclosures about the segment-wise valuation which the *Company* was presenting from quarter-to-quarter, to its shareholders.

22. It goes without saying that the duty of each and every company to its shareholders is not only to provide true and correct information to them but also to remove any kind of doubts and information asymmetry which may be caused on account of wrongful perception about the events happening in the company and such information asymmetry may also lead to reduction of shareholders' wealth in the company. For the same purpose, the companies are directed to make clarifications whenever any adverse news regarding the said company is floated in the market. At times, stock exchanges also seek clarification from the companies in case of any news/rumors floating about them in the market. The whole object of such exercise is to clarify and remove any kind of wrong information ambiguities or misleading perception forming about the affaires of

a company in the minds of the shareholders and other stakeholders in the securities market, caused by such information asymmetry.

23. While the *Company* has submitted that the wrong reporting of segment wise revenues had no impact on the overall entity level valuation of the assets of the *Company* for the purpose of carrying out transactions under the Framework Agreement, the disclosure dated June 24, 2020 made by the *Company* clearly states that one of the purposes of the Framework Agreement was to transfer out EPC business segment (Rural and C&I) and trademark 'SunEdison', since the *Company* itself was disseminating information about its proposed corporate actions segment wise, the possibility of adverse implication of the erroneous segmental valuation disclosed by the *Company* on the interest of the shareholders cannot be lost sight of. Such a wrong disclosure, made by the *Company*, was bound to have misleading impact in the minds of the investors who were led to believe that the transfer of assets was proposed to be segment-wise and not otherwise. The proclamation that such disclosures had no impact on the valuation of assets of the *Company* for the purpose of transaction under the Framework Agreement is a bald assertion. Thus, the issue under investigation cannot be confined and limited to anaylsing and gauging the impact of such wrong disclosures only on the other transacting parties of the said Framework Agreement, but also has to be aimed at finding as to whether, the acts of the *Company* were fair and transparent in sharing and disclosing all the information in true and effective manner to the shareholders or whether the absence of such information to the shareholders has led to deprivation of the shareholders and investors of those true and correct information which they were entitled to receive from a listed entity under the extant law. In this respect, it is found that nothing has been brought to my notice to submit, if any sincere attempt was made from the side of the *Company* to dispel such an impression from the minds of the shareholders at any point of time. Adding to this, the wrong disclosure of segment wise revenue was bound to be taken by the shareholders as an attempt on the part of the *Company* to deliberately undervalue the assets proposed to be sold to related parties. In any case, I find the segment wise revenue data was rectified much later after the EGM and therefore, the same was never placed before the shareholders

while seeking approval for the aforesaid Framework Agreement from the shareholders. Therefore, the information available before the shareholders was different from the information now placed by the *Company* before me to contend that the said wrong disclosure of segment-wise values had no impact on the total valuation. It would not be equitable on my part to form any conclusive opinion at this stage by merely relying on the statement of the *Company*, when the fact finding exercise is in progress at SEBI.

24. On the issue of the valuation of various assets for the purpose of being carved-out of SIL and transferred to related entities and the extent such valuation being fair and the said business restructuring being in the interest of the shareholders, I find that the *Company* is disposing off most of its productive assets to SESPL and STPL in terms of the aforesaid Framework Agreement at a small consideration of INR 26.42 Crores. Further, in the light of investment of INR 18.67 Crores by the *Company* in Sherisha Solar LLP for the purpose of acquisition of 36% of partnership interest and 99.99% economic interest in the said LLP, as mentioned at step 4 of diagram at page 3 above, it has been alleged that all those assets are being transferred for an effective consideration of INR 7.75 Crores only.

25. The *Company* has stated that the valuation of the assets being transferred to related entities was derived after taking the *Company*'s investment of INR 18.67 Crores (in Sherisha Solar LLP) into consideration. However, I find that the *Company* never disclosed the investment of INR 18.67 Crores to the shareholders prior to taking their approval with respect to the transactions proposed to be executed pursuant to the Framework Agreement. The said information was disclosed for the first time five days after the shareholders' approval was received to the said Framework Agreement.

26. Further, in addition to the earlier valuation reports, the *Company* has submitted one more valuation report prepared by Libord, a SEBI registered merchant banker, in support of its valuation of INR 26.42 Crores of the assets being transferred to related parties. I note certain difference of valuation found in the reports submitted by the *Company*. The *Company* has attempted to justify those

valuations by providing its reasons, however, it may not be proper to make any observation on those discrepancies in valuation as further investigation including the findings of the forensic audit report is in progress and fact finding is not yet complete. At this stage, I can at best observe that a preliminary examination of the report submitted by the Forensic Auditor indicates that *prima-facie*, the valuation of the assets of the *Company* being transferred to the related entities appears to be in variance with the valuation reports of M/s VPTP & Co as well as the valuation report prepared by Libord. In the light of this, I am of the view that the *prima-facie* discrepancy in valuation of assets as noticed in the *Interim Order*, which the *Company* is proposing to transfer as a part of the Framework Agreement requires further investigation by SEBI since, despite all the attempts made by the *Company* to justify the valuation of those assets, it still appears that the assets being transferred have not been valued properly and such valuation is likely to cause losses to the *Company* and its stakeholders.

27. The *Company* has also contended that no illegality can be attributed to the valuation reports of M/s VPTP & Co and Mr. Pitam Goel. It has been submitted that the mere fact that both the reports were signed by Mr. Pitam Goel would not be a reason to doubt the integrity of valuation arrived at in the said reports. The *Company*'s claim that Mr. Pitam Goel had signed one valuation report in the capacity of a partner of M/s VPTP & Co and the other valuation report as an independent valuer, appears to be in order on its face, however, grossly lacks persuasive value and in my view, such a contention is not capable of removing the doubts about the credentials of both these valuation reports on account of the fact, that both the reports were approved and signed by the same person i.e. Mr. Pitam Goel. In such circumstances, *prima facie*, when the valuation is not seen to be fair and reliable and the *Company* has also acknowledged to have committed valuation error in doing grouping/classification of assets in its disclosures, it would not be possible to overcome such genuine doubts and poor impression about the integrity of the valuation arrived at in these two reports without subjecting these reports to deeper scrutiny and investigation. It would be difficult to say with conviction at this stage that Mr. Pitam Goel was not influenced or not conflicted in performing his dual duties, one as a partner of M/s VPTP &

Co and other in his capacity of an independent valuer, while preparing and approving such valuation reports.

28. Further, as already noted in the *Interim Order*, post-restructuring exercise, SIL would be left with a very few income generating assets and business opportunities. Considering its negative net worth and the absence of any noteworthy income generating assets, SIL's ability to continue as a going concern and being solvent was observed to be doubtful even at the time of *Interim Order*. This issue was already flagged by statutory auditors of the *Company* stating that SIL continuing as a going-concern at a standalone as well as consolidated level (post restructuring) was doubtful. After the transfer of the identified businesses and in view of the incorporation of non-compete clause in the Framework Agreement, it is noticed that the *Company* would be left with hardly any revenue earning assets and business opportunities. Thus, it appears that the *Company* has not been successful in refuting the apprehension raised in the *Interim Order* pertaining to the undervaluation of various assets being carved-out of SIL and transferred to related entities and the said transactions in pursuance of the Framework Agreement as a whole, does not inspire confidence so as to be considered to be in the interest of the minority shareholders of the *Company*.

29. The *Company* has claimed that all the relevant disclosures were made to the shareholders before conducting voting exercise on the resolutions, by the shareholders. In this regard, I would like to refer to the comments of the statutory auditors who have consistently qualified that liabilities aggregating to INR 14.5 Crores do not have sufficient audit evidence, which amounted to 7.5% of the net worth of the *Company* on a consolidated basis as on September 30, 2020. Considering that the financial statements appeared to be not stating the correct financial parameters (such as net worth), the disclosures made by the *Company* to the shareholders would certainly have the elements that can be termed as misleading. These financial statements were also the basis on which the valuation of the carved-out assets was carried out. Hence, it would not be wrong to observe that the valuations of assets was also susceptible to be misstated or erroneously done by the valuer. This possibility of misstatement in

valuation gets reinforced by the undervaluation of the assets as already observed above based on the facts and circumstances of the case. I have already taken note of the misleading net worth disclosure of SIL Rooftop made in the notice of the EGM meeting dated November 19, 2020. I have also taken note of the glaring errors committed in sub-grouping of assets and liabilities between various segments (rural, C&I and others) in the consolidated segment reporting made by the *Company* for the periods ending March 2020 and September 2020. Thus, there were multiple misleading/erroneous disclosures already available in the public domain made by the *Company* before the Framework Agreement was put up for voting to the shareholders. I also note that all these misleading/erroneous disclosures, if correctly disclosed, would have portrayed the proposed restructuring in a less favourable manner before the shareholders than presently portrayed. Thus, it *prima-facie* appears that the disclosures based on which the approval of the shareholders was obtained were themselves misleading and the said approval may not be based on an informed decision taken by the shareholders.

30. From the aforesaid discussions, it is seen that the *Company* has not been able to dispel the suspicions regarding the reliability and authenticity of the valuation of businesses being transferred to the related entities, hence, granting any major relief pertaining to the same at this stage would not be warranted, especially in a situation, when the report of Forensic Auditor is under examination, which also *prima facie* indicates that the valuation reports submitted by the *Company* have undervalued those business assets. At the same time, I find that many of the information submitted by the *Company* during the time of *Interim Order* as well as subsequent to passing of the said order were never placed before the shareholders while seeking their approval of the said Framework Agreement in terms of which, the business assets are being transferred out of the *Company* to the related entities. Therefore, it doesn't *prima-facie* appear that the approval of such a Framework Agreement was obtained from the shareholders on the basis of complete and fair disclosures of all the information to the shareholders by the *Company*. In the light of the foregoing discussions, at this stage, I am of the view that further and deeper investigation into the matter is required before any final

decision on the whole issue is taken, more so when the *Company* has not been successful in showing any ground warranting immediate revocation or modification in the directions issued *vide* the *Interim Order*.

31. Notwithstanding the aforesaid observations, I note that the *Company* has requested for a specific relief in the form of permitting it to licence the brand name 'SunEdison' in favour of someone else to use it. I note that the *Company* is not using the said brand name for its business purposes. The *Company* has also submitted that the said brand is more useful for retail businesses which the *Company* is claiming to be not operating as of now. Therefore, in the event of the *Company* not using the said brand name, the prayer of the *Company* as stated above, if approved, may turn out to be useful for the *Company* as well as for its shareholders. Therefore, pending the completion of the investigation in this matter, in my view, the *Company* can be permitted to use the brand name 'SunEdison' for being leased/licensed out, subject to the condition that the same is intended to and results in safeguarding the interests of the *Company* and its shareholders.

32. As regards the contention of the *Company* that the *Interim Order* contains contradictory statements pertaining to the valuation of assets being transferred to SESPL, I find it suffice to state that the *prima-facie* allegation of SEBI against the *Company* in the *Interim Order* was impinging on the issue of undervaluation of assets being transferred to related parties. During the preliminary examination, when the *Company* contended that the book value of the assets being transferred to SESPL was INR 14.97 Crores, a reasonable suspicion arose that if that was the case, why would a related party pay INR 26.42 Crores for such assets, which have been valued at almost half of the price agreed to be paid. It appeared at the stage of *Interim Order* that this valuation amount was brought before SEBI in an attempt to demonstrate that the transaction was being done at a price higher than the book value of assets. Given the fact that the valuations done by the entities appointed by the *Company* itself, valued the assets at INR 14.97 Crore (M/s VPTP & Co.) and INR 17.40 Crore (Libord), it is viewed that the said suspicion of SEBI regarding accuracy of valuation of those assets gets further

strengthened, necessitating to enquire further into the justification behind paying such a higher amount by the related party. The *Interim Order* does not contain any contradictory statement and rather has rightly raised suspicion on the incongruous stand taken by the *Company*. It shows a *prima-facie* fallacy in the argument of the *Company*, in light of the fact that the *Company* has failed to put forth a satisfactory reply even at this post *Interim Order* stage to dispel the suspicion raised in the *Interim Order*. Be as it may be, the valuation of assets being transferred out by the *Company* to related entities is a core and critical aspect of the entire matter which has not been explained or justified by the *Company* satisfactorily till date, hence, requires thorough investigation by SEBI.

33. It is also noted that Fenice has made an investment of $ 2,500,000 million in the CCPS of SILRES Energy. Similarly, South Lake has also made an investment of $ 10,000,000 million in the CCPS of SILRES Energy.

34. Fenice, in its representation before me, has requested for modification in the directions issued under the *Interim Order*, to permit the conversion of its CCPS into the shares and to allow grant of certain rights to them subsequent to such conversion as per their terms of agreement with the *Company*. In this regard, I find no dispute to the fact that both Fenice and South Lake have invested funds into SILRES Energy. Further, I find from the submission of the *Company* that SILRES Energy was incorporated to conduct retail solar projects business but the same was never started by it. I also don't find any significant divergence in valuation of SILRES Energy in the valuation reports submitted by the *Company* as well as by the Forensic Audit Report.

35. At the same time, I cannot lose sight of the fact that the investment into the said company is a part of the series of transactions proposed under the Framework Agreement, in respect of which sufficient evidences have already been placed on record to *prima-facie* show that the said Framework Agreement proposes various suspicious transactions that may go against the interest of the minority shareholders of the SIL. Therefore, if the prayers made by Fenice are accepted in whole, it may, in effect, result into carving out a part of the Framework Agreement and allowing the *Company* to execute the same. Considering the fact

that Framework Agreement as a whole is under investigation by SEBI, granting complete liberty to execute a part of the said Framework Agreement may not be appropriate at this stage. Thus, prayer made by Fenice to modify the directions contained in paragraphs 54(a) and 54(d) of the *Interim Order* so as to vacate the complete *status quo* cannot be accepted since they are at present not seen to be in the interest of the minority shareholders of SIL. Nevertheless, considering the aspect of protection of investments made by Fenice and South Lake, I am of the opinion that other prayers of Fenice w.r.t. conversion of CCPS into equity shares, Information Rights, Consent Rights and Board Representation may not have any significant impact on the interest of minority shareholders of SIL and the same can be considered favorably.

## ORDER

36. In view of the foregoing paragraphs, pending conclusion of investigation, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11(4) and 11B(1) thereof, hereby confirm the directions issued *vide ex-parte ad-interim* Order dated February 15, 2021 subject to following modifications:

    36.1. Fenice and South lake are permitted to convert their CCPS held in SILRES Energy into equity shares and exercise following rights associated with it:

        36.1.1. Information Rights – clause 5.1 of the Framework Agreement and clause 10 of the amended SSHA

        36.1.2. Consent Rights – clause 5.3 and 5.4 of the Framework Agreement

        36.1.3. Board Representation – clause 6 of the amended SSHA

    The aforesaid conversion of CCPS and exercise of rights shall be subject to Fenice and South Lake undertaking not to dispose, sell or alienate SILRES Energy's assets transferred from SIL under the Framework agreement dated June 23, 2020 (if any).

37. SIL is permitted to license the brand 'SunEdison' to another entity as a revenue generating resource. However, the validity of such license agreement cannot be more than a year at a time and may be renewable upon expiry at the option of

the *Company*. At the same time, the license agreement would be subject to any further directions by SEBI as a part of the present proceedings.

38. This Order shall come into force with immediate effect.

39. This Order is without prejudice to any other action that SEBI may initiate under the securities laws, as deemed appropriate, against the above-mentioned entities.

40. A copy of this Order shall be forwarded to the Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

**-Sd-**

**Date: July 15, 2021** **S. K. Mohanty**

**Place: Mumbai** **Whole Time Member**