



QJA/BS/DDHS/DDHS-SEC-2/32791/2026-27

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

**UNDER SECTION 12(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF
INDIA (INTERMEDIARIES) REGULATIONS, 2008**

In respect of:

Axis Capital Limited

PAN: AAACU8367M

SEBI registration no: INM000012029

**In the matter of role of Axis Capital Limited in providing guarantee to the NCDs of
Sojo Infotel Pvt. Ltd.**

A. BACKGROUND

1. The present matter emanates from post enquiry show cause notice dated December 17, 2025 issued to Axis Capital Limited ("**Axis Capital**"/"**Noticee**"/"**ACL**") under regulation 27 (1) of the SEBI (Intermediaries) Regulations, 2008 ("**SEBI Intermediaries Regulations**"). The Noticee is registered with the Securities and Exchange Board of India ("**SEBI**") as a Merchant Banker ("**MB**") with SEBI registration no INM000012029 since January 02, 2013.

2. Sojo Infotel Private Limited ("**Sojo**") was incorporated as a private limited company on June 24, 2016 under the Companies Act, 2013. Sojo had issued Non-Convertible Debentures ("**NCDs**") of INR 260 crore on March 25, 2021. The issue was open on March 24, 2021 and closed on March 24, 2021. The deemed date of allotment was March 25, 2021. Axis Trustee Services Ltd. ("**Axis DT**") was the Trustee and ACL was the "Sale Arranger" to the issue. Repayment obligations of the NCDs were inter alia secured by 26% pledge over the shares of Lava International Ltd. ("**Lava**"/"**LIL**") held by Sojo's promoters ("**Pledged Shares**"). The maturity date of the NCDs was on March 25, 2024. After September 25, 2023, Sojo would be entitled to redeem the NCDs in whole ("**Call Option**"). If Sojo does not exercise the Call Option, it would constitute an 'Event of Default' and an 'Asset Sale Event'. The NCDs were subscribed by:
- Aditya Birla Finance Private Ltd. – INR 150 crore;
 - Sun TV Network Ltd.- INR 100 crore; and
 - Shriram Foundry Private Ltd.– INR 10 crore.
3. In September 2022, Sojo redeemed NCDs of INR 60 crore. On September 13, 2023, Sojo exercised the Call Option, which was not fully honored, leaving a balance of INR 174 crore outstanding in respect of the NCDs. This triggered an 'Event of Default' and 'Asset Sale Event' on September 25, 2023, post which, ACL's obligation to act as the sale arranger of the Pledged Shares and to find a purchaser for the Pledged Shares for an amount equal to the outstanding amounts in respect of the NCDs was triggered. Under their arrangement, ACL deposited INR 166.84 crore in the NCD Escrow Account of Sojo on March 19, 2024. The said amounts were utilized to repay the outstanding NCDs of INR 174 crore and interest. The said shares acquired by Noticee were classified as 'securities held for trading' in its financial statements for the year ended March 31, 2024. ACL charged a fee of approximately INR 33 crore from Sojo for the entire transaction.
4. SEBI conducted an inspection of the Noticee on March 13, 2024 for the period from January 01, 2013 to December 31, 2024 ("**Inspection Period**") to *inter alia* examine whether the underwriting commitment provided by ACL for listed NCDs of Sojo are in

accordance with the provisions of Securities and Exchange Board of India, Act, 1992 ("**SEBI Act**"), SEBI (Merchant Bankers) Regulations, 1992 ("**MB Regulations**"), SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. The inspection findings were based on analysis and test checking of books of accounts and other records as well as written / oral submissions of Noticee and other entities associated with the issuance of NCDs. SEBI's inspection found certain non-compliances of MB Regulations.

B. PROCEEDINGS BEFORE THE DESIGNATED AUTHORITY

5. Pursuant to observations made in the course of inspection, SEBI initiated enquiry proceedings under Chapter V of the Intermediaries Regulations against the Noticee and appointed a Designated Authority ("**DA**") to enquire into the alleged violation.
6. The DA issued a show cause notice dated April 16, 2025 ("**Pre-Enquiry SCN**") to the Noticee under Regulation 25 (1) of the Intermediaries Regulations to show cause as to why appropriate recommendation should not be made against it in terms of Regulation 26 of the Intermediaries Regulations for the alleged violations.
7. In response to the Pre-Enquiry SCN issued by the DA, the Noticee requested for inspection of documents which was completed on June 11, 2025. Reply was filed by the Noticee on July 18, 2025 and hearing opportunity was availed by it on September 15, 2025 through its authorized representatives. After the hearing, the Noticee filed its post hearing submissions on September 29, 2025.
8. Thereafter, based on the allegations levelled against the Noticee in the Pre-Enquiry SCN, reply filed by the Noticee, submissions made during the personal hearing and the material available on record, the DA concluded the Enquiry Proceedings and submitted the Enquiry Report ("**Enquiry Report**") dated October 15, 2025 in terms of regulation 26 of the Intermediaries Regulations.
9. The DA in his report has observed the following with respect to the Noticee:

- a. The terms of the Share Agreement and Debenture Trust Deed executed on March 22, 2021 between Sojo, its promoters, Axis Debenture Trustee and ACL *inter alia* states that ACL has unconditional, unequivocal and irrevocable obligation to purchase or fund the purchase of the pledged shares. An “issue” can only be underwritten when the securities are offered for sale. However, in this instant matter, the underwriting commitment provided by Noticee for the “pledged shares” were not offered for sale at the time of issuance of NCDs. It was only upon failure of the issuer to arrange the proceeds for redemption (including principal and interest), such “underwriting commitment” would trigger and, Noticee would have been obligated to find a buyer, failing which Noticee would have to deposit the requisite funds. Such arrangement was not an underwriting transaction, but a “guarantee” provided by the Noticee for redeeming the debt instruments and the same was disguised as an “underwriting commitment”.
- b. Noticee has not earned a standard fee as a percentage of issue. The fees payment in such transaction is calculated considering the difference between the yield of the issuer over the interest rate offered to the investors, which clearly indicates that Noticee had borne a credit risk for the issuers and hence was compensated accordingly.
- c. CRISIL and investors in their rating rationale and reasons for investment have laid heavy emphasis on the underwriting commitment given by Noticee. This shows that the “guarantee” provided by the Noticee under the garb of underwriting commitment, was the main strength behind their decisions.

10. Based on the aforesaid findings, the DA held that the violations stood established against the Noticee. Accordingly, the DA recommended the following:

“In light of the above, it is recommended that in terms of Regulation 26 (1)(vii) of the Intermediaries Regulations, regulatory censure may be issued to the Noticee (Axis Capital Limited – SEBI Registration No. INM000012029).”

C. SHOW CAUSE NOTICE, REPLY AND HEARING

11. Pursuant to the submission of the Enquiry Report, the SCN dated December 17, 2025 was issued to the Noticee in this proceeding. *Vide* the above mentioned SCN, the Noticee was called upon to show cause as to why action as recommended by the DA or any other directions as deemed fit should not be issued / imposed on it in terms of Intermediaries Regulations. The Enquiry Report of the DA was enclosed with the SCN dated December 17, 2025 issued to the Noticee. Therefore, any reference in this Order to the allegations made in the SCN must also be read to include the conclusions arrived at in the Enquiry Report.
12. In response to the SCN, the Noticee submitted its reply *vide* e-mail / letter dated February 04, 2026. Subsequently, the Noticee was granted an opportunity of personal hearing on May 07, 2026. On the said date, the authorized representatives (“**ARs**”) of the Noticee appeared before me and reiterated the submissions made *vide* the Noticee’s e-mail / letter dated May 07, 2026. The Noticee *vide* letter / email dated May 18, 2026 made additional submissions.
13. The submissions made by the Noticee (through its ARs) *vide* its replies and during the personal hearing are summarised below:
 - (i) The alleged structure in question contributed to approx. 5 to 6% of the total business of ACL. ACL has not been carrying out business using this particular structure since April, 2023.
 - (ii) The Noticee has not provided a guarantee for the NCDs. It was only acting as a sale arranger and fulfilling its underwriting obligation which is permitted under the MB Regulations.
 - a. The definition of “merchant banker” under MB Regulations means a person engaged in the business of “issue management”. ACL has entered into arrangements regarding “sale of securities” and “issue management”. The term “issue” under MB Regulations includes an offer of sale or

purchase of securities through a merchant banker. Thus, the scope of the term “issue” also contemplates a private secondary sale of securities.

- b. The definition of “underwriting” under MB Regulations includes securities “...issued or offered for sale...”. What is not prohibited, is permitted. There is no prohibition on a merchant banker from also underwriting the sale of securities in a secondary sale. ACL was underwriting only such pledged shares for which it was not able to find the purchaser or if the purchaser failed to purchase within the timeline prescribed.
- c. The pledged shares of Lava were classified as “securities held for trading” in the financial statements of ACL for the year ended March 31, 2024. ACL exercised its right under the documents and completed the sale of its holding of 24.05% shares in Lava, due to which it does not hold any shares in Lava.

(iii) The activity undertaken by the Noticee is not in the nature of a credit related assignment.

- a. A contract of indemnity / guarantee requires payment of amounts in default to creditors. It does not envisage the guarantor taking over any assets over which security is created for the benefit of creditors. The primary obligation of ACL was to arrange a sale of the pledged shares, and upon its inability to conclude such sale to a third party, acquire relevant pledged shares. This does not amount to a guarantee. The same is evident from the fact that there is no deed of guarantee or letter of comfort or any other instrument in the nature of guarantee which was signed by ACL.
- b. As per the Indian Contract Act, 1872, in a contract of guarantee, the obligation of the guarantor gets triggered upon the default of the principal debtor. But, in the present case, upon the occurrence of “event of default / asset sale event”, there is no immediate obligation on ACL to purchase the pledged shares. At no point, did ACL undertake an obligation to service the issuer’s debt.

- c. The activities of ACL are in the nature of market risk related assignment, as ACL was required to identify buyers for the pledged shares, and purchase shares only on failure to find a buyer. The risk assumed by ACL was execution and price discovery risk in a secondary sale, and not the creditworthiness of the issuer.
- (iv) The fee earned by the Noticee was in compliance with the MB Regulations and industry practice. The MB Regulations do not state that the fees received for underwriting activity ought to be a one-time payment rather than a recurring payment received over the tenure of the NCDs. The basis and methodology employed by SEBI for calculating fees at paragraphs 38 to 40 of the Enquiry Report is incorrect and is an inaccurate representation.
- (v) Factors taken into consideration by investors / CRAs without any representation to that effect by ACL or the issuers, cannot be used as basis to charge ACL for alleged violation of MB Regulations.
 - a. NCDs were secured by hypothecation and / or mortgage of assets in addition to the pledge of shares. If the investors were investing solely on the basis of the alleged structure, there would not be any reason to create such hypothecation / mortgage.
 - b. Factors taken into consideration by investors or credit rating agencies are their subjective assessment of a particular security and cannot be used as a foundational basis to allege that the contract was a guarantee.
 - c. There is no allegation in the SCN that either the issuer or ACL represented to the investors / CRAs that the redemption of the instruments i.e, the NCDs were guaranteed by ACL.
 - d. If it was contract of guarantee, then ACL's obligation to purchase the securities would arise immediately upon default by the issuer and not on its failure to find a purchaser for the pledged shares.
 - e. With respect to paras 44 to 47 of the Enquiry Report, the press release for ratings provided by CRA are not within the control of ACL.

D. CONSIDERATION OF ISSUES AND FINDINGS

14. Before dealing with the matter on merits, I note that the Noticee has raised a preliminary issue that the proceedings have been vitiated by delay, as the issuances referred to in the SCN issued by the Designated Authority pertain to a period of last 12 years.
15. In this regard, I note that the impugned transactions did not involve one-time obligations that came to an end on the date of subscription of NCDs or upon subscription by the Noticee pursuant to underwriting obligations. Rather, the liability of the Noticee continued until the debenture holders were paid the purchase price of the debentures. Therefore, the cause of action, cannot be said to have arisen on the date when the first such transaction was entered into, but it must be calculated with reference to the date on which the last surviving obligation under such structure came to an end. As per the submission of the Noticee dated January 08, 2025 before the DA, while the redemption date of the NCDs issue of Sojo was March 19, 2024, the redemption of the last issue undertaken under the same structure took place only on April 12, 2025. SEBI visited the office of Noticee with respect to such transactions on March 13, 2024. Thus, I note that SEBI's inspection in respect of such transactions had commenced more than a year prior to the redemption date of the last transaction undertaken under such structure. Post the inspection, the sequence of events leading upto the present Order is tabulated below:

Table 1

#	Date / Period	Particulars
1.	March 13, 2024	Inspection team visited the office of Noticee
2.	May 21, 2024	Observations of the inspection team were communicated to Noticee
3.	June 06, 2024	A summary settlement notice was issued to the Noticee
4.	July 04, 2024 and August 13, 2024	Noticee filed for rectification of the settlement amount
5.	July 15, 2024 and August 14, 2024	SEBI did not accede to the said request
6.	September 19, 2024	SEBI issued an Interim Order
7.	November 26, 2024	SEBI passed a Confirmatory Order
8.	January, 2025	Completion of comprehensive inspection of Noticee

#	Date / Period	Particulars
9.	February 28, 2025	Proposal to initiate enquiry proceedings was approved by the Competent Authority
10.	April 02, 2025	Appointment communicated to the Designated Authority for initiation of enquiry proceedings
11.	April 16, 2025	SCN issued by the Designated Authority
12.	June 02, 2025 and June 11, 2025	Inspection availed by the Noticee before the Designated Authority
13.	July 18, 2025	Reply submitted by the Noticee before the Designated Authority
14.	September 15, 2025	Hearing availed by the Noticee before the Designated Authority
15.	September 29, 2025	Post hearing submissions filed by the Noticee before the Designated Authority
16.	October 15, 2025	Enquiry Report submitted by the Designated Authority
17.	November 12, 2025	Appointment of the undersigned as Quasi- Judicial Authority
18.	December 17, 2025	Issuance of post-enquiry SCN by the undersigned
19.	February 04, 2026	Reply filed by the Noticee before the undersigned
20.	May 07, 2026	Hearing availed by the Noticee before the undersigned
21.	May 18, 2026	Post hearing submission filed by the Noticee before the undersigned

After considering the various events that took place in the present matter, I find that the contention of the Noticee regarding delay is not tenable.

16. I have perused the Enquiry Report, SCN, replies of the Noticee and other material available on record. The main issue that arises for consideration is:

Whether the obligation of the Noticee under the Transaction Documents constitutes a “guarantee” or is genuinely in the nature of “underwriting” as claimed?

17. Before proceeding, I find it appropriate to reproduce below the relevant provisions of the MB Regulations:

Definitions 2(1) In these regulations, unless the context otherwise requires,—

(ca) **“issue”** means an offer of sale or purchase of securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to or from the public, or the holders of securities of such body corporate or person or group of persons through a merchant banker;

(cb) **“merchant banker”** means any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management;

(g) **“underwriter”** means a person who engages in the business of underwriting of an issue of securities of a body corporate;

(h) **“underwriting”** means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.

Merchant banker not to associate with any business other than that of the securities market.

13A. No merchant banker, other than a Bank or a Public Financial Institution, who has been granted a certificate of registration under these regulations shall after June 30, 1998 carry on any business other than that in the securities market.

Notwithstanding anything contained above, a merchant banker who prior to the date of notification of the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997, has entered into a contract in respect of a business other than that of the securities market may, if it so desires, discharge its obligations under such contract:

Provided that a merchant banker who has been granted certificate of registration to act as primary or satellite dealer by Reserve Bank of India, may carry on such business as may be permitted by the Reserve Bank of India.

Provided further that a merchant banker, that has been granted a certificate of registration under these regulations, shall ensure market making in accordance with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Explanation: For the purposes of this regulation,—

(i) A “bank” shall mean a banking company as defined under section 5 of the Banking Regulation Act, 1949 (10 of 1949), and the corresponding new bank set up under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970), and the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 (40 of 1980), State Bank of India Act, 1955 (23 of 1955) and State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).

(ii) A “public financial institution” shall have the same meaning as assigned to the term under subsection (72) of section 2 of the Companies Act, 2013 and shall include Industrial Development Corporations and Financial Corporations established by the Central Government or State Governments, as the case may be.

18. The Enquiry Report has concluded that the role played by Noticee and activity undertaken by it (which secured the listed NCDs issued by Sojo), was guarantee / indemnity and does not fall under the scope of “underwriting” as permitted under the MB Regulations. This act of Noticee has violated regulation 13A read with regulation 2(1)(cb) and 2(1)(h) of the MB Regulations.
19. The Enquiry Report explains that the Noticee acted as an arranger in structured finance transactions designed to provide bridge funding to issuers pending a later liquidity event, such as an IPO, OFS, merger, acquisition, or business sale. The issuer raised money through debt securities and secured the transaction by pledging shares of itself or a group company. If the anticipated liquidity event failed or did not generate sufficient funds to service the debt, the Noticee was appointed to arrange sale of the pledged shares. Where the Noticee could not find a third party buyer within the stipulated timeline, it was required to purchase the pledged shares itself for an amount equivalent to the dues under the debt securities, which obligation was described as an “underwriting commitment.” The DA has stated that the Noticee, vide email dated January 08, 2025, has forwarded to SEBI the details of issuances where Noticee acted as an arranger of NCDs in the aforesaid manner. The details are reproduced below:

Table 2

S. No.	Name of Issuer	ISIN	Issue Size (In INR Cr.)	Listed/ Unlisted	Date of Issuance	Redempti on dates
1	Mandava Holdings P Ltd	INE689L07024 INE689L07032	350	Unlisted	INE689L07024- January 21, 2013 INE689L07032- March 26, 2013	December 10, 2014
2	Elder Pharmaceutical s Ltd	INE975A07053	250	Unlisted	March 14, 2014	March 31, 2015
3	Mandava Holdings P Ltd	Not Available*	350	Unlisted	November 21, 2014	July 18, 2018
4	Northern India Media P Ltd	INE264R07015	145	Unlisted	September 2, 2014	April, 2016
5	Shivprasad Realty P Ltd	INE785Q08019	54	Unlisted	September 22, 2014	September 30, 2016
6	Camden Industries Ltd	INE604U07016	430	Unlisted	March 22, 2016	March 22, 2019
7	Mandava Holdings P Ltd	INE689L07073	72.50	Unlisted	January 20, 2017	January 23, 2020
8	Camden Industries Ltd	INE604U07032	340	Unlisted	March 21, 2017	November, 2017
9	Good Earth Minetech P Ltd & Gainwell Commosales P Ltd	INE583U07012	238	Unlisted	May 31, 2016	March, 2017
10	Trends In Vogue P Ltd	INE874W07011	525	Unlisted	March 7, 2017	October, 2017
11	Igarashi Motors Sales P Ltd	INE323Y07023	175	Unlisted	August 28, 2017	August, 2019
12	Manav Investments & Trading Co. Ltd.	INE726Z07016	325	Unlisted	March 16, 2018	November 14, 2018
13	Sojo Infotel P Ltd	INE0GS807011	260	Listed	March 24, 2021	March 19, 2024
14	MGM Consulting Services Pvt Ltd	INE257N07042	262.5	Unlisted	March 30, 2022	September 30, 2024
15		INE257N07034	166	Unlisted	September 28, 2022	September 30, 2024
16		INE257N07059	102	Unlisted	January 31, 2023	September 30, 2024
17	Day1 Advisors Pvt Ltd	INE0IFR07021	70	Unlisted	April 13, 2022	April 12, 2025
18		INE0IFR07047	80	Unlisted	March 31, 2023	April 12, 2025

*ISIN was not provided by the Noticee.

Obligations under the Share Agreement and Debenture Trust Deed

20. The Enquiry Report has relied on the (i) Share Agreement dated March 22, 2021 ("**Share Agreement**") executed between Sojo, Promoters, Axis Trustee Services Ltd. and ACL; and (ii) Debenture Trust Deed dated March 22, 2021 ("**DTD**") executed between Sojo, the Promoters of Sojo, Axis Trustee Services Ltd. and ACL to arrive at conclusion regarding the impugned matter. The Share Agreement and the DTD Are collectively referred to as the "**Transaction Documents**". The relevant provisions of the same are reproduced below:

Share Agreement

2.1 Appointment of Sale Arranger

The Debenture Trustee hereby irrevocably appoints Axis Capital, at the cost and expense of the Issuer, as its agent for the sale of the Secured Assets (the "Appointment Effective Date"). The Debenture Trustee agrees that the appointment of Axis Capital as the agent of the Debenture Trustee for the sale of the Secured Assets shall not be terminated until the Purchase Price has been paid in full to the Debenture Holders and all Secured Obligations are paid in full to the Debenture Instructing Group. Pursuant to aforesaid right of Axis Capital, the Debenture Trustee, the Obligors hereby irrevocably appoint Axis Capital as their attorney and authorise Axis Capital to do all such acts, deeds and things as may be desirable and necessary and to execute all documents in their respective names for the purpose of sale of the Secured Assets pursuant to this Agreement....

2.2 Notification of Asset Sale Event

On occurrence of the Asset Sale Event, the Debenture Trustee shall notify Axis Capital and the Debenture Holders in writing of such occurrence within 1 (one) Business Day of the Asset Sale Event (the "Asset Sale Notice"). Upon such notification, Axis Capital undertakes to carry out the sale of Secured Assets in the manner as set out in this Agreement and other Transaction Documents....

2.3 Procuring a Purchaser

Axis Capital hereby agrees to use its reasonable efforts to procure a Purchaser in accordance with this Agreement and the other Transaction Documents

3.1.1 Underwriting Commitment:

(a) Upon the occurrence of the Asset Sale Event and Axis Capital being unable to identify a Purchaser for the sale of the Pledged Shares or in the event that the Purchaser identified for the sale of the Pledged Shares fails to purchase all or any part of the Pledged Shares for an amount equal to the Purchase Price at least 5 (five) Business Days prior to: (i) the date falling 6 (six) months from the occurrence of the Asset Sale Event, or (ii) Maturity Date, whichever is earlier (the "Purchase Event"), Axis Capital is unconditionally, unequivocally and irrevocably obligated to (either directly and/ or through its affiliates), within 4 (four) days of the Purchase Event: (i) purchase or fund the purchase of the Pledged Shares for the amount detailed below as consideration towards the purchase of the whole or part of the Pledged Shares; or (ii) in the event that Axis Capital, for any reason whatsoever, is unable to purchase the Pledged Shares where required to do so for the purpose of complying with its Underwriting Commitment under this Clause, make payment of monies specified hereinbelow as advance consideration towards the purchase of Pledged Shares, and this obligation of Axis Capital shall be deemed to be, for the period commencing from the date on which the obligation of Axis Capital under this Clause 3.1.1(a) has arisen and expiring on the date on which this obligation is discharged by Axis Capital (which obligation is required to be discharged within a maximum period of 4 (four) days of the Purchase Event), an indemnity obligation of Axis Capital in favour of the Debenture Holders (represented by the Debenture Trustee) for the amounts detailed hereinafter.

The amounts that are required to be deposited into the NCD Escrow Account for discharging the obligations outlined above shall be equivalent to:

- (i) the Purchase Price; or*
- (ii) an amount equal to the shortfall between the consideration being paid by the Purchaser and the Purchase Price (the "Consideration Shortfall"),*

(b) In the event the Pledged Shares are not transferred to Axis Capital the advance consideration paid by Axis Capital will not be repayable by the Debenture Holders. It is hereby acknowledged that upon payment of advance consideration by Axis Capital, Axis Capital will not be required to make any additional payments for purchase of the Pledged Shares and Axis Capital shall be entitled to complete the purchase of the Pledged Shares at no additional cost. Accordingly, the purchase consideration payable for any transfer of

shares which may happen subsequently, may be adjusted against the advance consideration paid by Axis Capital, and if for any reason the shares are not subsequently transferred to Axis Capital, the advance consideration paid by Axis Capital, will be repayable by the Promoters to Axis Capital.

(f) For the avoidance of doubt it is clarified that the amounts paid by Axis Capital pursuant to this Clause shall be utilised only towards payment of the Purchase Price as outlined in Clause 3.1.1(a) above and Axis Capital is providing the above Underwriting Commitment only for the purpose of redemption of the Debentures and payment of Interest in relation to the same.

11.1.2 Axis Capital hereby agrees, confirms and acknowledges that failure of Axis Capital in due performance by it of its Underwriting Commitment under the terms of this Agreement shall constitute a financial default of Axis Capital, and the other Parties herein shall have the right to exercise all such rights and remedies and take all such actions against Axis Capital as are available to them, whether under the Transaction Documents or under the Applicable Laws including under Insolvency and Bankruptcy Code, 2016.

12.1 The Obligors agree to indemnify and hold harmless Axis Capital and the Debenture Trustee, and their respective affiliates and the respective directors, officers, employees, agents and representatives from and against:

13.1 Notwithstanding anything contained in this Agreement, Axis Capital shall not terminate this Agreement and the obligations of the Parties hereunder shall continue to be in full force and effect until the Final Settlement Date save and except the Underwriting Commitment of Axis Capital which shall terminate upon redemption in full of the Debentures including and payment of Interest in relation to the same. Upon occurrence of the Final Settlement Date, this Agreement shall terminate forthwith.

Debenture Trust Deed

1.1.1 Settlement of Trust for the Benefit of the Debenture Holders

(a) The Issuer has appointed Axis Trustee Services Limited as the Debenture Trustee and the Debenture Trustee has agreed to act as trustee until the Final

Settlement Date on behalf of and for the benefit of the Debenture Instructing Group upon and subject to the terms and conditions of this Deed, the Debenture Trustee Agreement and its appointment letter, including the terms and conditions of the Debentures set out hereunder. It is hereby clarified that, notwithstanding anything to the contrary contained in any of the Transaction Documents, once the Secured Obligations towards the Debenture Holders is discharged in full, the Debenture Trustee shall act on behalf of and for the benefit of Axis Capital solely for the purposes of recovering the amounts payable to Axis Capital (if any) pursuant to the terms of the Transaction Documents.

1.1.8 Redemption

(e) On payment of Principal Amount together with all accrued but unpaid Interest on the Debentures, the Underwriting Commitment of Axis Capital as defined in the Share Agreement shall automatically stand terminated.

1.1.9 No Dues Certificates

(a) Upon satisfaction of the Secured Obligations in full, each Debenture Holder and Axis Capital shall send a satisfaction certificate (the "Debenture Instructing Group No Dues Certificate") to the Debenture Trustee to confirm to the Debenture Trustee that no amounts are outstanding under the Transaction Documents to such Debenture Holder or Axis Capital.

(b) Upon receipt of the respective Debenture Instructing Group No Dues Certificate, the Debenture Trustee shall deliver a no dues certificate (the "DT No Dues Certificate") to the Issuer.

1.4.2 Consequences of an Event of Default

(b) Notwithstanding anything to the contrary contained in any of the Transaction Documents, upon, occurrence of an Event of Default, an Asset Sale Event shall be deemed to have occurred in respect of the Debentures. Upon the occurrence of an Asset Sale Event, the Parties irrevocably agree that that the Debenture Trustee shall be bound on the instructions of the Majority Debenture Instructing Group to intimate the Issuer of the occurrence of such Asset Sale Event and Axis Capital shall (as Sale Arranger) be entitled to sell any of the Secured Assets in accordance with the Transaction Documents and shall fulfill its obligations as set

out in Clause 3 of the Share Agreement (except where Principal Amounts and all Interest accrued (but unpaid) thereon have been already paid in full). The Obligors shall promptly follow all instructions of the Debenture Trustee / Axis Capital in respect of such Asset Sale.

(c) Notwithstanding anything contained in any of the Transaction Documents, the obligation of Axis Capital to purchase the whole or any part of the Pledged Shares and to make payment of the Principal Amount of the Debentures together with all Interest accrued (but unpaid) thereon to the Debenture Holders shall arise only on the occurrence of the Purchase Event (as defined in Share Agreement) and in the event that payment of all Principal Amounts and all Interest accrued (but unpaid) thereon has not been made to the Debenture Holders by any of the Obligors and/or the Issuer and/or from the sales proceeds from the Pledged Shares or other Security prior to the Purchase Event.

2.1.2 Early Redemption

(d) For avoidance of doubt, it is clarified that in the event Axis Capital or any of its Affiliates purchase the Pledged Shares pursuant to Clause 3 of the Share Agreement, then such proceeds shall be applied in accordance with Clause 2.1.5 of this Deed and the Escrow Agreement solely towards the redemption of the Debentures and payment of the Interest accrued (but unpaid) thereon.

2.1.4 Escrow Account

(c) The Debenture Trustee / Axis Capital shall deposit/ cause deposit of the proceeds from Asset Sale, in the NCD Escrow Account and shall use the proceeds thereof in accordance with the terms of this Deed and the Escrow Agreement, towards the servicing the Secured Obligations.

SCHEDULE III: PROVISIONS FOR THE MEETINGS OF THE DEBENTURE INSTRUCTING GROUP

9 (iii) Axis Capital shall be entitled to one vote in respect of every vote that is available to the Debenture Holders i.e. Axis Capital shall be entitled to exercise 1300 votes at any meetings of Debenture Instructing Group. For avoidance of any doubt, it is clarified Debenture Holders collectively and Axis Capital are entitled to 50% (fifty per cent.) votes each respectively at any meetings of Debenture Instructing Group.

For avoidance of doubt, it is clarified that in case of equality of votes on a poll or electronically, Axis Capital shall be entitled to an exercise of a casting vote in addition to the vote or votes to which it may be entitled to. Notwithstanding anything contained in this Deed or elsewhere in the Transaction Documents, upon the occurrence of an events falling under Clauses 1.4.1(a) (Event of Default- Payment Defaults), Clause 1.4.1(d) (Event of Default- Insolvency), 1.4.1(m) (Event of Default- Cross Default), 2.1.11(a) (Event of Default- Change in Management Control), 1.4.1(n) (Event of Default- Title to Security), 1.4.1 (q) (Event of Default- Default in Payment to Debenture Trustee and Sale Arranger) 2.1.11(d) (Event of Default:- Failure to Maintain and Replenish ISRA Amounts) 2.1.11(e) (Event of Default- Failure to exercise Call Option), 1.4.1(t) (Event of Default- Illegality), 2.1.11 (g)(Event of Default- Failure to dematerialize and Credit the Debentures), 2.1.11(i) (Event of Default- Failure to Redeem the Debentures Upon Occurrence of Mandatory Prepayment Event), 1.4.1(u) (Event of Default- Failure to maintain Security Cover), 2.1.11(j) (Event of Default- Failure by Axis Capital) Axis Capital and the Majority Debenture Holders shall each have an independent right to declare an Event of Default.

21. The Share Agreement classifies the Noticee as a “Sale Arranger” and inter alia mentions that:

- (i) The Noticee will act as an arranger for NCDs to be issued by Sojo;
- (ii) At the end of 30 months from the “deemed date of allotment” (i.e, the allotment date set out in the Private Placement Offer Letter), Sojo is required to redeem the NCDs and accrued interest (this act of Sojo is referred to as the call option). If Sojo is unable to exercise the call option, or on occurrence of “event of default”, an “asset sale event” will be triggered and the Noticee, which will be appointed by Axis DT, shall have an unconditional, irrevocable and unequivocal right to sell the “secured assets” (hypothecated property and pledged shares of Sojo / LIL) in order to satisfy the “purchase price”. “Purchase price” has been defined as an amount equal to the principal amount of non-redeemed NCDs and interest.
- (iii) If Axis Capital is unable to identify such a purchaser for the “pledged shares” or if the purchaser identified does not pay the entire “purchase price” on or prior to the “purchase event”, Axis Capital shall purchase the pledged shares

or pay advance consideration for the purchase of the whole or part of the pledged shares.

22. The MB Regulations, under regulation 2(1)(cb), defines “merchant banker” to be a person who is engaged in the business of “issue management” either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management. “Issue” has been defined under regulation 2(1)(ca) as an offer of sale or purchase of securities by any body corporate. Regulation 13A, prescribes that a merchant banker cannot carry on any business other than that in the securities market. Further, regulation 22 permits a merchant banker to undertake “underwriting” obligations. I note that section 2(1)(h) of the MB Regulations defines “underwriting” as an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.
23. From the Share Agreement discussed above, the first limb which requires the Noticee to act as an arranger for NCDs of Sojo, falls under the ambit of regulation 2(1)(cb) of MB Regulations, as arranging for the subscription to NCDs is “issue management”. But the second and third limbs discussed above, does not show that the Noticee was engaged for subscribing or procuring subscription for securities offered for sale, which remained unsubscribed. Rather, it shows that the Noticee steps in if Sojo is unable to exercise the call option or an “event of default” occurs, both of which are triggers relating to non-payment by Sojo or credit risk of Sojo. Importantly, the “purchase price” is dependent on the principal payment and interest of non-redeemed NCDs, not to the value of the pledged shares. Typically, the underwriting obligation would be in reference to the securities being underwritten i.e the NCDs, but here the underwriter’s commitment is linked to Sojo’s repayment obligation.
24. The Noticee has argued that the underwriting obligation provided by it with respect to the NCDs of Sojo is in compliance with the definitions of “issue”, sale of “securities”, and “underwriting” as well as regulation 13A of the MB Regulations as the regulations contemplate that a merchant banker can provide private secondary sale of securities. In this regard, as stated earlier, a sale of the pledged shares to a third party, and

Noticee's own fallback promise to buy the shares if no such buyer is found is triggered not by weak market demand, which underwriting is meant to cover, but by a credit default event that is Sojo's inability to redeem the NCDs. This is confirmed by the definition of "Purchase Price", which the Noticee is required to satisfy on occurrence of the "Asset Sale Event". A genuine underwriting and genuine sale are both priced to the value of the securities involved. However, in the instant case, the "Purchase Price" in the Share Agreement is defined as the principal and interest outstanding on the NCDs, and bears no connection to the value of the "Pledged Shares". Further, an "issue" can only be underwritten when the securities are offered for sale. But, in the instant matter, the underwriting commitment provided by the Noticee for the "Pledged Shares" were not offered for sale at the time of issuance of NCDs. Also, while regulation 13A of the MB Regulations confines merchant bankers to securities market related activities, a mere connection to "securities" is not sufficient to bring an activity within its scope. If the Noticee's interpretation is accepted, then any repayment guarantee dressed as "private secondary sale of securities" would fall within the merchant banking perimeter and allow merchant bankers to take credit risk.

25. The Enquiry Report holds that the Noticee provided a "guarantee" by agreeing to purchase the Pledged Shares. Relevant sections under the Indian Contract Act, 1872 with respect to guarantee, read as follows:

126. 'Contract of guarantee', 'surety', 'principal debtor' and 'creditor'

A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written.

127. Consideration for guarantee

Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

128. Surety's liability

The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

134. Discharge of surety by release or discharge of principal debtor

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

140. Rights of surety on payment or performance

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

145. Implied promise to indemnify surety

In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

26. From the above, the core ingredients of a contract of guarantee are:

- (i) Three distinct parties exist, a 'principal debtor' who borrows, a 'creditor' to whom the debt is promised and a 'surety' who gives the guarantee if the 'principal debtor' defaults;
- (ii) An existing liability or debt between the 'principal debtor' and the 'creditor';
- (iii) The liability of the 'surety' is secondary and conditional upon default by the 'principal debtor'.

27. From the provisions of the Share Agreement reproduced above, I note that clause 3.1.1(a) of the Share Agreement states that if ACL is unable to purchase the shares for any reason whatsoever, it must still pay monies as advance consideration in favour of the debenture holders represented by the debenture trustee. This is expressly deemed as an "indemnity" obligation in favour of debenture holders. Clause 3.1.1(b) states that even if the pledged shares are not transferred to ACL, the advance consideration paid by it is not repayable by debenture holders and the recovery, if any, lies against

promoters. In conventional underwriting, once a payment is made for acquisition of shares, the obligation of the merchant banker would extinguish. This is also evident from the definition of “underwriting” under the MB Regulations, which states that underwriting means an agreement to “*subscribe to or procure subscription to securities ... remaining unsubscribed*”. Accordingly, once the underwriter has subscribed to and acquired such securities, the underwriting commitment stands discharged in the ordinary course. However, under the terms of the Share Agreement, even where ACL does not ultimately receive the Pledged Shares, the debenture holders are entitled to retain the amounts paid by ACL for such Pledged Shares. This shows that the arrangement does not operate as a conventional underwriting mechanism for acquisition of unsubscribed or untaken shares, but is instead structured to ensure payment of redemption proceeds and interest to the debenture holders. This arrangement also resembles a guarantor stepping in, paying the creditor, and then retaining the recourse against the principal debtor (in the present case, promoters), which is aligned with section 145 of the Indian Contract Act, 1872 where the principal debtor must reimburse the guarantor for the amounts rightfully paid. Further, clause 3.1.1(f) links the obligation of ACL directly to the issuer’s debt service obligations, not merely acquisition of shares. Clause 11.1.2 states that if ACL fails in its underwriting commitment, it shall constitute a “financial default”. This makes it clear that ACL was not merely acting as an intermediary responsible for arranging a sale, but had assumed an independent financial payment obligation of its own. Clause 13.1 explicitly makes the underwriting commitment of ACL contingent upon redemption of debentures including payment of interest. I find that if this were truly only an underwriting obligation for pledged shares, it ought to have come to an end upon the purchase of shares or payment of purchase consideration. Instead, ACL’s obligation continues until the debt due to the NCD holders is fully discharged.

28. In the DTD, in clause 1.1.8(e), the underwriting commitment terminates on payment of the principal amount together with unpaid interest on the debentures. A genuine underwriting would terminate on completion of sale of “Pledged Shares”, but here it discharges on Sojo’s debt. Clause 1.4.2(c), states that the obligation of ACL arises in the event payment of all principal amounts and all unpaid interest accrued has not been

made to the debenture holders by any of the Obligors and/or the Issuer and/or from the sales proceeds from the Pledged Shares or other security prior to the Purchase Event. This is a direct payment obligation of the creditor on the principal debtor's default in line with section 126 of the Indian Contract Act, 1872. Further, this also demonstrates how ACL's obligation was a guarantee as its liability is co-extensive with that of Sojo and is limited to Sojo's unpaid balance. Clause 1.1.9(a) states that upon satisfaction of the secured obligations, the debenture holders and ACL shall send a satisfaction certificate to the debenture trustee that no amounts are outstanding under the Transaction Documents to the debenture holder or ACL. Grouping ACL with the debenture holders as a party to whom "amounts" may be "outstanding" only makes sense if ACL, having paid on Sojo's default, has its own claim against the obligors for reimbursement i.e., a subrogation right under section 145 of the Indian Contract Act, 1872. Further, in terms of Schedule III, clause 9(iii) of the DTD, ACL is given one vote for every vote available to the debenture holders collectively (50% of total voting power), a casting vote in case of a tie, and an independent right to declare an "event of default". The above clause makes it difficult to reconcile that ACL's role was limited to a "sale arranger" or an "underwriter". A party which has no stake in the debt repayment, would not be voting with the debenture holders, and would not be put in a position to trigger a unilateral "event of default".

29. Noticee's argument that "what is not prohibited is permitted" also does not apply in the present case, as a registered intermediary may act only within the scope of its registration and the MB Regulations. In this regard, it is relevant to refer to the section titled "*Review of activities that merchant bankers can undertake*" in the consultation paper issued on August 28, 2024 to review the SEBI (Merchant Bankers) Regulations, 1992. The said section records that certain merchant bankers were undertaking activities not pertaining to the securities market and are therefore outside SEBI's jurisdiction. It further notes that such activities may pose significant regulatory and systemic risks precisely because they fall outside SEBI's regulatory purview. The consultation paper proposes that the permitted activities for merchant banker be expressly defined in the Regulations and that merchant bankers undertaking activities

other than such permitted activities, should segregate and hive off such activities to a separate entity.

30. Noticee's submission that underwriting the sale of securities in a secondary sale is permitted and its underwriting obligation arises only with respect to the portion of pledged shares for which it is unable to find a purchaser or if the purchaser fails to purchase within the prescribed timeline, is not in line with the definition of "underwriting". By its own submission, Noticee's obligation is not contingent on the market conditions for the shares themselves, but solely on whether a third party would step in to satisfy Sojo's redemption obligation. If a third party is unable to fully acquire the Pledged Shares, the Noticee steps in to take up the remaining shares. To that extent, such an arrangement may resemble an underwriting type commitment in respect of the leftover Pledged Shares. However, the difficulty arises from the fact that the Noticee's obligation is not confined merely to acquisition of the remaining shares, but extends to ensuring repayment of the outstanding debt due on the NCDs. Thus, the concern is not with taking up the remaining shares, but with the obligation to ensure repayment of the debt, which gives the arrangement the nature of guarantee like credit support.
31. The Noticee has submitted that a contract of indemnity or guarantee requires payment of amounts in default to creditors. It does not envisage the guarantor taking over any assets over which security is created for the benefit of creditors. The primary obligation of ACL was to arrange a sale of the pledged shares, and upon its inability to conclude such sale to a third party, acquire relevant pledged shares. This does not amount to a guarantee. I find that the aforesaid interpretation of "guarantee" endorsed by the Noticee is narrow. Under section 126 of the Indian Contract Act, 1872, a guarantee is a promise to either perform the promise or discharge the liability of principal debtor. The mode of discharge is not confined to a cash payment to the creditor. If the Transaction Documents structure that "discharge" as an acquisition of security underlying the debt (i.e, the Pledged Shares) at a price fixed to the outstanding debt itself, the substance remains the same that the liability of principal debtor (i.e, Sojo) is discharged. The absence of a document termed as a "deed of guarantee" or "letter of comfort" is not determinative. The character of an obligation is to be gathered from its substance.

32. Noticee has submitted that in a contract of guarantee, the obligation of the guarantor gets triggered upon the default of the principal debtor. But, in the present case, upon the occurrence of “event of default / asset sale event”, there is no immediate obligation on ACL to purchase the pledged shares. At no point, did ACL undertake an obligation to service the issuer’s debt. Section 126 of the Indian Contract Act, 1872 does not require that a surety’s obligation ought to be crystallised instantaneously upon default, it requires only that the obligation be conditional upon the principal debtor’s default. The Transaction Documents themselves provide that the obligation “*shall be deemed to be... an indemnity obligation of Axis Capital in favour of the Debenture Holders*” from the date the obligation arises under the relevant clause until discharged “*within a maximum period of 4 (four) days of the Purchase Event.*”
33. The Noticee has further submitted that the activities of ACL are in the nature of market risk related assignment, as ACL was required to identify buyers for the pledged shares, and purchase the shares only on failure to find a buyer. Therefore, according to the Noticee, the risk assumed by ACL was execution and price discovery risk in a secondary sale, and not the creditworthiness of the issuer. In the present case, I note that the obligation of ACL inter alia arises upon “Event of Default” or the “Asset Sale Event” flowing from Sojo’s inability to redeem the NCDs. This shows that ACL was not merely bearing execution or price discovery risk in a secondary sale, but had undertaken an obligation to ensure repayment of Sojo’s debt dues, which is in the nature of credit support.

Credit rating assigned and investor confidence due to Noticee’s underwriting commitment

34. The Enquiry Report mentions that all the issuances of NCDs were provided a credit rating by a Credit Rating Agency (“**CRA**”) and that credit ratings are alpha-numeric codes assigned by a CRA to express their opinion on the relative risk of default of a debt issuer or financial instrument. As per the Enquiry Report, the ratings range from high-grade (indicating low risk of default) to speculative-grade (indicating higher risk of default). Further, it states that if an issuer receives support consideration from another

entity in the form of guaranteed bond, letter of comfort, debt backed by pledge of shares or other assets, etc. the CRA may assign Credit Enhancement (CE) / Structured Obligation (SO) rating in accordance with SEBI Regulations and circulars. The Enquiry Report also emphasizes that from the press release of certain NCD issuances where the Noticee has acted as the “Sale Arranger” similar to the NCDs of Sojo, due to the support of the Noticee, the issue has received a CE / SO rating. Such issues are as follows:

Table 3

S. No.	Name of Issuer	ISIN	Issue Size (In INR Cr.)	Date of Issuance	Without Support ¹	With Support of Noticee
1.	Sojo Infotel P Ltd	INE0GS807011	260	March 24, 2021	BBB	AAA(CE)/ CRISIL
2.	MGM Consulting Services Pvt Ltd	INE257N07042	262.5	March 30, 2022	BB	AAA(CE)/ ICRA
3.		INE257N07034	166	September 28, 2022		
4.		INE257N07059	102	January 31, 2023		
5.	Day1 Advisors Pvt Ltd	INE0IFR07021	70	April 13, 2022	B-	AAA(CE)/ ICRA
6.		INE0IFR07047	80	March 31, 2023	B-	AAA(CE)/ ICRA

35. Accordingly, an extract from one such CRISIL rating rationale issued with respect to the NCDs of Sojo dated March 30, 2021, is reproduced below²:

“Detailed Rationale

CRISIL Ratings has converted its provisional rating to the proposed Rs 300 crore non convertible debentures of Sojo Infotel Private Limited (SIPL) to a final rating of ‘CRISIL AAA (CE) / Stable’ backed by underwriting commitment from Axis Capital Limited (Axis Capital). CRISIL Ratings has received the final legal documents executed for the transaction and has hence converted the provisional rating to a final rating.

¹ CRISIL, while assigning the rating, also discloses the corresponding “Unsupported Rating”.

² https://www.crisil.com/mnt/winshare/Ratings/RatingList/RatingDocs/SojoInfotelPrivateLimited_March%2030,%202021_RR_267806.html

The rating continues to reflect the strength of the underwriting commitment provided by Axis Capital for the entire rated amount. The underwriting commitment is unconditional and irrevocable and also has a well-defined payment mechanism to ensure timely servicing of the debt obligations, and hence, reflects the credit strength of Axis Capital.

Analytical Approach

*For arriving at its ratings, CRISIL Ratings has factored the underwriting commitment given by Axis Capital Limited **for the proposed NCD issuance and has applied its criteria for rating instruments backed by guarantees.** The 'CE' suffix reflects the payment structure that is designed to ensure full and time-bound payment to investors, as per the underwriting commitment by Axis Capital.*

Well defined payment mechanism built into the transaction structure – to ensure timely payments to debenture holders

*The underwriting commitment from Axis Capital is unconditional and irrevocable, and it covers the whole quantum of the repayment obligation that may arise on redemption of the NCDs (including entire principal + accrued coupon). A well-defined payment mechanism has been put in place to ensure timely servicing of obligation to the investors.”
(emphasis supplied)*

36. From the above, I note that rationale provided in the above rating of NCDs of Sojo focuses on the credit strength of Noticee and its affiliation with Axis Bank Limited along with the “underwriting commitment” provided. It also emphasizes Noticee’s financial standing and the credit risk which it may face. Importantly, CRISIL has explicitly noted that it “*has applied its criteria for rating instruments backed by guarantees*”. This means that CRISIL did not view ACL’s role as mere underwriting risk, it evaluated the NCDs of Sojo as one supported by credit enhancement similar to a guarantee. As per the Transaction Documents, I note that other support considerations including Promoter guarantees has also been provided by the issuers, but the CRISIL rating rationale in public domain does not discuss the same.
37. The Enquiry Report records that upon examining the responses of the subscribers / investors regarding the investment rationale for the issues in which the Noticee acted

as “Sale Arranger” or in a similar capacity involving an obligation connected with repayment of the debt due, it was observed that the investors (predominantly institutional entities such as mutual funds and NBFCs), placed reliance on the comfort provided by the Noticee’s underwriting commitment for redemption of the securities issued by the issuers.

38. I note that in its submissions, the Noticee has stated that the factors taken into consideration by investors or credit rating agencies are their subjective assessment of a particular security and cannot be used as a foundational basis to allege that the nature of the contract was one of guarantee, particularly when neither the issuer nor ACL represented to investors or CRAs that the redemption of the NCDs was guaranteed by ACL. It has further submitted that the NCDs were also secured by hypothecation and / or mortgage of assets in addition to the “Pledged Shares”, which shows that investors were not relying solely on the alleged support structure. According to the Noticee, had the arrangement truly been a contract of guarantee, its obligation would have arisen immediately upon issuer default, rather than only upon its failure to find a purchaser for the “Pledged Shares”.

39. The Noticee’s contentions do not hold any merit. The presence of additional security such as hypothecation or mortgage does not negate the separate credit support provided by the Noticee. The absence of the word “guarantee” is not decisive, since the substance of the arrangement matters more. The fact that the Noticee’s obligation would be triggered upon failure to find a buyer for the “Pledged Shares” does not change the “guarantee” like nature of the arrangement, because the ultimate obligation remained on the Noticee that it had to step in to ensure repayment of the NCDs.

Fee structure of the issues

40. The inspection and the Enquiry Report states that the total fees earned by Noticee for undertaking such structured financial transactions during the period of inspection was approximately INR 299 crore.

41. The DA has also relied upon the fee letters executed by the issuers and Noticee for such NCD issuances. Extract of one such fee letter executed between Day1 Advisors Private Ltd (an Issuer), ACL and Axis DT dated February 07, 2023 as amended by letter dated March 30, 2023 is provided below:

“Re: Fees to be paid to Axis Capital Limited ("Axis Capital") for the debenture issuance by Day1 Advisors Private Limited ("Issuer")

1. DEFINITIONS

1.1 "Agreed Total Yield" means 16.50% per annum payable quarterly.

"Agreed Total Yield Amount" means the amount due when calculated at Agreed Total Yield on the principal amount of the Outstanding Debentures till the date of repayment to Debenture Holders.

"Debentures" means the debt instruments in the form of 800 (Eight Hundred) 9.65%, rated, unlisted, non-convertible debentures with a face value of Rs. 10,00,000 (Rupees Ten Lakhs Only) each aggregating upto Rs. 80,00,00,000 (Rupees Eighty Crore Only), issued by the Issuer on the terms and conditions contained in the Debenture Trust Deed.

"Interest" means 9.65% (nine point six five per cent) per annum payable quarterly on the Interest Payment Date.

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3. FEES AND EXPENSES

In connection with the provision of services by Axis Capital pursuant to this Fee Letter in connection with the issuance of the Debentures, the Issuer or any of its Group Companies shall pay Axis Capital the fee in the manner as set out below ("Fee"):

Type of Fees	Fee Payable	Payment Date
<i>Upfront Fee</i>	<i>Rs. 2,40,27,0877 (Rupees Two Crores Forty Lakhs and Twenty Seven Thousand Eight Hundred and Seventy Seven Only)</i>	<i>On the Deemed Date of Allotment</i>

Additionally, given below is an indicative schedule assuming the Deemed Date of Allotment is 31 March 2023 and Debentures are being repaid on the Call Option Exercise

Date falling on 13 October 2024 with no redemption prior to that. Please note that this is subject to change based on actual Deemed Date of Allotment and actual date of repayment.

Payment Interval	Payment Date	No. of days	Fees to Axis Cap (Rs.)
1.	31/Mar/23		2,40,27,877
2.	13/Apr/23	13	13,14,588
3.	13/Jul/23	91	92,02,119
4.	13/Oct/23	92	93,03,242
5.	13/Jan/24	92	93,03,242
6.	13/Apr/24	91	91,76,977
7.	13/Jul/24	91	91,76,977
8.	13/Oct/24	92	92,77,823
9.	13/Jan/25	92	92,77,823
10.	13/Apr/25	90	91,00,997

....

In the event of the Debentures being repaid prior to the Call Option Exercise Date falling on 13 October 2024, the Issuer shall be bound to pay to Axis Capital all accrued fees such that Agreed Total Yield is maintained.”

42. In this regard, the DA has concluded that as the fees payment in such transactions were calculated as the difference between the total yield over the interest rate offered to the investors, it suggests that such transactions were in the nature of credit risk. The Noticee has submitted that there is no provision in the MB Regulations or circulars issued thereunder, that mandates that a merchant banker must charge its fees as a one-time upfront payment and that the payment schedule is as per the commercial wisdom of the parties. As per the DA, the question is not merely whether the Noticee was entitled to receive recurring payments under the MB Regulations, but whether the true nature of those payments corresponded to a permissible merchant banking fee or whether they represented compensation for assuming a risk position that went beyond the scope of permitted underwriting activity.

43. Before me, the Noticee has additionally submitted that the staggered fees were a commercially sound choice, as the Noticee had two distinct obligations. One, at the time

of placement of the NCDs, and second, a contingent obligation to find purchasers for pledged shares in the event of default. As per the Noticee, since the second obligation was contingent, it was prudent for the issuer to spread the fee over the tenure of the instrument, rather than pay the entire amount upfront. Further, the Noticee has provided certain examples to drive home the point that the fee variations in the transactions undertaken by it are inconsistent with any credit risk based pricing model, and they reflect commercially negotiated fees which depend on deal size, market conditions and the bargaining dynamics of individual transactions. The Noticee has submitted that if the transaction contained credit risk, then it would exhibit more standardized and predictable pattern, establishing correlation with exposure and tenure.

44. I do not find the above submissions to be tenable. The substance of the fee arrangement entered into by the Noticee in such transactions is that the Noticee is entitled to an upfront fee and continuous stream of payments over the tenure of NCDs. The terms of the fee agreement between Day1 Advisors Private Ltd (an Issuer), ACL and Axis DT dated February 07, 2023, states that even upon early redemption of NCDs, the accrued fees would remain payable to ACL so as to maintain the total agreed yield of 16.5% per annum (when the investor coupon rate is 9.65% per annum). This clearly demonstrate that the Noticee's remuneration was linked to the continuance of the instrument and the underlying risk exposure, and not merely to a one-time obligation of sale of pledged shares upon default. Further, the Noticee's plea that variations in fee levels across transactions negate credit risk pricing is not persuasive. Commercial risk-based compensation need not follow a uniform formula and the absence of standardization does not detract from the clear linkage here between the fee structure and the credit risk borne over the life of the instrument by ACL. While recurring fees may not necessarily be prohibited under the MB Regulations, the concern here is that the periodic payments appear to be adjusted to achieve a target yield and tied to the tenure of the NCDs. Merely describing the payments as "fees" for arranging or underwriting does not alter the fact that the underlying economics reveal a risk-transfer arrangement under which the Noticee assumed exposure akin to a credit intermediary or a risk-bearing participant. It is, however, clarified that the aforementioned discussion does not aim to regulate the manner in which fees ought to have been charged by the merchant banker. The fee structure has been analysed only to assess the weight of the

allegation that the support provided by the merchant banker was in the nature of a guarantee and not an indemnity.

Year-Wise Cumulative Liability Exceeding Net Worth

45. Due to the above transactions, the DA has noted that the year wise cumulative continuing liability / obligation borne by Noticee exceeded its net worth (see table below). These continuing liability were over and above the liabilities taken in the regular course of business.

Table 4

FY	Net-worth (INR Cr)	Amount for New Guarantee/ indemnity offered by Noticee (INR Cr)	Amount for Cumulative Continuing Liability on the date of Balance sheet (INR Cr)	Issuance Date	Name of the Issuer	Redemption Dates
2012-13	234	350	350	January 21, 2013	Mandava Holdings P Ltd	December 10, 2014
Total	234	350	350			
2013-14	186	250	250	March 14, 2014	Elder Pharmaceuticals Ltd	March 31, 2015
Total	186	250	600			
2014-15	232	549	350	November 21, 2014	Mandava Holdings P Ltd	July 18, 2018
			145	September 2, 2014	Northern India Media P Ltd	April, 2016
			54	September 22, 2014	Shivprasad Realty P Ltd	September 30, 2016
Total	232	549	549			
2015-16	360	430	430	March 22, 2016	Camden Industries Ltd	March 22, 2019
Total	360	430	979			
2016-17	411	1175.50	72.50	January 20, 2017	Mandava Holdings P Ltd	January 23, 2020
			340	March 21, 2017	Camden Industries Ltd	November, 2017
			238	May 31, 2016	Good Earth Minetech P Ltd & Gainwell Commosales P Ltd	March, 2017
			525	March 7, 2017	Trends In Vogue P Ltd	October, 2017
Total	411	1175.50	1718			
2017-18	426	500	175	August 28, 2017	Igarashi Motors Sales P Ltd	August, 2019
			325	March 16, 2018	Manav Investments & Trading Co. Ltd.	November 14, 2018
Total	426	500	1353			
2018-19	348					
Total	348	0	247.50			
2019-20	398	0	0	-	-	-
2020-21	519	260	260	March 24, 2021	Sojo Infotel P Ltd	March 19, 2024
Total	519	260	260			
2021-22	982	262.5	262.5	March 30, 2022	MGM Consulting Services Pvt Ltd	September 30, 2024
Total	982	262.5	522.5			
2022-23	1,075	418	166	September 28, 2022	MGM Consulting Services Pvt Ltd	September 30, 2024

FY	Net-worth (INR Cr)	Amount for New Guarantee/ indemnity offered by Noticee (INR Cr)	Amount for Cumulative Continuing Liability on the date of Balance sheet (INR Cr)	Issuance Date	Name of the Issuer	Redemption Dates
			102	January 31, 2023	MGM Consulting Services Pvt Ltd	September 30, 2024
			70	April 13, 2022	Day1 Advisors Pvt Ltd	April 12, 2025
			80	March 31, 2023	Day1 Advisors Pvt Ltd	April 12, 2025
Total	1075	418	940.5			
2023-24	1,345					
Total	1345	0	680.5			

46. I note that regulation 22B was inserted in the MB Regulations with effect from March 30, 2021, which inter alia stated that at any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker. Further, in the above provision, with effect from January 03, 2026, the words “net worth” were substituted with the words “liquid net worth”.
47. However, I note that neither the above regulation has been invoked in the present case nor the Noticee has provided any detailed explanation regarding the observation in the Enquiry Report that the year wise cumulative continuing liability / obligation of the Noticee exceeded its net worth.

E. CONCLUSION

48. In view of the preceding paragraphs, I find that the impugned transaction undertaken by the Noticee did not constitute “underwriting” and was not in compliance with the role of “merchant banker” contemplated under the MB Regulations. The structure of the transactions, the fee linked to the yield spread, the continuing payment obligations over the tenure of the NCDs, the obligation to step in for repayment upon default, and the right to recover the amounts so paid with interest show that the Noticee had, in substance, assumed credit risk and provided support akin to a “guarantee”. The CRA rating rationale and investor records, further support this conclusion. Accordingly, I hold that the Noticee’s actions have violated regulation 13A read with regulation 2(1)(cb) and 2(1)(h) of the MB Regulations.

49. I note that in the instant matter, proceedings under sections 11(1), 11(4) and 11B(1) of the SEBI Act were also initiated and an Interim Order dated September 19, 2024 was passed. Subsequently, vide Confirmatory Order dated November 26, 2024, SEBI issued following direction to the Noticee:

“ACL shall not carry out any transaction, which would involve ACL providing any credit risk cover (as contemplated in paragraph 10 of the Interim Order), guarantee or indemnity relating to purchase of pledged shares (as contemplated in paragraphs 11 and 12 of the Interim Order), or such that it results in a structured secured credit transaction (as contemplated in paragraph 18 of the Interim Order), in the debt segment, until further orders.”

50. As per the Enquiry Report, in all such structured finance transactions undertaken by the Noticee, apart from the issue of Sojo discussed in the present order, the issuers duly redeemed the debentures. However, in the case of Sojo, Noticee's obligations were invoked and it had to pay INR 166.84 crore, which was the outstanding amount of the debentures. The Noticee has submitted before the DA and before me, that it has not been carrying out business using this particular structure since April, 2023 and will continue to refrain itself from indulging in such business practice in future. This is also evident from the minutes of the board meeting of ACL held on May 30, 2024 wherein its MD & CEO informed the board that pursuant to SEBI's inspection, ACL has not undertaken any new structured finance transactions for over a year and does not intend to continue with this line of business going forward. Further, as per the Noticee, the alleged structure in question contributed approximately 5-6% to the total business of Noticee.

51. I note that Axis Capital is before me as a Noticee only in the context of enquiry proceedings (wherein directions can be passed with respect to its certificate of registration). Consequently, I am not empowered to impose any monetary penalties as a deterrent or punitive measure. As submitted by Axis Capital and as I have observed earlier, there is a clear commitment made by the company to not continue with the impugned business of guaranteeing repayment to NCD holders. No material has been brought before me to suggest that this submission is incorrect or that Axis

Capital is continuing to be engaged in non-permitted business. The Interim Order imposing a blanket restraint on the Noticee from taking up any “*new assignments in the capacity of a merchant banker, arranger or underwriter for any issue / offer for sale of securities in the debt segment, till further order*” was modified by the Confirmatory Order. The modified direction confined the restraint to prohibiting the Noticee from providing “*any credit risk cover.....guarantee or indemnity relating to purchase of pledged shares...or such that it results in a structured secured credit transaction...in the debt segment, until further orders*”. The impugned arrangement in the present matter was entered into in March, 2021, i.e, more than 5 years ago. Similar arrangements seem to have been undertaken by the Noticee in 18 instances since 2013, without any allegation having been raised in respect of those transactions.

52. I note that no allegations of harm to investors or default by fraudulent design has been brought on record in the facts of this case. While this is not a necessary requirement to prove the allegations in these proceedings, it may be relevant while determining the punishment that must be meted out. Given the limited scope of the directions that I can pass in these proceedings, a direction that results in stalling the business activity of the Noticee so many years after the violation and in the peculiar facts and circumstances of this case, may be disproportionate and infact cause more harm to investors and members of the securities market ecosystem tied to the Noticee’s ongoing functions. At the cost of repetition, I note, that this observation is relevant only in the context of the directions that I can pass in these proceedings to address the violation. For these reasons, considering all the facts and circumstances noted in this Order, I agree with the Designated Authority’s recommendation to impose a direction of censure.

F. ORDER

53. In view of the foregoing, I, in exercise of the powers conferred upon me under section 12(3) and section 19 of the SEBI Act, 1992 read with regulation 27(5) of the SEBI (Intermediaries) Regulations, 2008 hereby issue a regulatory censure against the

Noticee i.e, Axis Capital Limited (PAN: AAACU8367M and SEBI registration no: INM000012029).

54. The Order shall come into force with immediate effect.

55. A copy of this order shall be served on the Noticee and Stock Exchanges for their information and record.

Biju S Digitally signed
by Biju S
Date: 2026.10.28
15:07:44 +05'30'

DATE: OCTOBER 28, 2026

PLACE: MUMBAI

BIJU S.

QUASI JUDICIAL AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA