BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AK/AS/2023-24/ 28354-28355

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 IN RESPECT OF:

Name of Noticee (PAN)	Address
Janapriya Engineers Syndicate Pvt Ltd (AAACE4560A) Email- lakshmi.sri@janapriya.com	D No. 8-2-120/ 86, 8-2-120/86/1, Keerthi & Pride Towers, Road No 2, Banjara Hills, Hyderabad, Telangana- 500034
IDBI Trusteeship Services Ltd (AAACI8912J) Email-sgunware@idbitrustee.com	Asian Building, Ground Floor, 17, R Kamani Marg, Ballard Estate, Mumbai- 400001

In the matter of Janapriya Engineers Syndicate Pvt Ltd

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) received a reference dated January 04, 2023 from the Debenture Trustee (hereinafter referred to as **"DT"**) viz. IDBI Trusteeship Services Ltd (hereinafter referred to as **"Noticee No. 2/ DT"**) with respect to default in payment of debt securities issued by Janapriya Engineers Syndicate Pvt Ltd (hereinafter referred to as **"Noticee No. 1/ Company"**). Noticee No. 2, vide its aforesaid letter informed SEBI that it was acting as DT for Secured NCDs issued by Noticee No. 1 under Debenture Trust Deed dated June 04, 2021 aggregating to Rs. 100 Cr. However, Noticee No. 1 had not conveyed the payment status pertaining to the payment of interest/ principal against the said NCDs to Noticee No. 2, which was due on January 01, 2023. On the basis of above, examination was conducted in respect of Noticee No. 1, to verify its compliance status with the applicable Regulations.

2. SEBI observed from the findings of the aforementioned examination that Noticee No. 1 allegedly violated the provisions of Regulation 19A(1); and Regulation 19(3) and 21(2) read with Schedule I of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as **"SEBI (ILDS) Regulations"**) and Clause D.12 and D.14 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020 read with Regulation 21B of SEBI (ILDS) Regulations. Further, SEBI also observed that Noticee No. 2 allegedly violated the provisions of Regulation 15(1)(r) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as **"SEBI (DT) Regulations"**).

APPOINTMENT OF ADJUDICATING OFFICER

3. On being satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid alleged violations, SEBI in exercise of powers under Section 19 r/w Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules"**), appointed the undersigned as the Adjudicating Officer, vide order dated April 21, 2023, to inquire into and adjudge under Section 15-I r/w Section 15A(b) and 15HB of the SEBI Act, 1992, the alleged violations by Noticee Nos. 1 and 2.

SHOW CAUSE NOTICE AND PERSONAL HEARING

4. A Common Show Cause Notice ref no EAD-6/AK/AS/18772/2023 dated May 09, 2023 (hereinafter referred to as **"SCN"**) was issued to the Noticees to show cause as to why an inquiry should not be initiated against them, and why penalty, if any, should not be imposed against them under Section 15A(b) and 15HB, as applicable, of the SEBI Act, 1992 for the alleged violations. The details of communication with the Noticees are as follows:

4.1 <u>Noticee No. 1</u>

The SCN was served on the Noticee vide SPAD and digitally signed copy of SCN was served vide email dated May 09, 2023. Noticee submitted reply to the SCN vide email dated June 20, 2023. Further, personal hearing in the matter was held on June 20, 2023. During the course of hearing, Authorized

Representative of the Noticee made submissions relying upon the response dated June 20, 2023. Thereafter, Noticee submitted revised response vide email dated July 04, 2023, and requested that the earlier response dated June 20, 2023 submitted in the matter might be ignored. Accordingly, the response dated July 04, 2023 has been considered as the final response of the Noticee in the matter.

4.2 Noticee No. 2

The SCN was served on the Noticee vide SPAD and digitally signed copy of SCN was served vide email dated May 09, 2023. Thereafter, Noticee submitted replies to the SCN vide responses dated May 22, 2023 and June 02, 2023. Personal hearing in the matter was held on June 07, 2023. During the course of hearing, Authorized Representative of the Noticee made submissions relying upon the responses dated May 22, 2023 and June 02, 2023.

CONSIDERATION OF ISSUES AND FINDINGS

5. The issues that arise for consideration are as under:

5.1. Whether Noticee No. 1 failed to get the debt security listed, resulting in violation of provisions of Regulation 19(3) read with Schedule I of SEBI (ILDS) Regulations? Whether Noticee No. 1 failed to execute listing agreement with the stock exchange, resulting in violation of provisions of Regulation 19A(1) of SEBI (ILDS) Regulations?

5.2. Whether Noticee No. 1 failed to submit the mandated disclosure document with the stock exchange with requisite disclosures, resulting in violation of provisions of Regulation 21(2) read with Schedule I of SEBI (ILDS) Regulations?

5.3. Whether Noticee No. 1 violated the provisions of Clauses D.12 and D.14 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020?

5.4. Whether Noticee No. 2 failed to intimate the non-compliance by Noticee No.1 to SEBI, and failed to exercise due diligence to ensure compliance by Noticee No. 1 with SEBI (ILDS) Regulations, resulting in violation of provisions of Regulation 15(1)(r) and 15(1)(s) of the SEBI (DT) Regulations?

5.5. If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 15 A(b) and 15HB of the SEBI Act, 1992, as applicable? If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

6. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees, as applicable during the Investigation Period, and the same are reproduced below:

SEBI (ILDS) Regulations

Mandatory listing

19(3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities

Listing Agreement

19A (1) Every issuer desirous of listing its debt securities on a recognised stock exchange shall execute an agreement with such stock exchange

Disclosures in respect of Private Placements of Debt Securities

21 (1) The issuer making a private placement of debt securities and seeking listing thereof on a recognized stock exchange shall make disclosures in a disclosure document as specified in Schedule I of these regulations accompanied by the latest Annual Report of the issuer.

(2) The disclosures as provided in sub-regulation (1) shall be made on the web sites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020

D. Creation and registration of charge of security by issuer:

12. Before making the application for listing of debt securities, the Issuer shall create charge as specified in the OD or PPM/ IM, in favour of the debenture trustee and also execute debenture trust deed (DTD) with the debenture trustee.

……..

14. The charge created by Issuer shall be registered with Sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable, within 30 days of creation of such charge. In case the charge is not registered anywhere or is not independently verifiable, then the same shall be considered a breach of covenants/ terms of the issue by the Issuer.

SEBI (DT) Regulations

15(1) It shall be the duty of every debenture trustee to-

….

(r) inform the Board immediately of any breach of trust deed or provision of any law, which comes to the knowledge of the trustee.

….

(s) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement), Regulations, 2015, the listing agreement of the stock exchange or the trust deed or any other regulations issued by the Board pertaining to debt issue;

7. The findings of the examination and allegations against the Noticee in the SCN are summarized below:

7.1 Alleged violation of Regulation 19(3) read with Schedule I, and Regulation 19A(1) of SEBI (ILDS) Regulations

7.1.1. It was observed that as per Private Placement Memorandum (hereinafter referred to as **"PPM"**) pertaining to issuance of debt security (ISIN-INE365V07038), the said security was intended to be listed. However, as confirmed by BSE, the aforesaid ISIN was not listed, subsequent to obtaining in principle approval from it. Therefore, it was alleged the Noticee No. 1 violated the provisions of Regulation 19(3) read with Schedule I of SEBI (ILDS) Regulations.

7.1.2. Further, as the debt security issued by Noticee No. 1 was not listed with BSE, no listing agreement had been executed by Noticee No. 1. Therefore, it was alleged the Noticee No. 1 violated the provisions of Regulation 19A(1) of SEBI (ILDS) Regulations.

7.2 Alleged violation of Regulation 21(2) read with Schedule I of SEBI (ILDS) Regulations

7.2.1. It was observed that Noticee no. 2, vide its email dated January 16, 2023 had submitted that the disclosure document, as mandated under Regulation 21(2) read with Schedule I of SEBI (ILDS) Regulations, was not present on the website of BSE.

7.2.2. Therefore, it was alleged that Noticee No. 1 violated the provisions of Regulation 21(2) read with Schedule I of SEBI (ILDS) regulations.

7.3 Alleged violation of Clauses D.12 and D.14 of the SEBI Circular No. SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020 read with Regulation 21B of SEBI (ILDS) Regulations

7.3.1. In terms of Clause D.12 of the SEBI circular no. - SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020, the Noticee was mandated to create the charge as specified in the PPM in favor of the DT before making the application for listing. In terms of Regulation 19(3) of SEBI (ILDS) Regulations, the listing application should have been made within 15 days from the date of allotment. Therefore, the security creation was required before listing, which itself had to be done within 15 days from the date of allotment. Further, Clause D.14 of the aforesaid circular mandated that the charge created by the issuer should be registered with Sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable, within 30 days of creation of such charge.

7.3.2. It was observed that while the NCDs were allotted on June 28, 2023, the Noticee created security pertaining to the NCDs only on October 01, 2021 and October 05, 2021 in favor of Noticee No. 2. Further, vide its email dated February 03, 2023, Noticee No. 2 had confirmed that the security was created by Noticee No. 1 with a delay of 64 days with RoC and registered with CERSAI after a delay of 139 days.

7.3.3. Therefore, it was alleged that Noticee No. 1 violated the provisions of Clauses D.12 and D.14 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/ CI/P/2020/218 dated November 03, 2020.

7.4 Allegations against Noticee No. 2

7.4.1 It was observed that Noticee No. 2 was aware about the fact that there was an intention given in the PPM by Noticee No. 1 to list its debt securities on the stock exchanges. Accordingly, Noticee No. 2 was obligated to ensure compliance of the same by Noticee No. 1.

7.4.2 In terms of Regulation 15(1)(r) of the SEBI (DT) Regulations, Noticee No. 2 was required to intimate the breach of any provision of law by Noticee No. 1, immediately to SEBI. However, Noticee No. 2 allegedly failed to do so.

7.4.3 Therefore, it was alleged that Noticee No. 2 violated the provisions of Regulation 15(1)(r) and 15(1)(s) of the SEBI (DT) Regulations.

8. The submissions made by the Noticees are summarized below:

8.1. Noticee No.1

8.1.1 Noticee No. 1 had filed the listing application along with the information memorandum with the BSE on July 01, 2021, which was well within the 15-day period from the Allotment Date (i.e. June 28, 2021) required in terms of Regulation 19(3) of the SEBI (ILDS) Regulations.

8.1.2 Noticee No. 1 accepts that it was unable to comply with all the requirements for a successful listing application with BSE. However, this was primarily on account of factors beyond the control of the Company. The said factors were as follows:

8.1.2.1 Delay in Creation of Security - The delay in creation of security was caused due to the office of the Registrar of Sub-Assurances being non-operational, due to the Covid-19 pandemic.

8.1.2.2 Non-receipt of Due-diligence Certificate from DT - the DT/ Noticee No. 2 did not issue the due diligence certificate at the time of filing of listing application by the Company, in terms of the SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020, apparently due to delay in creation of security and non-receipt of the No Objection letter from the Previous Debenture Holder, despite repayment of the Existing NCDs. The DT is required to satisfy itself of the availability of such No Objection Certificates as per Paragraph 6 of the aforesaid SEBI Circular. This certificate has not been made available to the Noticee till date. Further, the aforesaid No Objection Certificate was supposed to be issued by the Previous Debenture Holder, which is an affiliate of IIFL Management Services Ltd (hereinafter referred to as **"IIFL"**), the existing holder of the NCDs.

8.1.3 The alleged non-compliance with the provisions of Regulation 19(3) of the SEBI (ILDS) Regulations was not solely attributable to any action or inaction on the part of the Company. In view of the foregoing, a lenient approach be adopted and the Noticee No. 1 must not be penalized for the stated non-compliance in terms of Regulation 19(3) of the SEBI (ILDS) Regulations.

8.1.4 Noticee No. 1 was desirous of executing the listing agreement with BSE, however the said agreement could not be executed without receipt of the final listing approval from BSE. Noticee No. 1 did not, at any given point of time, express its intention to not complete the listing of the NCDs with BSE.

8.1.5 Noticee No. 1 submitted the information memorandum containing the disclosures as required in terms of Regulation 21(1) of the SEBI(ILDS) Regulations to BSE along with the listing application on July 01, 2021. Since Noticee No. 1 was unable to comply with all the requirements for a successful listing application, BSE did not carry out the necessary disclosures pertaining to the listing of NCDs, on its website.

8.1.6 Noticee No. 1 had executed the Debenture Trust Deed prior to the application for listing of the NCDs. Noticee was unable to create charge by executing and registering the security documents prior to such filing, due to the impact of Covid pandemic and the ensuring logistical issues, which were force majeure events and unforeseeable circumstances beyond the control of the Noticee No. 1.

8.1.7 IIFL (the existing holder of the NCDs), and the DT/ Noticee No. 2 were fully aware of Noticee No. 1's inability to complete the process of security creation and did not classify such delay as an event of default in terms of the Debenture Trust Deed and did not call an 'event of default' and exercise their rights in terms of the Debenture Trust Deed.

8.1.8 Mitigating factors are listed below:

8.1.8.1 No Aggrieved Party

8.1.8.2 No effect on general public

8.1.8.3 Factors beyond control of Noticee

8.1.9 The failure to list on BSE, even if it was solely the default of Noticee No. 1, would be treated as a contractual breach of the terms agreed between the issuer and the holders of the NCDs and Noticee No. 1 would be liable for such breach, in terms of the transaction documents executed by Noticee No. 1, with respect to the NCDs. Imposition of a penalty for infractions which were not solely attributable to the Noticee No. 1 would result in considerable and unfair repercussions. Therefore, if the Noticee No. 1 is in fact solely at fault for the failure to list the NCDs, the sole debenture holder already has a remedy available under the transaction documents executed by Noticee No. 1, with respect to the NCDs.

8.2. <u>Noticee No. 2</u>

8.2.1 Noticee No. 2 had on several occasions, vide series of letters dated June 23, 2021, June 25, 2021, June 28, 2021, July 07, 2021 and September 15, 2021, and email dated July 20, 2021, reminded Noticee No. 1 with regards to non-creation of security, which is a pre requisite for filing of listing application under SEBI Circular dated November 03, 2020. Further, vide the aforementioned letters and vide further letters dated December 31, 2021 and January 31, 2022, Noticee No. 2 had reminded Noticee No. 1 with regards to non-compliance with listing provisions under SEBI Regulations.

8.2.2 Due to the follow ups done by Noticee No. 2, the sole debenture holder viz. IIFL had vide email dated July 26, 2021 called upon the independent professional appointed for the transaction, to provide the timeline/ extension letter provided by BSE. Pursuant to the said email, Noticee No. 2 had followed up vide emails dated July 26, 2021, July 28, 2021 and July 30, 2021.

8.2.3 Noticee No. 1, vide letter dated July 12, 2021 to Noticee No. 2, explained the reason for non-creation of security and non-listing due to Covid pandemic, and sought additional time to complete the process. Further, Noticee No. 2 had, vide letter dated July 07, 2021, sought instructions from IIFL with regard to any action that might be taken against Noticee No. 1. In response, vide letter dated July 22, 2021, IIFL informed Noticee No. 2 regarding the request of Noticee No. 1, and suggested to grant some leverage to Noticee No. 1 to comply with the requisite formalities in a time bound manner. IIFL had also suggested to take a lenient view due to constraints faced by Noticee No. 1 because of Covid pandemic.

8.2.4 Pursuant to creation of charge by Noticee No. 1 in October, 2021, vide letter dated December 31, 2021, Noticee No. 2 reminded Noticee No. 1 about the obligation to list security. Vide email dated March 11, 2022, Noticee No. 2 had also informed the Credit Rating Agency i.e. Brickwork Ratings with regards to the delay in security creation and delay in listing of NCDs.

8.2.5 Noticee No. 2 had also convened a meeting with IIFL on July 28, 2022 for initiating further action against Noticee No. 1. However, in the meeting the representatives of IIFL conveyed that they would take necessary legal action in consultation with their advocate.

8.2.6 SEBI had undertaken inspection of operations of Noticee No. 2 in February, 2022. Noticee No. 2 had provided the necessary information and documents during the course of inspection, along with the information about non-listing and delay in creation of security by Noticee No. 1 as part of the sample cases. However, there were no findings pertaining to Noticee No. 1.

8.2.7 Noticee No. 2 had also been following up with Noticee No. 1 for quarterly and half yearly compliances vide several emails as per the need.

8.2.8 Vide email dated November 30, 2021, Noticee No.1 had responded to Noticee No. 2 that it had submitted the listing application with BSE and the application was in process.

8.2.9 Further, the issuance of Noticee No. 1 was in June, 2021, when Covid pandemic had led to imposition of lockdown norms. Despite the aforesaid restrictions, Noticee No. 2 had undertaken the requisite due-diligence.

8.2.10 When Noticee No. 1 committed default in payment to the Debenture Holder i.e. IIFL in January, 2023, the same was proactively informed to SEBI and to Brickwork Ratings.

8.2.11 Noticee No. 2 has relied upon the press release by Brickwork Ratings dated July 08, 2022, and contended that the same substantiates the proactiveness of Noticee No. 2 in reporting default, and the non-cooperative attitude of management of Noticee No. 1.

8.2.12 Noticee No. 2 has relied upon the order of the Hon'ble Securities Appellate Tribunal in the matter of UPSE Securities Ltd vs SEBI dated July 25, 2011, and contended that the instant violations, if any, can be at most construed as an irregularity.

8.2.13 Noticee No. 2 has relied upon the judgement of the Hon'ble Supreme Court in the matter of CCE, New Delhi vs Hari Chand Shri Gopal and Ors., and contended that it has substantially complied with the requirements of the applicable regulations.

Issue No. I: Whether Noticee No. 1 failed to get the debt security listed, resulting in violation of provisions of Regulation 19(3) read with Schedule I of SEBI (ILDS) Regulations? Whether Noticee No. 1 failed to execute listing agreement with the stock exchange, resulting in violation of provisions of Regulation 19A(1) of SEBI (ILDS) Regulations?

9. I note that Noticee No. 1 had issued secured NCDs aggregating to Rs 100 Crores under Debenture Trust Deed dated June 04, 2021. Noticee No. 2 was acting as

its DT, while IIFL was the sole debenture holder. Details of the NCD are given below:

ISIN	Instrument Details	Issue Size	Allotment Date	Credit Rating	Maturity Date	Listing Status	Issue Type
INE365V07038	12% Secured Rated Listed Non-Convertible Debenture – Series 1	Rs. 100 Cr.	28-06-2021	B+ (Brickwork Rating)	30-06-2025	Unlisted	Private Placement

10. I further note that, vide email dated January 16, 2023, Noticee No. 2 had informed to SEBI that the aforesaid security was unlisted. Vide email dated February 01, 2023, BSE also informed SEBI that the security was unlisted. Additionally, BSE informed that *"due to incomplete documentation at the time of listing and inspite of repeated reminders given to the issuer to clear the queries/ documentation, issuer did not respond to the queries"*. Therefore, I note from the above and from the submissions of Noticee No. 1, that it is undisputed that Noticee No. 1 had made application to BSE on July 01, 2021 for listing of the NCDs, however, it did not resolve BSE's queries due to incomplete documentation in the listing application, resulting in non-listing of the said security.

11. Noticee No. 1 has submitted that it could not comply with the requirements of the successful listing application due to two reasons viz. (i) delay in creation of security due to office of Registrar of Sub-Assurances being non-operational due to Covid pandemic, and (ii) non- receipt of due diligence certificate from DT/ Noticee No. 2, due to delay in creation of security and non-receipt of the no-objection letter from the Previous Debenture Holder.

12. I note from the Noticee's submissions that the NCDs were secured by way of creation of charge on, interalia, various projects in Karnataka and Telangana. In this regard, I note that vide, Order No RD 158 TNR 2020 dated June 06, 2021, Karnataka Government had allowed 'District Registrar and Sub-Registrar Offices' to function. Further, vide CCLA Memo No. 2/2021 dated May 30, 2021, Telangana Government had allowed Registration of documents and other transaction through

the Dharani portal w.e.f. May 31, 2021, and had allowed Tahsildar officers to open between 9 AM to 1 PM every day. In view of the above, the contention of Noticee No. 1 that the delay in creation in security was caused as the Registrar of Sub-Assurances were non-operational is incorrect, misleading and acceptable.

13. Further, as regards non-receipt of Due-diligence certificate from DT, I note that the obligation lay on Noticee No. 1 itself to follow up with the DT for resolving the issues, interalia, including issuance of a No Objection Certificate from the previous Debenture Holder. Noticee No. 1 ought to have ensured that all the procedural formalities were completed, and the security successfully listed within the stipulated timelines. However, it failed to do so and also did not execute listing agreement with BSE due to which the security was not listed.

14. Noticee No. 1 has also submitted that the failure to list on BSE, even if it was solely the default of Noticee No. 1, should be treated as a contractual breach of the terms agreed between Noticee No. 1 and IIFL, and must not attract the imposition of monetary penalty. I note in this regard that Noticee No. 1 had entered the capital market for raising funds through private placement of secured NCDs. Accordingly, Noticee No. 1 was mandated to comply with the provisions of SEBI (ILDS) Regulations, pursuant to which it had filed the Disclosure document as per Schedule I of the said Regulations. Therefore, the contentions by Noticee No. 1 are evasive and without merits.

15. Therefore, I note that Noticee No. 1 failed to get the debt security listed within the prescribed timelines, resulting in violation of provisions of Regulation 19(3) read with Schedule I of SEBI (ILDS) Regulations. Further, Noticee No. 1 also failed to execute listing agreement with the stock exchange i.e. BSE, resulting in violation of provisions of Regulation 19A(1) of SEBI (ILDS) Regulations.

Issue No. II: Whether Noticee No. 1 failed to submit the mandated disclosure document with the stock exchange with requisite disclosures, resulting in violation of provisions of Regulation 21(2) read with Schedule I of SEBI (ILDS) Regulations?

16. I note that Noticee No. 1 had made private placement of the security, and as per the PPM, had sought listing of the security once it was allotted. In terms of Regulation 21(2) read with Schedule I of SEBI (ILDS) Regulations, the issuer making a private placement of debt securities and seeking listing thereof should make disclosures as specified in Schedule I, accompanied by the latest Annual Report. Therefore, Noticee No. 1 was mandated to make the aforesaid disclosures to BSE.

17. I note that, vide email dated January 16, 2023, Noticee No. 2 had, interalia, submitted that the disclosure document pertaining to the NCDs issued by Noticee No. 1 was not present on the website of BSE. Further, I note that Noticee No. 1, vide its submissions has also submitted that as it was not able to comply with the requirements for a successful listing application, BSE had not carried out the necessary disclosures on its website.

18. Therefore, I note that Noticee No. 1 had not made the necessary disclosures, by not submitting listing application after resolving the issues raised by BSE in the original application, resulting in violation of provisions of Regulation 21(2) read with Schedule I of SEBI (ILDS) Regulations.

Issue No. III: Whether Noticee No. 1 violated the provisions of Clauses D.12 and D.14 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020?

19. I note that in terms of Clause D.12 of the SEBI circular no. - SEBI/HO/MIRSD/ CRADT/CI/P/2020/218 dated November 03, 2020, Noticee No. 1 was mandated to create the charge as specified in the PPM in favor of the DT/ Noticee No. 2 before making the application for listing. In terms of Regulation 19(3) of SEBI (ILDS) Regulations, the listing application should have been made within 15 days

from the date of allotment. Therefore, I note from harmonious reading of the above two provisions that the security creation had to be done within 15 days of allotment; the security creation was required to be done before listing, which itself had to be done be within 15 days from the date of allotment. Further, Clause D.14 of the aforesaid circular requires that the charge created by the issuer should be registered with Sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable, within 30 days of creation of such charge.

20. I note that the security was created by Noticee No. 1 on October 01, 2021 and October 05, 2021 in favor of Noticee No. 2. Further, vide its email dated February 03, 2023, Noticee No. 2 had confirmed that the security was created by Noticee No. 1 with a delay of 64 days with RoC and registered with CERSAI with a delay of 139 days.

21. I note that that the NCD was allotted on June 28, 2021, such that the creation of security should have been done before making listing application, which itself should have been made within 15 days from the date of allotment. Therefore, the creation of security should have happened on or before July 13, 2021. Thereafter, the registration of security should have happened before 30 days of its creation, i.e. on or before August 12, 2021. However, the creation of security and the registration of the same happened after a substantial delay vis-à-vis the timeline stipulated in the SEBI Circular dated November 03, 2020.

22. Noticee No. 1 has submitted that it could not create the charge because of the 2nd wave of pandemic which was existing during the period of August and October, 2021, which caused severe logistical issues in creation of securities, which was done in different states as well. I note that, as stated in paragraph 12, the government offices dealing with necessary registration of assets were already operational at the time of allotment of security itself. Further, I note incidentally that that Noticee could arrange for the documentation and the procedural formalities required for allotment of NCDs during the course of pandemic itself, and was assured of listing it and complying with the other obligations imposed

under security laws, as per its PPM. Therefore, Noticee No. 1 could also be reasonably expected to have the wherewithal to proceed with the creation of charge and its registration with the relevant authorities, in compliance with the applicable provisions. In view of the above, the difficulties faced on account of Covid pandemic can at best be considered as a mitigating factor, but cannot be taken as a ground to absolve Noticee of the delay in compliance with the timelines stipulated in the applicable provisions.

23. Noticee No. 1 has also submitted that the DT was aware of its inability to complete the process of security creation and did not classify such delay as an 'event of default' in terms of the Debenture Trust Deed and also, did not exercise its rights accordingly. I note that the DT, i.e. Noticee No. 2 had been corresponding with Noticee No. 1 by way of several emails and letters, indicating the lapses on its part in terms of non-creation of security and non-listing on the exchange. Further, as per its submissions in the instant matter, Noticee No. 2 has termed the attitude of Noticee No. 1 towards ensuring compliances with applicable provisions as callous and non-cooperative.

24. Considering the facts above, I note that Noticee No. 1 is liable for delayed creation of charge, and that of the delayed registration of the said charge with relevant authorities. Therefore, Noticee No. 1 has violated the provisions of Clauses D.12 and D.14 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020.

Issue No. IV: Whether Noticee No. 2 failed to intimate the non-compliance by Noticee No. 1 to SEBI, and failed to exercise due diligence to ensure compliance by Noticee No. 1 with SEBI (ILDS) Regulations, resulting in violation of provisions of Regulation 15(1)(r) and 15(1)(s) of the SEBI (DT) Regulations?

25. I note that Noticee No. 2 was aware that that there was an intention given in the PPM by Noticee No. 1 to list its debt securities on the stock exchange, and that Noticee No. 2 was obligated to ensure compliance of the same by Noticee No. 1.

Further, Noticee No. 2 was also obligated to intimate the breach of any provision of law by Noticee No. 1, immediately to SEBI. However, Noticee No. 2 allegedly failed to do the aforesaid.

26. I note in this regard, that Noticee No. 2 had undertaken several communications with Noticee No. 1, reminding it of the obligation to create security and also to list the said security, in compliance with the Debenture Trust Deed. Noticee No. 2 had addressed to Noticee No. 1, letters dated June 23, 2021, June 25, 2021, June 28, 2021, July 07, 2021, September 15, 2021, December 31, 2021 and January 31, 2022; and email dated July 20, 2021 in this regard.

27. Further, Noticee No. 2 had also conveyed the lapses on part of Noticee No. 1 to IIFL, i.e. the sole debenture holder. Pursuant to the follow ups done by Noticee No. 2, IIFL had vide email dated July 26, 2021 called upon the independent professional appointed for the transaction, to provide the timeline/ extension letter provided by BSE. Thereafter, Noticee No. 2 had followed up vide emails dated July 26, 2021, July 28, 2021 and July 30, 2021. Further, Noticee No. 2 had, vide letter dated July 07, 2021, sought instructions from IIFL with regard to any action that might be taken against Noticee No. 1. However, IIFL had, interalia, suggested to take a lenient view due to constraints faced by Noticee No. 1 because of Covid pandemic. Noticee No. 2 had also convened a meeting with IIFL on July 28, 2022 for initiating further action against Noticee No. 1. However, in the meeting the representatives of IIFL conveyed that they would take necessary legal action in consultation with their advocate. Vide email dated March 11, 2022, Noticee No. 2 had also informed the Credit Rating Agency i.e. Brickwork Ratings with regards to the delay in creation and listing of the security. Therefore, it is evident that Noticee No. 2 had clearly and repeatedly conveyed the non-compliance by Noticee No. 1 to IIFL.

28. I note from the above that the Noticee No. 2 had ensured requisite due diligence as regards ensuring compliance by Noticee No. 1 with the applicable provisions. It had reminded Noticee No. 1 repeatedly about its obligations, and had also

conveyed the issue to IIFL, requesting for the instructions pertaining to the actions that were supposed to be taken. Therefore, Noticee No. 2 had taken necessary steps to get Noticee No. 1 to comply with the applicable provisions of SEBI (ILDS) Regulations, and cannot be held liable for violation of provisions of Regulation 15(1)(s) of the SEBI (DT) Regulations.

29. Further, in terms of Regulation 15(1)(r) of the SEBI (DT) Regulations, Noticee No. 2 was obligated to bring any breach of trust deed or any provision of law to the knowledge of SEBI. In this regard, Noticee No. 2 has submitted that it had provided the complete information about the status of compliances by Noticee No. 1 during the course of inspection of its operations carried out in February, 2022, however, SEBI had not made any adverse observations. I note that the information submitted by Noticee No. 2 during the course of inspection were general in nature. However, Regulation 15(1)(r) of SEBI (DT) Regulations mandates the DT to intimate the precise non-compliance or breach by the issuer to SEBI. Therefore, the information submitted by Noticee No. 2 during the course of inspection cannot satisfy the stipulation in Regulation 15(1)(r) of the SEBI (DT) Regulations.

30. Further, I note that even though Noticee No. 2 was corresponding with Noticee No. 1 and IIFL regarding the obligation to carry out the necessary compliances, and was discussing with IIFL the possible future course of action, it had not conveyed the same to SEBI. Upon plain reading of Regulation 15(1)(r) of the SEBI (DT) Regulations, it is clear that Noticee No. 2 should have communicated the details of non-creation of security and non-listing thereof to SEBI early on, instead of waiting for the payment default to happen and then communicating the issue to SEBI. Therefore, I note that Noticee No. 2 has failed to informed SEBI immediately of the breach of provisions of law by Noticee No. 1, and has committed violation of provisions of Regulation 15(1)(r) of the SEBI (DT) Regulations.

31. However, I also note that Noticee No. 2 had carried out multiple follow-ups with Noticee No. 1, and had continuously striven to ensure the compliance at the earliest. Noticee No. 2 had also ensured complete disclosure of information,

interalia, pertaining to Noticee No. 1 during the course of its inspection. I also note that the IIFL has not raised any complaint/ grievance, and instead, apparently restrained Noticee No. 2 from escalating the issue. Considering the aforesaid circumstances, I am inclined to taken lenient view in respect of violation of Regulation 15(1)(r) of the SEBI (DT) Regulations by Noticee No. 2, as regards the imposition of monetary penalty.

Issue No. V: If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 15 A(b) and 15HB of the SEBI Act, 1992, as applicable? If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

32. It has been established in the foregoing paragraphs that Noticees No. 1 has violated the provisions of Regulation 19A(1); and Regulation 19(3) and 21(2) read with Schedule I of SEBI (ILDS) Regulations and Clause D.12 and D.14 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020 read with Regulation 21B of SEBI (ILDS) Regulations. Therefore, the aforesaid violations committed by Noticee No. 1 attracts monetary penalty under Section 15A(b) of the SEBI Act, 1992 which reads as under:

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

……….

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

33. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, 1992, which reads as under: -

SEBI Act, 1992

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

c) the repetitive nature of the default.

34. I note that the amount of disproportionate gain or unfair advantage made by Noticee No. 1 is not available. With respect to the repetitive nature of the default, I find that there is nothing on record to indicate any past violations committed by Noticee No. 1. However, the alleged violations had been conducted by Noticee No. 1 in the course of 2nd wave of COVID pandemic and the ensuing logistical restrictions, which serves as a mitigating factor in deciding the quantum of penalty.

ORDER

35. After taking into consideration the facts of the matter, violations established against Noticee No. 1 and factors mentioned in Section 15J of the SEBI Act, 1992, I impose the following penalty on it:

Noticees (PAN)	Violation of provisions	Penalty u/s	Penalty in Rs.
Janapriya Engineers Syndicate Pvt Ltd (AAACE4560A)	Regulation 19A(1) of SEBI (ILDS) Regulations; Regulation 19(3) and 21(2) read with Schedule I of SEBI (ILDS) Regulations;	Section 15A(b) of the SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakhs Only)

	Clauses D.12 and D.14 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CI/P/2020/218 dated November 03, 2020 read with Regulation 21B of SEBI (ILDS) Regulations		

I find that the said penalty is commensurate with the violations committed by Noticee No. 1 in this case.

36. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

37. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

38. In terms of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to SEBI.

Place: Mumbai **AMIT KAPOOR**

Date: July 27, 2023 **ADJUDICATING OFFICER**