

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/AN/RG/2023-24/30183**

**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:
Beacon Trusteeship Limited**

PAN: AAGCB5444C
SEBI Registration Number: IND000000569

In the matter of inspection of Beacon Trusteeship Limited – Debenture Trustee

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as '**SEBI**') conducted inspection of Beacon Trusteeship Limited (hereinafter also referred to as '**Noticee/ Beacon/ Debenture Trustee/ DT/ BTL**') during May 10-11, 2023 for the Inspection period September 01, 2021 to May 09, 2023. The focus of inspection was to inter alia examine the extent of compliance to regulatory provisions with respect to DT Regulations and various circulars issued by SEBI from time to time.
2. The findings of the inspection were communicated to the Noticee by SEBI vide letter dated September 15, 2023 and comments of the Noticee were sought on the same. The Noticee vide letter dated October 02, 2023 provided its comments on the findings of SEBI. Pursuant to the said inspection, based on the analysis of replies received and examination in the matter by SEBI, it was observed by SEBI that Noticee had allegedly violated various provisions of Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 {"SEBI DT Regulations" / "DT Regulations"} and Circulars issued by SEBI

viz. Regulation 15(1)(r) of DT Regulations, Regulation 15(1)(s) of DT Regulations, Regulation 16 of DT Regulations read with Clause 4 of Code of Conduct mentioned in Schedule III, Regulation 16 of DT Regulations read with Clause 13 of Code of Conduct mentioned in Schedule III, Clause 3 of SEBI Circular CIR/MIRSD/3/2013 dated March 15, 2013 read with Clause B(4) and B(5) of Annexure to the circular, Clause 5 of SEBI Circular SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017. Accordingly, Adjudication Proceedings under Section 15 I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules, 1995' / 'Adjudication Rules' / 'AO Rules', in short) had inter alia been initiated to inquire into and adjudge under Section 15HB of the SEBI Act, 1992 ('SEBI Act' in short) for the alleged violations of the relevant provisions, as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred upon him under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as "SEBI Adjudication Rules" / "Adjudication Rules" / "AO Rules") read with Section 19 of the SEBI Act, 1992, the Competent Authority appointed the undersigned as the Adjudicating Officer ('AO', in short) vide Communique dated December 18, 2023 to inquire into and adjudge under Section 15HB of the SEBI Act, 1992, the aforesaid alleged violations by the Noticee.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice No. SEBI/EAD-5/AN/RG/3330/1/2024 dated January 19, 2024 ("SCN"), was served upon the Noticee under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, to show cause as to why an inquiry should not be held and penalty not be imposed upon the Noticee under Section 15HB of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.
5. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

"...

4. Findings and Observations by SEBI and alleged violations thereto in respect of the Noticee:

Pursuant to its inspection, following was inter alia observed and/or alleged by SEBI:

4.1. Finding A: Failure to carry due diligence with regards to Material change in NCDs:

4.1.1. Regulation 59 of LODR Regulations before amendment dated September 07, 2021 states following,

"(1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :

(a) the structure of the debenture in terms of coupon, conversion, redemption, or otherwise.

(b) The structure of the non-convertible redeemable preference shares in terms of dividend, conversion, redemption, or otherwise.

(2) The approval of the stock exchange referred to in sub-regulation (1) shall be made only after:

(a) approval of the board of directors and the debenture trustee in case of non-convertible debt securities and

(b) after complying with the provisions of Companies Act, 2013 including approval of the consent of requisite majority of holders of that class of securities”

4.1.2. Regulation 59 of LODR Regulations pursuant to amendment dated September 07, 2021 states following,

“(1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :

(a) the structure of the non-convertible debt securities debenture in terms of coupon, redemption, or otherwise.

(b) The structure of the non-convertible redeemable preference shares in terms of dividend, redemption, or otherwise.

(2) The approval of the stock exchange referred to in sub-regulation (1) shall be made only after:

(a) approval of the board of directors and the debenture trustee and

(b) obtaining consent in writing of the holders of not less than three-fourths, by value of holders of that class of securities:

Provided that the listed entity shall provide the facility of remote e-voting to facilitate such consent.”

4.1.3. Regulation 15(1)(r) of DT Regulations read as follows:

“It shall be the duty of the 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.

Explanation: The communication to the debenture holders by the debenture trustee as mentioned in these regulations may be made by electronic media, press-release and placing notice on its website;

4.1.4. Regulation 15(1)(s) of DT Regulations read as follows:

“It shall be the duty of the debenture trustee to-

(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;”

4.1.5. As per SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/230 dated November 12, 2020, DT is required to inter-alia disclose the following on its website,

“Status of information regarding any default by listed entity and action taken by debenture trustee on an annual basis within 75 days of the end of the financial year

a. *Status of payment of interest/ principal by the listed entity on continuous basis within T+1 day from receipt of information”*

4.1.6. In case of Azeem Infinite Dwelling India Private Limited (**‘Azeem/issuer’**), it has been observed that Azeem has issued secured listed NCDs amounting to INR 395 Crores as follows:

S.No.	ISIN	Amount	Allotment Date	Listing Date	Maturity Date	Tenor
1.	INE265Y07034	INR 200 Crores	November 16, 2017	July 05, 2018	November 15, 2022	60 months
1.	INE265Y07042	INR 195 Crores				

4.1.7. As per the Information Memorandum, the interest payment and principal payment for the ISINs is as follows,

Interest Payment:

- i. Half yearly for first 12 months
- ii. Quarterly from 13th to 24th month
- iii. Monthly from 25th month to 60th month

Principal Payment:

S.No.	Redemption Dates	% of Face value of NCDs
1.	End of 39 th month from date of first subscription	12.50%
2.	End of 42 nd month from date of first subscription	12.50%
3.	End of 45 th month from date of first subscription	12.50%
4.	End of 48 th month from date of first subscription	12.50%
5.	End of 51 st month from date of first subscription	12.50%
6.	End of 54 th month from date of first subscription	12.50%
7.	End of 57 th month from date of first subscription	12.50%
8.	End of 60 th month from date of first subscription	12.50%

4.1.8. First Restructuring of the NCDs:

- i. Beacon has informed that due to Covid-19 stress Azeem made request for interest payments due on March 30, 2020, April 30, 2020 and May 30, 2020 to be restructured on April 23, 2020.
- ii. Pursuant to same, Beacon vide letter dated May 29, 2020 communicated to Azeem that the debenture holders has approved the grant of moratorium for three aforementioned interest payments due dates and in view of the same, the repayment schedule for the three aforementioned interest payments has been revised.

4.1.9. Second Restructuring of NCDs:

- i. The issuer company made another application for grant of moratorium on June 18, 2020 for the interest payment due on June 30, 2020, July 30, 2020 and August 30, 2020.
- ii. Beacon vide letter dated July 11, 2020 informed Azeem that debenture holders have approved the moratorium for the three interest payments and repayment schedule has been revised.
- iii. Vide letter dated November 11, 2020, Beacon informed with respect to the first and second restructuring, pursuant to approval from Board of Directors of debenture holders, the interest payment due from March 01, 2020 to August 31, 2020 aggregating to INR 22,88,64,051 has been capitalized and issuer shall pay interest/coupon at the rate set in DTD on the capitalized interest till the repayment of capitalized interest has been made fully. Further, the repayment schedule mentioned in the letter is as follows :

S.No.	Redemption Dates	Amount of capitalized interest to be repaid
1.	End of 39 th month from date of first subscription	INR 2,86,08,006.47
2.	End of 42 nd month from date of first subscription	INR 2,86,08,006.47
3.	End of 45 th month from date of first subscription	INR 2,86,08,006.47
4.	End of 48 th month from date of first subscription	INR 2,86,08,006.47
5.	End of 51 st month from date of first subscription	INR 2,86,08,006.47
6.	End of 54 th month from date of first subscription	INR 2,86,08,006.47
7.	End of 57 th month from date of first subscription	INR 2,86,08,006.47
8.	End of 60 th month from date of first subscription	INR 2,86,08,006.47

- iv. Further, the letter mentioned that terms and conditions specified should be taken as modification in the DTD.

4.1.10. Third Restructuring of NCDs:

- i. Azeem vide letter dated February 03, 2021 made an application for rescheduling of the 8 repayments due dates maturing on November 15, 2022.
- ii. Beacon vide letter dated May 26, 2021 (**Annexure 6**), informed Azeem that it has considered the request and is agreeable to change in existing repayment schedule. The actual and revised repayment schedule is given as under:

S.No.	Actual Repayment Date	Revised Repayment Date	Repayment % (not changed in revised dates)
1.	February 28, 2021	February 28, 2022	12.50%
2.	May 31, 2021	May 31, 2022	12.50%
3.	August 30, 2021	August 30, 2022	12.50%
4.	November 30, 2021	November 30, 2022	12.50%
5.	February 28, 2022	February 28, 2023	12.50%
6.	May 31, 2022	May 31, 2023	12.50%
7.	August 30, 2022	August 30, 2023	12.50%
8.	November 30, 2022	August 30, 2023	12.50%

- iii. Further, the letter mentioned that terms and conditions specified should be taken as modification in the DTD.

4.1.11. Fourth Restructuring of NCDs:

- i. Azeem vide letter dated January 10, 2022 made an application for rescheduling of the 8 repayments due dates maturing on November 15, 2023.
- ii. Beacon vide letter dated May 26, 2022, informed Azeem that it has considered the request and is agreeable to change in existing repayment schedule. The actual and revised repayment schedule is given as under:

S.No.	Actual Repayment Date	Revised Repayment Date	Repayment % (not changed in revised dates)
1.	February 28, 2022	February 28, 2023	12.50%
2.	May 31, 2022	May 31, 2023	12.50%
3.	August 30, 2022	August 30, 2023	12.50%
4.	November 30, 2022	November 30, 2023	12.50%
5.	February 28, 2022	February 28, 2024	12.50%

S.No.	Actual Repayment Date	Revised Repayment Date	Repayment % (not changed in revised dates)
6.	May 31, 2022	May 31, 2023	12.50%
7.	August 30, 2022	August 30, 2023	12.50%
8.	November 30, 2022	August 30, 2023	12.50%

- iii. Further, the letter mentioned that terms and conditions specified should be taken as modification in the DTD.
- iv. The ISINs for the issuances were changed from INE265Y07034 and INE265Y07042 to INE265Y07059 and INE265Y07067 respectively.

4.1.12. Vide email dated September 12, 2023, Beacon was asked to provide information regarding the approval taken from Stock Exchanges in terms of Regulation 59(1) of SEBI LODR Regulations for each instance of restructuring. Beacon vide email dated September 13, 2023 (**Annexure 8**) informed SEBI that it has not received any communication from Azeem with regard to taking approval from Stock exchanges in respect of restructuring of the above mentioned interest/principal payments of NCDs issued by Azeem.

4.1.13. In terms of Regulation 59 of LODR Regulations, the listed entity shall not make material modification including changes in the structure of NCDs in terms of coupon redemption, or otherwise without prior approval of the stock exchange(s) where the NCDs are listed.

4.1.14. In the instant matter, as per the submission of Beacon vide email dated September 13, 2023, the issuer has not informed Beacon about such approval.

4.1.15. In terms of Regulation 15(1)(r) and 15(1)(s) of DT Regulations, Beacon is required to inform SEBI about any breach of trust deed or provision of any law which comes to the knowledge of the Trustee and is supposed to exercise due diligence to ensure compliance with Companies Act, LODR Regulations, etc.

4.1.16. In the instant matter, Beacon has failed to exercise due diligence with regard to the restructuring of NCDs of Azeem and has failed to inform SEBI regarding the breach of Regulation 59 of LODR Regulations by Azeem.

4.1.17. In this regard, the Noticee in response to the findings of inspection, submitted the following:

- a. The restructurings carried out by the Issuer Company were during the period of heavy onset of Covid-19.

- b. As informed at the time of inspection, the debenture holders are in complete control of the cash flows accruing to the issuer through various escrow & monitoring mechanisms set in place.
- c. Further, the Issuer Company has maintained a stance of non-co-operation whenever Beacon has followed up for any payment confirmation or regulatory compliance requisite.
- d. The communication to SEBI has been inadvertently missed by Beacon, however, going forward we have taken steps to ensure reporting SEBI as is envisaged under the extant regulations.

4.1.18. In this regard, SEBI observed that Beacon vide email dated September 13, 2023, confirmed that Azeem has not taken approval from Stock Exchanges as required under Regulation 59 of LODR Regulations, before making such modification in the structure of NCDs in terms of interest payment and redemption in any of the four instances.

4.1.19. **In view thereof, the Noticee is alleged to have violated Regulation 15(1)(r), Regulation 15(1)(s), Regulation 16 read with clause 4 of Schedule III of DT Regulations.**

4.2. Finding B: Failure to share information with Credit Rating Agency (CRA):

4.2.1. Clause 13 of Schedule III of DT Regulations reads as under:

"A Debenture Trustee shall share information available with it regarding client companies, with registered credit rating agencies."

4.2.2. SEBI circular CIR/MIRSD/3/2013 dated March 15, 2013 on "Sharing of information regarding issuer companies between Debenture Trustees and Credit Rating Agencies", inter-alia states that:

"B. Information from DTs to CRAs

4.Any default committed including the default in payment of interest or redemption of debentures or delay in creation of security.

5.Any change or restructuring of the terms of the issue."

4.2.3. As per the submission made by Beacon,

-Azeem defaulted in the interest payment due in month of March 31, 2020. Azeem vide its letter dated April 23, 2020, made application to Beacon for restructuring of payment for the month of March 2020, April 2020 and May 2020.

4.2.4. Further, as per the submission of Beacon vide email dated September 13, 2023, no communication has been made to CRA with respect to repayments by Azeem.

4.2.5. In terms of Regulation 16 read with Clause 13 of Schedule III of DT Regulations and SEBI circular dated March 15, 2013, Beacon is mandated to inform CRA about the default in payment by Azeem and restructuring of the NCDs. However, Beacon has not informed CRA about the same.

4.2.6. In this regard, the Noticee in response to the findings of inspection, submitted the following:

- a. The restructurings carried out by the Issuer Company were during the period of heavy onset of Covid-19.
- b. As informed at the time of inspection, the debenture holders are in complete control of the cash flows accruing to the issuer through various escrow & monitoring mechanisms set in place.
- c. Further, the Issuer Company has maintained a stance of non-co-operation whenever Beacon has followed up for any payment confirmation or regulatory compliance requisite.
- d. From time to time, Beacon has communicated payment status, whether a confirmation has been received or not, to CRAs & other stakeholders.
- e. Mail communications evidencing the same have been attached for reference in folder 'Q20'.
- f. Due to Covid 19 & resultant movement & communication restrictions, at certain instances, communication to CRA has been inadvertently missed by Beacon.
- g. However, going forward we have taken steps to ensure reporting to CRA as envisaged under the extant regulations.

4.2.7. After considering Noticee's response to the findings of inspection, SEBI observed the following:

- a. As per regulation 13 of DT Regulations, DTs are required to share information about its client companies with CRAs.
- b. SEBI Circular dated March 15, 2013 inter-alia requires DTs to share information pertaining to default by issuers and restructuring of any terms of issue on immediate basis.
- c. In case of Azeem, it was observed that as per submission made by Beacon, it has failed to report the default happened in month of March, 2020 and all of the four instances of restructuring to the CRA.
- d. Beacon in its reply has stated that restructuring were carried out by Issuer Company during Covid -19 and has stated that debenture holders were in control of cash flows accruing to the issuer through various escrow & monitoring mechanisms.
- e. Further, Beacon has submitted that it has made communication to CRA with respect to payments made from time to time, however on certain instances it has missed communications to CRA on account of due to Covid 19 & resultant movement & communication restrictions.

- f. It may be noted that, the communication of status of payment to the CRA is very important in order to enable CRAs to assess the credit worthiness of the capital market instruments rated by CRAs any delay or non-communication from DTs affect CRAs ability to actively monitor any change in the ratings and dissemination of same to wider public.
- g. The submission made by Beacon containing the communications with respect to status of payment to CRA does not contain any communication with respect to default, hence Beacon has failed to produce any evidence that it has communicated the status of default in payment to the CRA.
- h. Further, Beacon in its reply has failed to furnish any supporting document in respect of any communication made by it to the CRAs with respect to the four instances of restructuring.
- i. In view of the above, the reply of Beacon may not be accepted.

4.2.8. In view thereof, Noticee is alleged to have violated Regulation 16 read with Clause 13 of Schedule III of DT Regulations and Clause 3 of SEBI Circular CIR/MIRSD/3/2013 dated March 15, 2013 read with Clause B(4) and B(5) of Annexure to the circular.

4.3. Finding C: Failure to intimate SEBI on information on non-receipt/disclosure of information on payment:

4.3.1. Clause 5 of Circular No. SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017

“
It is clarified that if no information regarding payment by Issuer Company is received by the DTs by due date or such information is not disclosed by the issuer company on the stock exchange website, then, the DTs shall make reference to SEBI accordingly and disclose the non-availability of such information on their website.
.....”

4.3.2. As per the submission made by Beacon, Azeem has defaulted on the interest payment for the month of March 2020 and no confirmation was provided by the issuer with respect to same, however it is observed that same was not communicated to SEBI as required.

4.3.3. In this regard, the Noticee in response to the findings of inspection, submitted the following:

- a. The restructurings carried out by the Issuer Company were during the period of heavy onset of Covid-19.
- b. As informed at the time of inspection, the debenture holders are in complete control of the cash flows accruing to the issuer through various escrow & monitoring mechanisms set in place.

- c. Further, the Issuer Company has maintained a stance of non-co-operation whenever Beacon has followed up for any payment confirmation or regulatory compliance requisite.
- d. From time to time, Beacon has communicated payment status, whether a confirmation has been received or not, to CRAs, Stock Exchanges, Depositories & other stakeholders.
- e. Mail communications evidencing the same have been attached for reference in folder 'Q21'.
- f. While communication to SEBI has been inadvertently missed by Beacon, however, going forward we have taken steps to ensure reporting SEBI as envisaged under the extant regulations

4.3.4. After considering Noticee's response to the findings of inspection, SEBI observed the following:

- a. Clause 5 of SEBI Circular dated June 30, 2017 states that DT shall report any instances of non-communication of status of payments by issuer further DT shall disclose the same on its website.
- b. Beacon in its submission has admitted that issuer company has maintained stance of non-cooperation whenever Beacon followed up for any payment confirmation or regulatory compliance.
- c. Further, Beacon in its submission has admitted that, it has not made any communication to SEBI with respect to non-receipt of information Azeem for providing information on status of payment by Azeem for the default committed by Azeem in the month of March 2020.
- d. Beacon has submitted that while it has missed the communication to SEBI, going forward it will ensure reporting to SEBI as envisaged under DT Regulations.
- e. It is stated that Beacon is non-compliant with respect to clause 5 of SEBI Circular dated June 30, 2020 during inspection period, hence submission with respect to ensuring compliance for SEBI reporting in future may not be taken into consideration for the earlier non-compliance by Beacon. In view of the above, the reply of Beacon may not be accepted.

4.3.5. **In view thereof, the Noticee is alleged to have violated Clause 5 of SEBI Circular No. SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017.**

...

6. Vide email dated January 23, 2024, the Noticee stated, "We confirm to have received your email and shall do the required within stipulated timelines." However, vide email dated February 01, 2024, the Noticee requested additional time of 14 days to submit its reply to the SCN. The Noticee was allowed time till February 09, 2024 to submit its reply to the SCN. Vide email and letter dated February 09, 2024, the Noticee submitted its reply to the SCN.

7. Having regard to principles of natural justice, opportunity of hearing was afforded to the Noticee on February 16, 2024, vide Hearing Notice dated February 12, 2024. The Noticee vide email dated February 14, 2024 sought adjournment of hearing. Having regard to the request made by the Noticee's, the hearing was rescheduled to February 21, 2024.
8. On the scheduled date of hearing on February 21, 2024, the Noticee appeared for hearing through its Authorized Representatives (ARs) viz., Shri Vinay Chauhan (Advocate), Shri Anand Kankani (Company Secretary) and Shri Viraj Dere (Sr. Manager, Beacon Trusteeship Limited) wherein they relied upon and reiterated the submissions made by Noticee vide letter dated February 09, 2024. Further, the ARs informed that the detailed submissions dated February 21, 2024 subsuming the earlier submissions dated February 09, 2024 were being filed by them formally. Accordingly, the ARs submitted that submissions dated February 09, 2024 be ignored and submissions dated February 21, 2024 be considered as completed and final submissions as reply to the SCN in the matter.
9. The key submissions made by Noticee vide letter dated February 21, 2024 as reply to the SCN, are as under:

“ ...

41. *At the outset, we clarify that the noticee have been a compliant intermediary since inception.*

42. *We have been acting as Debenture Trustee in over 1000 transactions since 2016 and in the past no violations or lapses or penalties were attracted by the noticee.*

43. *Further till date there are no investor complaints against noticee or any regulatory action qua noticee.*

44. *During the inspection by SEBI, out of 23 transactions over Rs. 4,600 Crore, save and except statutory routine, technical infractions, nothing qua noticee was found in the inspection.*

However, in a peculiar case of Azeem, where the issuer company issued Secured

Debentures on private placement basis; certain lapses occurred due to unprecedented client specific issue faced by noticee and limitations in carrying out operation in full swing owing to Covid in 2020.

45. *Without prejudice to anything stated hereinafter, due to the ongoing pandemic COVID – 19, the operations of the noticee were severely impacted and certain communications may inadvertently be missed by us; that have been clarified in the forthcoming paragraphs of this written submission.*
46. *Azeem was a debt listed entity with their aforesaid debentures issued on private placement basis and listed with 3 debenture holders belonging to the same group i.e. Edelweiss, all of whom are institutional / accredited investors. There were no retail investors of Azeem in this issue.*
47. *Each time the rescheduling took place, prior consent of debentureholders were obtained. The reschedulings were never declared as an Event of Default by the debenture holders, and moratorium was provided to Azeem by the debenture holders.*
48. *ECL Finance Limited, the majority debenture holder & also the monitoring agent vide letter dated October 25, 2021, clarified for non-classification of the debenture issue as an NPA in spite of delay in receipt of interest payments till date.*

(The copy of communication is hereto annexed and marked as Exhibit – L)

49. *Regulation 59 of SEBI (LODR) Regulations 2015 (“LODR”) requires that approval of the stock exchange is to be obtained prior making material modification in the non-convertible debt securities issued. The obligation to obtain such approval is of the issuer company.*
50. *Further, such approval is accorded by the stock exchange only after the approval of the Board of Directors, Debenture Trustees and consent of the majority of the holders of that class of debentures.*
51. *However, as stated in the earlier submissions by the noticee that they have not received any communication from the issuer company with respect to the approval required to be taken under Regulation 59 of the SEBI (LODR) Regulations 2015.*

(The copy of the communications by Noticee to SEBI is hereto annexed and marked as Exhibit – M)

52. The noticee clarify that in this regard that the approvals from the debenture holders were obtained by the requisite majority as per the Companies Act, 2013 where all material information was disclosed to the debenture holders and thereafter the noticee gave its approval in the interest of the debenture holders after ensuring the necessary safeguards.

(The copy of the Rescheduling communications by Noticee is hereto annexed and marked as Exhibit – H)

53. Noticee denies the allegation that as trustees, they were not acting diligently as despite non co – operation stance from the issuer company :

- a. As per the SEBI Circular, Noticee used to send reminder emails to the issuer company 7 days prior to the due date.
- b. Noticee did multiple follow ups with the issuer company.
- c. Noticee was always in frequent communication with the debenture holders and also CRA.

(The copy of the communications between Noticee and Credit Rating Agency is hereto annexed and marked as Exhibit – N)

- d. Noticee also sought information from the bank where the escrow account was opened to ascertain if the payments were made or not.
- e. Owing to the continued failure of the Issuer company to comply with the periodic reporting and confirming payment status, noticee pro-actively in the interest of the debenture holders, also conducted the meeting of debenture holders to declare the Event of Default.
- f. However, the debenture holders resolved and instructed us not to initiate any enforcement action against the issuer company till further notice, in their best interest.

- g.** When the first default (non – confirmation of the repayment) with respect to the principal repayment took place after the rescheduling on 28th February 2023, noticee immediately called the meeting of the debenture holders and informed to CRA, CDSL, NSDL and BSE about the default. Further, noticee also communicated the same to SEBI and uploaded it on their website.
- h.** The noticee had right to appoint Whole-time Director / Nominee Director in an event of default on the Board of Azeem. Hence, after the said default, noticee also appointed Mr. Kaustubh Kulkarni as a Nominee Director on the Board of Azeem on 20th July 2023. However, Azeem has still maintained the stance of non co – operation and not furnishing information, including the notices of the board meetings.

54. The non-communication to Credit Rating Agency (CRA) did not have any impact due to following:

- a.** CRA has been independently assessing Azeem based on multiple parameters. The difficulty of Azeem not providing information was even faced by them. Hence, they were not ignorant to the abeyance state of communication by Azeem.
- b.** As, the CRA too faced similar issue with Azeem the rating was also degraded from BB/Stable to BB/Issuer not co-operating to D/Downgraded.

(The copy of the Credit Rating Agency's Report is hereto annexed and marked as Exhibit – E)

- c.** Hence, the debenture holders and the markets were aware of the credit worthiness of the issuer company.
- d.** The exposure to the NCD Issue was limited to Edelweiss group entities viz. who are institutional / accredited investors, and were aware of the position of Azeem.

- e. *However, the event of default was informed to CRA.*
- f. *Further, there are no instances where Noticee has not responded to the CRA. Whenever CRA sought information with respect to the payment status, we have informed them about it; which was one of the source of information based on which the CRA generated its report.*

55. *Hence, it is an isolated instance where noticee was unable to make the requisite communications owing to the difficulties faced by them which was client specific in an unprecedented manner.*

56. *While communication to SEBI may been inadvertently missed by the noticee, no prejudice has been caused to any investors or market.*

57. *The board of the noticee have taken immediate actions after the receipt of SEBI's observations pursuant to its inspection of noticee.*

58. *In the Board Meeting dated October 31st, 2023, the noticee's board in its meeting has taken the note of all the observations made by SEBI in its report to ensure that in future such lapse do not occur.*

(The copy of the minutes of Board Meeting is hereto annexed and marked as Exhibit – 0)

59. *The noticee has formulated standard operating procedures (SOP) that is required to be followed by the officers of noticee upon the Event of Default or any Breach of Covenant.*

(The copy of the SOP is hereto annexed and marked as Exhibit – P)

60. *The noticee has in place a system of automation for communication and reminders for the debt listed securities pre and post due dates of Interest payments and Principal repayment.*

61. *Issuer company has maintained stance of non-cooperation by not providing information to the trustee as well as the credit rating agency and stock exchange.*

62. *As a SEBI registered intermediary, the noticee is mindful of its duties and obligations which travels beyond the commercials; and hence, they have been acting diligently*

to ensure that none of their action becomes prejudicial to the investors and securities market.

63. They have been acting diligently to the best of their available framework in this regard.

64. However, in such a peculiar case if any regulatory action is taken or adjudication proceeding are initiated, it will be highly prejudicial to the noticee; especially when:

- a. the situations faced by the noticee were unprecedented,*
- b. the corrective measures have already been taken by the noticee both before and after the inspection report of SEBI was received by the noticee with the intent to ensure that such a situation do not arise in future.*

65. There are no instances of fraud or connivance on the part of the noticee, and it has not been alleged in the SCN too.

66. In the instant case of Azeem, pursuant to the allegation levied against the noticee, the following must be noted that:

- a. There has been no disproportionate gain or unfair advantage made by the noticee.*
- b. At the outset there were no retail investors or large number of investors of the debentures issued by Azeem. It was a closely held by accredited investor belonging to the same group. There is no instance of loss that has been identified pursuant to the alleged violation. Furthermore, the rescheduling and moratorium was granted to Azeem only with the prior approval of the debenture holders.*
- c. The debenture holders were virtually in control of the Escrow account and were also acting as the monitoring.*
- d. It has been a first such instance for the noticee where the client company has maintained the stance of non – cooperation. It was an unprecedented situation for the noticee.*
- e. There are neither any investor complaint against the noticee nor any prejudice is caused to stakeholder.*

- f. *There are no allegations or any reguory action that has been taken by SEBI qua noticees.*

67. *Reliance is placed on the following:*

- a. *Hon'ble Securities Appellant Tribunal's order in the case of P.G. Electroplast Limited (Appeal no. 281 of 2017) wherein it was held that*

"Para 18:

Penalty can be imposed for failure to carry out a statutory obligation under the SEBI's Act. Factors contemplated under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act. The above was precisely held by the Supreme Court in M/s. Hindustan Steel Ltd. vs. State of Orissa, 1969(2) SCC 627.

Para 19:

In Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari, (2019) 5 SCC 90, the Supreme Court held that the provisions of Clauses (a), (b) and (c) of Section 15-J are illustrative in nature and have to be taken into account whenever such circumstances exist. The Supreme Court further held that factors other than those enumerated in Clauses (a), (b) and (c) of Section 15-J can also be considered by the Adjudicating Officer."

(The copy of the Order is hereto annexed and marked as Exhibit – Q)

- b. Hon'ble Securities Appellant Tribunal's order in the case of IDBI Trusteeship Services Limited (Appeal no. 186 of 2023) wherein it was held that:*

Para 12:

We may also point out that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. The purpose of inspection is to advise the entity to cure the lapse that have been found. If any serious lapse is discovered, then penalty action can be taken.

...

Para 13:

In the instant case, we find that the lapses pointed out were technical and not serious in nature.

(The copy of the Order is hereto annexed and marked as Exhibit – R)

- c. Adjudication Order against M/s. Axis Bank Ltd. (Debenture Trustee) dated March 10th, 2011*

(The copy of the Order is hereto annexed and marked as Exhibit – S)

68. In view of the above, I request that the present proceedings be dropped against the noticee and the case be put to rest. The noticee has not made any gains or caused any loss to the market or any investor. Hence, any levy of penalty would cause utmost travesty of justice.

..."

D. CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticee has violated provisions of Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and SEBI Circulars, as alleged?

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of SEBI Act?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

11. Before proceedings with the matter on merits, I would first deal with key technical contentions made by the Noticee.

11.1. Vide letter dated February 21, 2024 as reply to the SCN, the Noticee has submitted that, *“due to the ongoing pandemic COVID – 19, the operations of the noticee were severely impacted and certain communications may inadvertently be missed by us”*.

In this regard, I note that, ‘... *communications may inadvertently have been missed ...*’, has been contended by the Noticee at diverse places inter alia with regard to SEBI, CRA, albeit a tad differently worded. In this regard, I note that the said contention of Noticee, in so far as Noticee has inter alia cited communication restrictions owing to covid 19 pandemic situation, are devoid of merit, as Noticee has not demonstrated that it was prevented from communicating electronically i.e., through emails, and said contention are in nature of admission in so far as, to cite as example,

Noticee at one such instance has inter alia also stated, ‘ ... *While communication to SEBI may been inadvertently missed by the noticee, no prejudice has been caused to any investors or market ...* ’. Further in this regard, I also note that the provisions alleged to have been violated were applicable to the entire class of intermediary and not just Noticee alone. Further in this regard, I note that while the Noticee has contended about covid-19 pandemic, however Noticee has not demonstrated along with relevant documents that any exemption was available in this regard to the Noticee as DT during the stated period in respect of the provisions alleged to have been violated. Accordingly the said contentions of Noticee are devoid of merit and hence not acceptable.

11.2. I note that Noticee has inter alia contended that, “*It has been a first such instance for the noticee where the client company has maintained the stance of non – cooperation.*”

In this regard, I note from material available on record that similar response had inter alia been submitted by the Noticee earlier to SEBI as part of its reply on the findings of the inspection. In this regard, I note that while on one hand the Noticee has contended about instance of non-cooperation by the issuer, on the other hand Noticee as part of its submissions has also stated to have been providing approvals with respect to restructuring of NCDs. In my view, that this was first such instance, does not exculpate Noticee from compliance with the extant applicable provisions of securities laws, alleged to have been violated, which otherwise Noticee was required to comply with. Accordingly in my view contention of Noticee in this regard is conflicting and devoid of merit, hence not acceptable.

12. I now proceed to deal with the matter having regard to the facts and circumstances, material available on record and submissions of the Noticee on merits:

Issue No. I: Whether the Noticee has violated provisions of Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and SEBI Circulars, as alleged?

13. I note from the material available on record that the following was inter alia observed and alleged in respect of the Noticee:

13.1. Failure to carry due diligence with regards to Material change in NCDs:

13.1.1. In this regard, Azeem Infinite Dwelling India Private Limited ('Azeem' / 'Issuer' in short) was one of the issuers to whom Noticee was the Debenture Trustee, during the period covered under inspection by SEBI.

It had inter alia been observed by SEBI that Azeem has issued secured listed NCDs amounting to INR 395 Crores ('issues' / 'said issues', in short), details of which are tabulated as under:

ISIN	Amount INR	Allotment Date	Listing Date	Maturity Date	Tenor
INE265Y07034	200 Crores	November 16, 2017	July 05, 2018	November 15, 2022	60 months
INE265Y07042	195 Crores				

In this regard, I note from material available on record that, it had been observed that while Azeem has restructured the payment obligations on four different instances, however it has not taken approval from the Stock Exchange viz., BSE, in respect of restructuring of the NCDs, as required under Regulation 59(1) of SEBI LODR Regulations.

13.1.2. In this regard, it was inter alia observed and alleged that as debenture trustee to the said issues, Noticee was aware of the restructurings carried out in the NCDs on four occasions without prior approval having

been obtained by the issuer from the Stock Exchange viz., BSE and thus Noticee had inter alia failed to ensure compliance of Regulation 59(1) of SEBI LODR Regulations, 2015 by the issuer and also failed to exercise due diligence by not reporting about the non-compliance of Regulation 59 of SEBI LODR Regulations by issuer, in respect of the four instances of restructuring, to SEBI. In view thereof, the Noticee was alleged to have violated Regulation 15(1)(r), Regulation 15(1)(s), Regulation 16 read with clause 4 of Schedule III of DT Regulations.

13.1.3. Here it would be pertinent to draw reference to provisions of Regulation 59 of LODR Regulations and Regulation 15(1)(r), 15(1)(s) and Regulations 16 of SEBI DT Regulations, which inter alia read as under:

Regulation 59 of SEBI LODR Regulations, 2015

“

...

Structure of non convertible debt securities and non convertible redeemable preference shares.

59. (1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :

(a) the structure of the ³¹⁸[non-convertible debt securities] debenture in terms of coupon, ³¹⁹[***] redemption, or otherwise.

(b) the structure of the non-convertible redeemable preference shares in terms of dividend ³²⁰[***], redemption, or otherwise.

...

”

.

Regulation 15(1)(r) and 15(1)(s) of SEBI DT Regulations:

“

...

Duties of debenture trustees

15. ⁶³[(1)]It shall be the duty of the 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.

Explanation: The communication to the debenture holders by the debenture trustee as mentioned in these regulations may be made by electronic media, press-release and placing notice on its website;

(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;

...
”

Regulation 16 of DT Regulations and Clause 4 of Code of Conduct

“ ...

Code of Conduct

16. Every debenture trustee shall abide by the Code of Conduct as specified in Schedule III.

...
”

SCHEDULE III

CODE OF CONDUCT

“ ...

4. A Debenture Trustee shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

...
”

.

13.1.4. In this regard, the Noticee has submitted, *“Azeem was a debt listed entity with their aforesaid debentures issued on private placement basis and listed with 3 debenture holders belonging to the same group i.e. Edelweiss, all of whom are institutional / accredited investors. There were no retail investors of Azeem in this issue.*

Each time the rescheduling took place, prior consent of debenture holders were obtained. The reschedulings were never declared as an Event of Default by the debenture holders, and moratorium was provided to Azeem by the debenture holders.

...

they have not received any communication from the issuer company with respect to the approval required to be taken under Regulation 59 of the SEBI (LODR) Regulations 2015”

13.1.5. In this regard, I note that, that the Noticee was aware of the

restructuring of NCDs on 4 occasions, has not been denied or disputed by the Noticee. Further in this regard, I note that as per Regulation 15(1)(s) of SEBI DT Regulations, Noticee was duty bound /required to exercise due diligence to ensure compliance by Azeem, with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement), Regulations, 2015. However, it was observed that Azeem had not taken approval from Stock Exchanges as required under Regulation 59 of LODR Regulations, before making such modification in the structure of NCDs in terms of interest payment and redemption in any of the four instances. Therefore, the Noticee's submission, *"they have not received any communication from the issuer company with respect to the approval required to be taken under Regulation 59 of the SEBI (LODR) Regulations 2015"*, are devoid of merit and.

13.1.6. Further, as per Regulation 15(1)(r) of SEBI DT Regulations, it is duty of the Noticee to inform SEBI of any breach of provision of any law. I note that Noticee did not report the non-compliance by issuer to SEBI with respect to Regulation 59 of SEBI LODR Regulations in any of the 4 instances of restructuring.

13.1.7. The Noticee has further submitted that, *"approvals from the debenture holders were obtained by the requisite majority as per the Companies Act, 2013 where all material information was disclosed to the debenture holders and thereafter the noticee gave its approval in the interest of the debenture holders after ensuring the necessary safeguards"*

13.1.8. I note that the alleged violation is with respect to the Noticee not having exercised due diligence and about not informing SEBI about non-compliance of Regulation 59 of SEBI LODR Regulations by the issuer with respect to restructuring of NCDs. Hence, the submissions of the Noticee are out of context and devoid of merit.

13.1.9. The Noticee has also submitted that, *“The noticee clarify that in this regard that the approvals from the debenture holders were obtained by the requisite majority as per the Companies Act, 2013 where all material information was disclosed to the debenture holders and thereafter the noticee gave its approval in the interest of the debenture holders after ensuring the necessary safeguards.*

Noticee denies the allegation that as trustees, they were not acting diligently as despite non co – operation stance from the issuer company”.

13.1.10. In this regard, I note that, that Noticee was aware about the non-compliance by the issuer entity with respect to the restructurings carried out in the NCDs, has not been denied or disputed by the Noticee. Further in this regard, I note that Noticee as part of its submissions as reply to the SCN has itself inter alia submitted that, ‘*... the said debentures had undergone rescheduling four times ... which included deferring the interest payments and rescheduling the repayment of capital ... ’*, and that, ‘*... Beacon vide letter dated approved ... revised interest payments ... ’*, and that, ‘*... Azeem Infinite Dwelling India Private Limited ... made an application for rescheduling of ... repayments Beacon accepted the request’*

It is thus evident that the referred NCDs issued by Azeem had undergone restructuring in terms of deferring of the interest payments and rescheduling of the repayment of capital which Noticee as the Debenture Trustee was aware of in respect of all the four occasions.

13.1.11. In the instant case, as already brought out in the foregoing, while the NCDs issued by Azeem had undergone restructuring on four occasions, however no prior approval was obtained in this regard from

the Stock Exchange viz., BSE, in respect of restructuring of the NCDs, as was required in terms of provisions of Regulation 59(1) of SEBI LODR Regulations, which the Noticee was aware of /about. Further, in terms of provisions of Regulation 15(1)(s) of DT Regulations it was duty of Noticee as Debenture Trustee to exercise due diligence to ensure compliance by Azeem inter alia with the provisions as specified, including with the provisions of SEBI LODR Regulations 2015. Further in this regard, I note that in terms of Regulation 15(1)(r) of DT Regulations Noticee, as Debenture Trustee, was required to inform the Board immediately of any breach of trust deed or provision of any law, which came to the knowledge of the trustee. In the instant case no such intimation was made by the DT to the Board. I also note that Noticee has not demonstrated with relevant details and documents as to what efforts were made by it to ensure compliance with /of provisions alleged to have been violated.

13.1.12. It is thus evident that Azeem has restructured the payment obligations on four different instances for which it had not taken approval from the Stock Exchanges, as was required under Regulation 59 of LODR Regulations, before making such modification in the structure of NCDs in terms of interest payment and redemption, which the Noticee as Debenture Trustee was aware of and in respect of which Noticee failed to ensure compliance by Azeem and also failed to inform the Board immediately about, as dealt with and brought out in the foregoing and accordingly also failed to exercise due diligence, ensure proper care and exercise independent professional judgment, as required in terms of provisions of Clause 4 of Code of Conduct mentioned in Schedule III of DT Regulations.

13.1.13. In view thereof, I find that the allegation that Noticee had failed to exercise due diligence with regard to the restructuring of NCDs of

Azeem and had failed to inform SEBI regarding the breach of Regulation 59 of LODR Regulations by Azeem, stands established and accordingly, I hold that the Noticee has violated provisions of Regulation 15(1)(r), 15(1)(s), Regulation 16 read with Clause 4 of Code of Conduct mentioned in Schedule III of DT Regulations.

13.2. Failure to share information with Credit Rating Agency (CRA):

13.2.1. In this regard, it was inter alia observed and alleged that the Noticee had failed to inform CRA about the default interest payment due in month of March 2020 by Azeem and restructuring of the NCDs on 4 occasions.

13.2.2. The Noticee in this regard, has submitted the following:

“The non-communication to Credit Rating Agency (CRA) did not have any impact due to following:

- a. CRA has been independently assessing Azeem based on multiple parameters. The difficulty of Azeem not providing information was even faced by them. Hence, they were not ignorant to the abeyance state of communication by Azeem.*
- b. As, the CRA too faced similar issue with Azeem the rating was also degraded from BB/Stable to BB/Issuer not co-operating to D/Downgraded.*
- c. Hence, the debenture holders and the markets were aware of the credit worthiness of the issuer company.*

- d. *The exposure to the NCD Issue was limited to Edelweiss group entities viz. who are institutional / accredited investors, and were aware of the position of Azeem.*
 - e. *However, the event of default was informed to CRA.*
 - f. *Further, there are no instances where Noticee has not responded to the CRA. Whenever CRA sought information with respect to the payment status, we have informed them about it; which was one of the source of information based on which the CRA generated its report.*
- ...

13.2.3. In this regard, I note that the Regulation 16 and Clause 13 of Schedule III of DT Regulations inter alia reads as under:

“ ...

Code of Conduct

16. Every debenture trustee shall abide by the Code of Conduct as specified in Schedule III.

...

SCHEDULE III

CODE OF CONDUCT

...

13. A Debenture Trustee shall share information available with it regarding client companies, with registered credit rating agencies.”

Further, clause 3, Clause B(4) and B(5) of Annexure to the circular of SEBI circular CIR/MIRSD/3/2013 dated March 15, 2013 reads as under:

“ ...

In consultation with DTs and CRAs, it has been decided that registered DTs and CRAs shall share information with each other as specified in the Annexure. DTs and CRAs may share any other

information from time to time in respect of issues/issuer companies which would help them in effective discharge of their duties.

...

B. Information from DTs to CRAs

...

4. Any default committed including the default in payment of interest or redemption of debentures or delay in creation of security.

5. Any change or restructuring of the terms of the issue.

...”

13.2.4. I note from the Noticee’s submissions that the issuer was not co-operating with the Noticee as well as the CRA. In this regard, I note from the material available on record that vide letters dated 29 May 2020, 13 July 2020, 26 May 2021 and 16 May 2022, the Noticee had approved the restructuring of NCDs on 4 occasions as follows:

- i. Letter dated 29 May 2020 to the issuer approving first restructuring of NCDs
- ii. Letter dated 13 July 2020 to the issuer approving second restructuring of NCDs
- iii. Letter dated 26 May 2021 to the issuer approving third restructuring of NCDs
- iv. Letter dated 16 May 2022 to the issuer approving fourth restructuring of NCDs

13.2.5. Further, I note from material available on record that the Noticee vide email dated September 13, 2023 to SEBI had mentioned the following:

“...

- *Till February 28, 2020, the Issuer Company was servicing interest payments due as per scheduled due dates.*

COVID Effect:

Owing to Covid-19 onset in March 2020 & resulting financial stress on RE Sector, Issuer Company made an application on April 23, 2020, for

grant of Moratorium for Interest Payments due on 30-Mar-2020, 30-Apr-2020 & 30-05-2020. The same was approved in May 2020, by the Monitoring Agent, Edelweiss Finvest Private Limited & subsequently by Beacon, pursuant to approvals received from debenture holders.

The continued effect of Covid-19 throughout 2020 & resulting financial stress on the RE Sector, the Issuer Company made application for grant of Moratorium for Interest Payments due on 30-Jun-2020, 30-Jul-2020 & 30-08-2020. The same was approved in July 2020, by the Monitoring Agent, Edelweiss Finvest Private Limited & subsequently by Beacon, pursuant to approvals received from debenture holders.

...

Reschedule 1:

Owing to continued financial stress, the Issuer made an application, on February 3, 2021, to extend the due date for 8 quarterly repayments & extend maturity date from November 15, 2022, November 30, 2023. The same was approved in May 2021 on receipt of debenture holders' approval

...

Reschedule 2:

Owing to continued financial stress, the Issuer made an application, on January 10, 2022, to extend the due date for 8 quarterly repayments & extend maturity date from November 30, 2023, November 30, 2024. The same was approved in May 2022 on receipt of debenture holders' approval"

- 13.2.6. In view thereof, I note that the Noticee was has neither denied nor disputed that it was aware of the 4 instances of restructuring of the NCDs by Azeem and had approved the same. I also note that the Noticee was also aware of default of interest payment due in month of March 2020. However, the Noticee did not intimate this information to CRA, otherwise required per Clause 13 of Schedule III of DT Regulations and clause 3 read with clause B(4) and B(5) of Annexure to the circular of SEBI circular CIR/MIRSD/3/2013 dated March 15,

2013 as per Regulation 16 read with Clause 13 of Schedule III of DT Regulations.

Therefore, I note that the Noticee's contention, "*the debenture holders and the markets were aware of the credit worthiness of the issuer company*", cannot excuse the Noticee of its responsibility to intimate CRAs the required information. Further, the Noticee's contention "*there are no instances where Noticee has not responded to the CRA. Whenever CRA sought information with respect to the payment status, we have informed them about it*" is out of context in so far as alleged violation is about not intimating the CRA about the restructuring of the NCDs as well as the default of interest payment due in month of March 2020.

- 13.2.7. I view thereof, I find that the allegation that Noticee has failed to inform CRA about the default in interest payment due in month of March 2020 by Azeem and restructuring of the NCDs on 4 occasions, stands established. Therefore, I hold that the Noticee has violated Regulation 16 of DT Regulations read with Clause 13 of Code of Conduct mentioned in Schedule III and Clause 3 of SEBI Circular CIR/MIRSD/3/2013 dated March 15, 2013 read with Clause B(4) and B(5) of Annexure to the circular.

13.3. Failure to intimate SEBI on information on non-receipt/disclosure of information on payment:

- 13.3.1. In this regard, it was inter alia observed and alleged that Azeem had defaulted on the interest payment for the month of March 2020 and no confirmation was provided by the issuer with respect to same, however the same was not communicated by the Noticee to SEBI.

13.3.2. In this regard, I note that Clause 5 of Circular No. SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 read as follows:

“
It is clarified that if no information regarding payment by Issuer Company is received by the DTs by due date or such information is not disclosed by the issuer company on the stock exchange website, then, the DTs shall make reference to SEBI accordingly and disclose the non-availability of such information on their website.
.....”

13.3.3. In this regard, I note from the material available on record that no information regarding payment of interest for the month of March 2020 was received by the Noticee from the issuer by due date i.e. by March 30, 2020 not was such information disclosed by the issuer company on the stock exchange website, however the Noticee did not intimate the same to SEBI.

In this regard, I note that the submissions of the Noticee are in nature of admission in so far as Noticee has interalia stated, *“While communication to SEBI may been inadvertently missed by the noticee, no prejudice has been caused to any investors or market”*. Further, the Noticee in its submissions to the findings of inspection mentioned that, *“While communication to SEBI was has been inadvertently missed by Beacon, however, going forward we have taken steps to ensure reporting SEBI as envisaged under the extent regulations.”*

Further, I note that the Noticee cannot use its contention, *“no prejudice has been caused to any investors or market”* as an excuse to not fulfil statutory obligations as required under the provisions of law.

13.3.4. In view thereof, I find that the allegation that Azeem has defaulted on the interest payment for the month of March 2020 and no confirmation was provided by the issuer with respect to same, however the same was not communicated by the Noticee to SEBI, stands established.

Therefore, I hold that the Noticee has violated Clause 5 of SEBI Circular No. SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992?

14. It has been established in the foregoing paragraphs that Noticee had violated provisions of SEBI DT Regulations and SEBI circulars.

15. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established....."*

16. In this regard, the Noticee has stated the following:

"In the instant case of Azeem, pursuant to the allegation levied against the noticee, the following must be noted that:

a. There has been no disproportionate gain or unfair advantage made by the noticee.

b. At the outset there were no retail investors or large number of investors of the debentures issued by Azeem. It was a closely held by accredited investor belonging to the same group. There is no instance of loss that has been identified pursuant to the alleged violation. Furthermore, the rescheduling and moratorium was granted to Azeem only with the prior approval of the debenture holders.

c. The debenture holders were virtually in control of the Escrow account and were also acting as the monitoring.

...

e. There are neither any investor complaint against the noticee nor

any prejudice is caused to stakeholder.

f. There are no allegations or any regulatory action that has been taken by SEBI qua noticees.”

17. In this regard, I note that the Noticee as part of his submission had inter alia contended that , “... *no disproportionate gain or unfair advantage made ...*”, “... *there were no retail investors or large number of investors ...*”, “... *neither any investor compliant against the noticee nor any prejudice is caused to stakeholder...*”, “... *no allegations or any regulatory action that has been taken by SEBI qua notices...*”, “ ... *noticee have been a compliant intermediary since inception, in the past no violations or lapses or penalties were attracted by the noticee ...*”, “... *no investor complaints against noticee*”, “... *there were no retail investors of Azeem in this issue ...*”, “... *board of the noticee have taken immediate actions after the receipt of SEBI’s observations ...*”, “... *there has been no disproportionate gain or unfair advantage made by the noticee ...*”, and alike. In this regard, in my view said contentions would not exempt the Noticee from complying with the extant applicable provisions of securities laws violated, which Noticee was required to comply with and can at best be considered as mitigating factors.

In this regard, the Noticee relied upon the judgments of Hon’ble Securities Appellant Tribunal’s (“Hon’ble SAT”) in the case of P.G. Electroplast Limited v. SEBI (Appeal no. 281 of 2017), Hon’ble SAT’s order in IDBI Trusteeship Services Limited v. SEBI (Appeal no. 186 of 2023) and SEBI’s Adjudication Order against M/s. Axis Bank Ltd. (Debenture Trustee) dated March 10, 2011.

In this regard, I note that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. Noticee has merely cited and mentioned about the Orders, however, the Noticee has neither demonstrated as to how the cited orders was applicable in the

instant matter nor demonstrated as to what are the relied upon findings in the respective orders which have a bearing on the alleged violations against Noticee in instant matter. In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit. Further in this regard, I note that the alleged violations by the Noticee were of the extant applicable provisions of law that were otherwise applicable to that entire category of the intermediary viz., SEBI Registered Debenture Trustees and not just about minor procedural aspects specific to the Noticee.

Further in this regard, I note from the text of judgement submitted /cited by the Noticee itself that Hon'ble SAT in IDBI Trusteeship Services Limited v. SEBI [Appeal No. 186 of 2023] had inter alia held that, 'if any serious lapse is discovered, then penalty action can be taken'. I note that the violations committed by Noticee were fundamental to its operations as a Debenture Trustee.

18. In view thereof, for the above violations, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act which provides as following:

“ ...

Penalty for contravention where no separate penalty has been provided

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

...”

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

19. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

SEBI Act

“

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or 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.*

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

.....”

20. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. However, I cannot ignore the fact that Noticee being a SEBI registered Debenture Trustee was required to comply with the extant applicable provisions of laws, which SEBI is duty bound to enforce. The Noticee failed to comply with the provisions of law, as brought out in the foregoing, and such failure and non-compliances on part of the Noticee ought to be dealt with suitable penalty.

E. ORDER

21. Considering the facts and circumstances of the instant case, the material available on record, submissions of the Noticee, the factors mentioned in preceding paragraphs and in exercise of the powers conferred upon me under

section 15-I of the SEBI Act 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 3,00,000/ (Rupees Three Lakh Only) on the Noticee for the aforementioned violations, as discussed in this order under Section 15HB of the SEBI Act, 1992. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case.

22. The 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

23. 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 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
24. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: March 27, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER