BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/BS/RG/2023-24/29358

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:

Noticee	**Address**
Utkarsh Small Finance Bank Limited (PAN: AABCU9355J)	Utkarsh Small Finance Bank Limited, Utkarsh Tower, NH-31 (Airport Road), Sahmalpur, Kazi Sarai, Harhua, Varanasi, PIN-221105

In the matter of Utkarsh Small Finance Bank Ltd.

A. FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received a *suo moto* settlement application in respect of possible breaches of the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**SEBI LODR Regulations**") from Utkarsh Small Finance Bank Ltd. (hereinafter referred to as "**Noticee"**), to settle certain disclosure related violations with regards to the issue of Non-Convertible Debentures (hereinafter referred to as "**NCDs"**). To examine whether there were any violations of the relevant provisions of Companies Act, 2013 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 read with Section 59 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (hereinafter referred to as "**ILDS Regulations**") with respect to issuance of NCDs by the Noticee, during the period January 21, 2017 to May 17,

2021, an investigation was carried out. During investigation, certain contraventions with regard to the public issue guidelines under the Companies Act, 2013 and ILDS Regulations, with respect to issuance of NCDs of the ISIN INE735W08012, were observed.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed Ms. Geetha G as the Adjudicating Officer under Section 19 read with sub-section (1) of Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), vide communique dated August 8, 2022, to enquire into and adjudge under Section 15HB of SEBI Act for the alleged contraventions of Regulations 4(3), 5(2)(b), 6, 7, 8, 9, 12, 14, 26 of ILDS Regulations by the Noticee.. Subsequently, the undersigned has been appointed as Adjudicating Officer vide communique dated April 20, 2023.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. The show cause notice (hereinafter referred to as "**SCN")** bearing no. EAD1/SM/RG/55895/1/2022, dated November 03, 2022, was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15HB of the SEBI Act for the alleged violations of Regulations 4(3), 5(2)(b), 6, 7, 8, 9, 12, 14, 26 of ILDS Regulations. The said SCN was served upon the Noticee through Speed post and email.

4. The allegations levelled against the Noticee in the SCN are summarised below:

    4.1. The Noticee had issued NCDs of the ISIN INE735W08012 worth Rs. 25 crores to Karvy Capital Limited (hereinafter referred to as "**KCL**") on July 11, 2018, through private placement. In this regard, Shelf Disclosure Document (hereinafter referred to as "**SDD**") was issued by the Noticee on July 09, 2018. KCL transferred funds of Rs. 25 crores to the Noticee for subscribing to the said issue of NCDs, through its Portfolio Management Services (hereinafter referred to as "**PMS**")-Excel strategy pool account (A/c name: Karvy Capital Limited A/C Excel portfolio) on July 09, 2018. Subsequently, the Noticee transferred NCDs to KCL demat account (A/c name: Karvy Capital Limited A/c Excel Portfolio) on July 19, 2018. KCL had then transferred the allotted NCDs to more than 200 investors i.e. 355 investors on July 20, 2018. The Noticee, in this regard, received Beneficiary Position statement (hereinafter referred to as "**BENPOS statement**") dated Jul 20, 2018 from its Registrar and Transfer Agent (hereinafter referred to as "**RTA**") on July 23, 2018. The said statement indicated that as on July 20, 2018, 355 investors were holding the said NCDs. Therefore, the Noticee was aware that it was allotting the NCDs to KCL in the capacity of PMS and the NCDs were being purchased by KCL on behalf of its clients. Further, it is also observed from the Debenture Trust Deed (DTD) between the debenture trustee and the Noticee, that KCL has been appointed as "Debenture Holder Representative" for liaising with the debenture trustee on behalf of debenture holders. In the present matter, it was observed that the NCDs were listed on BSE on July 27, 2018 i.e. within 20 days of the allotment of NCDs to 355 investors.

4.2. From the above, it was alleged that aforesaid issue of NCDs bearing ISIN no. INE735W08012, was an issue of NCDs with a view to offer to the public as per Sections 25 and 42 of the Companies Act, 2013. Hence, the issue can be termed as a Deemed Public Issue (hereinafter referred to as "**DPI**").

4.3. In view of the finding that the Noticee had made a public issue of debt securities, the ILDS Regulations were also applicable to the aforesaid issue of NCDs of ISIN INE735W08012. However, from the SDD issued by the Noticee on July 09, 2018, it was observed that the issue of NCDs of the ISIN INE735W08012 was categorized as private placement. Therefore, it was alleged that the Noticee had violated the following provisions of the ILDS Regulations in respect of the public offer of the aforesaid NCDs:

i. Regulation 4(3) - Appointment of merchant banker registered with the Board

ii. Regulation 5(2)(b) - Disclosure requirements in the offer document
iii. Regulation 6 – Filing of draft Offer Document
iv. Regulation 7 – Mode of disclosure of Offer Document
v. Regulation 8 – Advertisements for Public Issues
vi. Regulation 9 – Abridged Prospectus and application forms
vii. Regulation 12 – Minimum subscription
viii. Regulation 14 – Prohibition of mis-statements in the Offer Document
ix. Regulation 26 – Obligation of the Issuer, etc.

4.4. Vide its email dated November 16, 2022, the authorised representative(s) (hereinafter referred to as "**ARs**") of the Noticee requested the inspection of documents. Vide email dated 17 November, 2022, SEBI granted the inspection on November 18, 2022. Inspection was conducted on scheduled date.

4.5. Vide Hearing Notice dated November 18, 2022, Noticee was advised to submit its reply to the SCN before the date of personal hearing, which was scheduled for 9 December, 2022. The aforesaid Hearing Notice was served upon the Noticee through SPAD and email.

4.6. The Noticee filed the settlement application on November 25, 2022 which was subsequently registered on 14 December, 2022.

4.7. The Noticee's settlement application was rejected by SEBI and the Noticee was informed about the same vide letter dated June 08, 2023.

4.8. The Hearing Notice dated June 12, 2023 was issued against the Noticee for the hearing scheduled on June 22, 2023. The aforesaid hearing Notice was served upon the Noticee through SPAD and email.

4.9. Vide email dated June 19, 2023, the Noticee sought extension to the date of hearing, saying that Noticee is in the process of redeeming the NCDs after approval from SEBI and RBI.

4.10. SEBI, vide email dated July 21, 2023 rescheduled the hearing to August 02, 2023. Thereafter, the Noticee sought another extension to the date of hearing, saying that the Noticee is in still the process of redeeming the NCDs and the exercise is estimate to be completed by August 28, 2023.

4.11. Pursuant to completion of redemption of NCDs, vide email dated August 31, 2023, SEBI provided the opportunity of being heard on September 06, 2023.

4.12. Vide email dated September 01, 2023, the Noticee requested another extension to the date of hearing. Vide email dated September 04, 2023, SEBI provided the Noticee with one final opportunity of being heard on September 12, 2023.

4.13. Vide email dated September 11, 2023, the Noticee submitted its reply to the SCN. Further, the Noticee's ARs appeared for hearing on September 12, 2023 and reiterated the submissions made vide email dated September 11, 2023.

5. Vide its email dated September 11, 2023, the Notice replied to the allegations levelled in the SCN as follows:

5.1. *After discussion with SEBI, the Noticee filed Adjudication application dated May 29, 2022, before the Registrar of Companies at Uttar Pradesh ("ROC") for compounding of the alleged violations under Sections 33(1) and 42 of the Companies Act.*

5.2. *On November 10, 2022, the ROC passed an order disposing of the Noticee's Adjudication Application without any action against the Noticee, stating that in the facts and circumstances of the case, the alleged violations did not pertain to actions committed by the Noticee, its promoters or directors. The ROC further indicated that in the facts of the present case, the violations had to be adjudicated vis-à-vis the security-holder, i.e. KCL. However, in terms of the relevant provisions of the Companies Act pursuant to which the present Compounding Application was filed by the Noticee, the ROC did not have the powers to proceed against the security-holder.*

5.3. *Upon receipt of the SCN on November 3, 2022, the Noticee filed a settlement application on November 25, 2022.*

5.4. *In regard to the aforesaid settlement application, ARs of the Noticee met with the Internal Committee of SEBI on February 2, 2023, wherein the Noticee was* *asked to make submissions on the order passed by the Registrar of Companies at Uttar Pradesh ("ROC") pursuant to the Compounding Proceedings.*

5.5. *On February 9, 2023, the Noticee sent an email to SEBI explaining that the ROC had issued an order confirming that the Bank/its promoters/directors had not violated any provisions of the Companies Act and on June 8, 2023, the settlement application of the Noticee was rejected by SEBI.*

5.6. *SEBI had advised the Noticee to restore status quo ante in respect of the Relevant NCDs, by undertaking cancellation/early redemption of the NCDs. Thereafter, Noticee had filed an application seeking exemption from strict enforcement of Regulation 59 of the Listing Regulations and SEBI granted an exemption to the Noticee on June 22, 2023. Subsequently, the Noticee redeemed the NCDs on August 28, 2023 pursuant to receipt of the aforesaid exemption from SEBI and no-objection letter from the RBI.*

5.7. *The Noticee had issued the NCDs to only person i.e. KCL and it was clearly stated in SDD as below:*

"This Shelf Disclosure Document is being issued in respect of the Debentures to be issued by Utkarsh Small Finance Bank Limited (the "Issuer" or "Company") on a private placement basis and contains relevant information and disclosures required for the purpose of issuing and allotting of the Debentures."

5.8. *Further, the Stakeholder Relationship Committee of the Bank had passed a resolution dated July 11, 2018 authorizing such issuance and allotment of NCDs to KCL, strictly on a private placement basis. Relevant extracts of the said resolution is stated below:*

"…the approval of the Stakeholder Relationship Committee of the Board be and is hereby accorded for issue and allotment of 2,500 Rated, Listed, Unsecured, Non-Convertible Debentures of Rs. 1,00,000 (Rupees one lakh only) each, at coupon rate not exceeding 10.57% per annum, payable Quarterly, on a private placement basis, in consideration of an amount of Rs. 25 crores ("Issue") to Karvy Capital Limited."

5.9. *Noticee had carried out the process of issuance and allotment of the Relevant NCDs strictly on a private placement basis, in line with Section 42 of the*

Companies Act and Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("PAS Rules") read with the relevant provisions of the ILDS Regulations. At no point, there were any discussions with KCL relating to further down-selling of NCDs.

5.10. *Noticee had issued another series of NCDs bearing ISIN INE735W08020 on a private placement basis, which was allotted to KCL on August 31, 2018, i.e. in less than 2 months from the date of allotment of the Relevant NCDs. The abovementioned NCDs were transferred to 103 investors by KCL, which was well within the private placement limit of 200 investors under the Companies Act. The fact that both series of NCDs were down-sold by KCL but the down-selling of only the Relevant NCDs breached the statutory limit, implies that the Noticee and KCL did not act in tandem to violate the public issue norms under the Companies Act or the ILDS Regulations, and that KCL had down-sold the Relevant NCDs on its own volition, through no involvement of the Noticee. If the Noticee were acting in tandem with KCL, it would have ensured that the Relevant NCDs were not down-sold to more than 200 persons.*

5.11. *Noticee cannot be expected to control the actions of its debenture holders, once it has validly issued and allotted the NCDs to the said debenture holders.*

5.12. *BENPOS statement dated July 20, 2018 was received by the Noticee on July 23, 2018 i.e. much after an application was made for the listing of the debentures on the BSE Limited on July 19, 2018. Therefore, in any event, the Noticee possessed no knowledge of such down-selling at the time the application for listing was submitted to the BSE Limited.*

5.13. *Noticee's reliance on BENPOS was and has always been limited to procuring the details of holders to whom interest/principal amounts has to be paid on a given due date, the fact that KCL had down-sold the NCDs did not come to its notice merely upon receipt of the BENPOS data. Since there were no interest/principal repayment due dates as on July 23, 2018, the Noticee did not look at the email with BENPOS.*

5.14. *It is a settled law that mere receipt of BENPOS data cannot be considered constructive notice, as the same would amount to creation of an independent onerous obligation which is absent from the applicable law. In this regard, the Hon'ble SAT had held in Avenue Supermarkets Limited v. SEBI2, that imputing* *constructive notice based on receipt of BENPOS data is patently erroneous. Per Joshi J,*

"We are of the opinion, that reliance made by the AO on Benpos report is incorrect. In the first instance, the data provided in the Benpos report has a limited information and is for a different purpose under the Depositories Act and cannot be treated as a source for disclosure requirement under the PIT Regulations. ***Further, the Benpos report does not disclose Permanent Account Number (PAN) of the employee and only discloses the depository participant identity (DP ID) and through the DP ID it is not Benpos report being too bulky, it is not possible for the Company to search for such transactions on a weekly basis of shares which are liquid and where huge transactions are made on a daily basis.*** *Therefore, in our opinion, it is not practical for the Company to scan the Benpos report for the purpose of making a possible disclosure under Regulation 7(2)(b) of the PIT Regulations.* ***Therefore, in our view, reliance on Benpos report is patently erroneous****."*

5.15. *Therefore, The Noticee could not have been considered to have become aware of the alleged contravention in law upon receipt of the BENPOS Statement.*

5.16. *Further, SEBI vide order dated April 25, 2023 had imposed a penalty on KCL. SEBI's order make it evident that breaches of extant law were entirely on part of KCL.*

5.17. *Since the year 2016, SEBI has consistently attempted to curb the issue of down-selling of debt securities. In its Annual Report for the financial year 2016-17, 4 SEBI discussed the introduction of electronic book mechanism for private placement of debt securities. The relevant portion of the Annual Report is reproduced below:*

"…Earlier, the price discovery of privately placed debt securities was being done either over the telephone among identified investors and issuers with the help of arrangers or by physical bids sent to the issuer by investors or by submitting individual bids on the portal provided by the issuer. These methods were opaque since most of the investors were brought in by the arranger(s) appointed by the issuer and there were hardly investors directly approaching

the issuer. ***<u>This resulted in many market malfunctioning like poor price discovery, arrangers taking a significant portion of the issue on their books and down-selling it without disclosing the price at which the securities were bought.</u>***

Keeping in view these issues and challenges, in April 2016 SEBI laid down a framework for an electronic book mechanism (EBM) for issuing of debt securities on a private placement basis in order to streamline procedures for issuing debt securities on a private placement basis and enhancing transparency in discovering prices. Accordingly, from July 01, 2016, NSE and BSE started their operations as electronic book providers (EBPs)."

5.18. *The abovementioned Annual Report clarifies that the issue of down-selling of debt securities by arrangers was prevalent and had been a concern even before the Relevant NCDs were issued in 2018. It is stated that the Noticee was merely another affected party of the ongoing practice in the securities market. Subsequently, on October 5, 2020, SEBI issued a circular titled 'Standardization of timeline for listing of securities issued on a private placement basis', whereby it directed the depositories to activate ISINs of debt securities issued on private placement basis, only after the stock exchanges had accorded their listing approval.*

5.19. *Allegations made out in the SCN do not reveal a case of intentional or wanton breach of laws/regulations by the Noticee, and in fact do not even prove knowledge on the part of the Noticee with regard to the violations alleged.*

5.20. *Even if the alleged violations are applicable to the Noticee as stated in the SCN, the same are entirely unintentional, technical and venial in nature and may not warrant imposition of panalty. In support of the same, the Noticee has placed reliance on the judgment of Bombay High Court in SEBI v. Cabot International Capital Corporation, Hon'ble Supreme Court in Hindustan Steel v. State of Orissa, in Electro Optics v. State of Tamil Nadu and Hon'ble SAT in PG Electroplast & Ors. v. SEBI.*

5.21. *The Noticee has not made any disproportionate gain and no loss has been caused to the investors and Noticee's act are not repetitive in nature under section 15J of SEBI Act. Based on this, the Noticee has requested to not levy any penalty on him and to support the same, the Noticee has relied on the* *judgments viz., the Hon'ble Supreme Court in Siddharth Chaturvedi v. SEBI, Hon'ble SAT in Vitro Commodities Pvt. Ltd. v. SEBI.*

5.22. *The following facts should be considered as mitigating cirumstances:*

5.22.1. Present adjudication proceedings arose out of a bona-fide and suo motu disclosure by the Noticee

5.22.2. The Noticee has completed the early redemption of the Relevant NCDs, thereby eliminating any possibilities of future risk

D. CONSIDERATION OF ISSUES AND EVIDENCE

6. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/ submissions of the Noticee made during the instant proceedings before the undersigned. In the light of the aforesaid factual position, I proceed to adjudicate the matter, and find that essentially, the following issues arise for determination in the instant matter:
   i. Issue 1: Whether the Noticee has failed to comply with various provisions of ILDS Regulations?
   ii. Issue 2: If answer to the aforesaid question is affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15HB of the SEBI Act?
   iii. Issue 3: If answer to the aforesaid question is affirmative, what should be the quantum of the monetary penalty?

7. Before proceeding further, I would like to refer to the relevant provisions of the ILDS Regulations:

Relevant provisions:

ILDS Regulations

4. General conditions

… (3) The issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.

5. Disclosures in the offer document

(1) The offer document shall contain all material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision.
(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:
… (b) disclosure specified in Schedule I of these regulations.

6. Filing of draft offer document

(1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.
(2) The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.
(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.
(4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.
(5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.
(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.

(8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

7. Mode of disclosure of Offer Document

(1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.

(2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.

(3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

8. Advertisements for Public Issues

(1) The issuer shall make an advertisement in a national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV.

(2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive.

(3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.

(4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.

(5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.

(6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.

9. Abridged Prospectus and application forms

(1) The issuer and lead merchant banker shall ensure that:

(a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus.

(b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus.

(c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

(2) The issuer may provide the facility for subscription of application in electronic mode.

12. Minimum subscription

(1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document.

(2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

14. Prohibition of mis-statements in the Offer Document

(1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.

(2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a 6 public issue of debt securities shall not contain any false or misleading statement.

26. Obligation of the Issuer, etc.

(1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the

offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.

(2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.

(3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board.

(4) The intermediaries shall be responsible for the due diligence 10 in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

(5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

(6) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities.

Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021

59. Repeal and Savings

(1) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations,2008andthe Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 shall stand repealed from the date on which these regulations come to force.

(2) Notwithstanding such repeal:

(a)anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any adjudication, enquiry or investigation commenced or show-cause notice issued

under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b)any application made to the Board under the repealed regulations, prior to such repeal, and pending before it shall be deemed to have been made under the corresponding provisions of these regulations; and,

(c)the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, incurred in respect of any violation committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed.

(3) Subsequent to the repeal of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations,2008 and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations,2013, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

8. The first issue to be addressed is as follows:

Whether the notice has failed to comply with the Regulations 4(3), 5(2)(b), 6, 7, 8, 9, 12, 14, 26 of ILDS Regulations provisions of the ILDS Regulations in respect of the aforesaid issuance of NCDs?

8.1. It is alleged in the SCN that the Noticee had violated the provisions of ILDS Regulations as private placement of NCDs of ISIN INE735W08012 ultimately turned out to be Deemed Public Issue because of downselling of NCDs by KCL to 355 investors.

8.2. The Noticee in response to the allegations levelled in the SCN has submitted that it was not aware of the downselling of NCDs by KCL until it received an email from SEBI dated July 23, 2021. The Noticee has also submitted that no discussion about downselling of NCDs had taken place between KCL and the

Noticee and the Noticee cannot be expected to control the actions of KCL after allotment of debentures to it. Further, the Noticee has mentioned that as per SDD and Stakeholder Relationship Committee's resolution dated July 11, 2018, the debentures were allotted to only one investor i.e. KCL.

8.3. Here, I would to take note of following facts pertaining to the case:

8.3.1. KCL transferred funds of Rs. 25 crores to the Noticee for subscribing to the said NCDs issue, through its PMS-Excel strategy pool account (A/c name: Karvy Capital Limited A/C Excel portfolio) on July 09, 2018.

8.3.2. Noticee transferred NCDs to KCL demat account (A/c name: Karvy Capital Limited A/c Excel Portfolio) on July 19, 2018.

8.3.3. Noticee received BENPOS statement dated July 20, 2018 from its RTA on July 23, 2018, and the said statement indicated that as on July 20, 2018, 355 investors were holding the NCDs.

8.4. I note from the material available on record that the Noticee has no response to the facts mentioned in 8.3.1. and 8.3.2. It is pertinent to mention here that it can be seen from the facts as narrated in 8.3.1. and 8.3.2. that the Noticee was aware of the fact that it was KCL was subscribing to the aforesaid issue of NCDs on behalf of the investors. Otherwise there was no need to transfer the NCDs to the portfolio demat account of KCL.

8.5. In response to 8.3.3., the Noticee has submitted that Noticee's reliance on BENPOS was and has always been limited to procuring the details of holders to whom interest/principal amounts has to be paid on a given due date, the fact that KCL had down-sold the NCDs did not come to its notice merely upon receipt of the BENPOS data. Since there were no interest/principal repayment due dates as on July 23, 2018, the Noticee did not look at the email with BENPOS. Further the Noticee has relied on the judgment of Hon'ble SAT in Avenue Supermarkets Limited v. SEBI, to support its contention that mere receipt of BENPOS data cannot be considered constructive notice.

8.6. I am of the opinion that it would not have required microscopic examination of BENPOS statement by the Noticee, just to ascertain that the number of investors as on July 20, 2018 was not just 1, but there were 355 investors Therefore, the Noticee's contention cannot be sustained. Also, the fact that BENPOS dated July 20, 2018 was the first BENPOS statement that the Noticee had received with respect to the aforesaid NCDs and the Noticee did not bother to have a look at it, shows lack of diligent efforts and lax attitude on part of the Noticee to ensure compliance with relevant regulations.

8.7. It is also noted that KCL was the Debenture Holder Representative of the aforesaid issue of NCDs, which seen in the light of the fact that KCL has transferred funds to Noticee from its portfolio pool account and allotment was made to portfolio demat account, indicate that the Noticee was in the knowledge of allotment of NCDs to 355 investors. The Noticee in this regard has submitted that the NCDs were to be listed, it was expected that the debentures will be traded on the BSE and will change hands multiple times and therefore, it was important to appoint a representative who will act on behalf of the debenture holders. This contention of the Noticee loes its strength when viewed alongside the facts of the present case that KCL has transferred funds to Noticee from its portfolio pool account and allotment was made to portfolio demat account, indicate that the Noticee was in the knowledge of allotment of NCDs to 355 investors.

8.8. Therefore, as noted above, there is enough evidence available on record to believe that the Noticee was aware of the fact that KCL was subscribing to the aforesaid NCDs in the capacity of a portfolio manager.

8.9. The Noticee has also mentioned that the practice of downselling is well known in the market which existed even before the NCDs were issued in July 2018 and the same was highlighted in the SEBI's FY16-17 annual report. On perusal of the relevant extract of the aforesaid annual report, I find that the issue discussed therein is that most of the investors were brought in by the arranger(s) appointed by the issuer and the arrangers use to downsell the bonds to investors without disclosing the price at which the securities were bought. The discussion therein does not pertain to the violations of public issue norms by allotment to more than 200 investors. Therefore, it has no relation to the present proceedings.

8.10. The Noticee has also submitted that SEBI in its order dated April 25, 2023 found that KCL had, in relation to the issuance of the relevant NCDs, failed to disclose its conflict of interest in violation of the erstwhile SEBI (Portfolio Managers) Regulations, 1993 and that SEBI's order penalizing KCL also makes it amply evident that breaches of extant law in relation to the issuance and allotment of the relevant NCDs were entirely on the part of KCL. On perusal on the said order, I find that the facts pertaining to the same are as below:

8.10.1. KCL in capacity of NBFC structured the NCDs for the Noticee, for which it received an advisory fee of Rs.98,55,000/- and thereafter, KCL in capacity of PMS subscribed to 2500 unsecured NCDs of Rs. 1,00,000/-each on behalf of its clients on July 11, 2018 amounting to Rs.25 Crores and transferred the same to its 355 PMS clients on July 20, 2018

8.10.2. Therefore, there was conflict of interest in the dual role played by KCL as a structurer of the deal and also as an investor on behalf of their clients through its PMS arm.

8.11. I am of the opinion that the aforesaid SEBI order dated April 25, 2023, in no way puts the entire blame for the violation of norms of public issue in respect of issuance of aforesaid NCDs, on KCL. Therefore, the Noticee's contention is devoid of merit.

8.12. The Noticee has also submitted that ROC hasn't imposed any penalty on the Noticee for the violations of Section 33(1) and Section 42 of the Companies Act. In support of its contention, the Noticee has quoted the Adjudication Order of ROC, Kanpur dated November 10, 2022. In this regard, it may be noted that for violation of provisions pertaining to public issue of NCDs, SEBI is empowered to initiate proceedings under the provisions of ILDS Regulations as the case of issuance of NCDs in the instant matter by the Noticee. In addition to the same, I also note that SEBI has passed an order against KCL as stated above. However the same does not, in anyway diminish the liability on part of the Noticee in not following the guidelines prescribed under ILDS Regulations if there is a breach of norms of public issue.

8.13. The Noticee has also contended that they did not have any contention to violate the public issue norms. In support of the same, the Noticee has brought on record the fact that in subsequent issue of NCDs in the month of August 2018, which was subscribed by the same entity i.e. KCL were downsold by KCL to 103 investors without any initiation to the Noticee, which is well within the private placement limit of 200 investors. In this regard, I am of the opinion that the Noticee's contention that the subsequent issue did not lead to violation of public issue norms, does not absolve the Noticee of a breach of law which is being adjudicated in the current proceedings.

8.14. The Noticee has further submitted that violations, if any, on part of the Noticee were venial in nature. I note that the downselling of NCDs has led the Noticee to circumvent the norms of public issue wherein the Noticee has not complied with Regulations 4(3), 5(2)(b), 6, 7, 8, 9, 12, 14, 26 of ILDS Regulations. Hence, the violations on the part of the Noticee cannot be termed as venial only. Hence, the Noticee's reliance on judgment of Bombay High Court in SEBI v. Cabot International Capital Corporation, Hon'ble Supreme Court in Hindustan Steel v. State of Orissa, in Electro Optics v. State of Tamil Nadu and Hon'ble SAT in PG Electroplast & Ors. v. SEBI, in support of the contention that the violation is only technical/venial in nature cannot be accepted.

9. The second issue to be addressed is as follows:

If answer to the aforesaid question in first issue is affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15HB of the SEBI Act?

9.1. From the discussion in the first issue, it is noted that the violations were established as described above and accordingly, I am of the view that the Noticee is liable for imposition of penalty in terms of Section 15HB of SEBI Act.

The text of Section 15HB of the SEBI Act is reproduced as under:

SEBI ACT

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."

10. The third issue to be addressed is as follows:

If answer to the aforesaid question in second issue is affirmative, what should be the quantum of the monetary penalty?

In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI which is reproduced as under:

SEBI Act

15J -Factors to be taken into account by the adjudicating officer

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."

11. It has been submitted by the Noticee that it has not made any disproportionate gain and no loss has been caused to the investors and Noticee's act are not

repetitive in nature under section 15J of SEBI Act. Based on this, the Noticee has requested that no penalty may be imposed on it. To support the same, the Noticee has relied on the judgments viz., the Hon'ble Supreme Court in Siddharth Chaturvedi v. SEBI, Hon'ble SAT in Vitro Commodities Pvt. Ltd. v. SEBI.

12. In this regard, I note that although no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. From the material available on record that there was no investor complaint against the Noticee. Also, the Noticee's default is not repetitive in nature. However, it is pertinent to mention here that the downselling of NCDs has led the Noticee to circumvent the norms of public issue wherein the Noticee has not complied with Regulations 4(3), 5(2)(b), 6, 7, 8, 9, 12, 14, 26 of ILDS Regulations. Therefore, the violations committed by the Noticee cannot be viewed lightly as it has more ramifications on the securities market.

13. While determing the quantum of penalty, the following mitigating factors are taken into account:
    13.1. The debentures have already been redeemed by the Noticee and apparently no complaints of investors are brought on record in these proceedings.
    13.2. Initially the present proceedings arose pursuant to a *suo moto* settlement application filed by the Noticee which was subsequently returned to the Noticee in terms of Regulation 3(5) of the Settlement Regulations, stating that the examination by SEBI in the matter was in progress and that the Noticee may file a fresh application upon completion of the examination.

14. I note from the adjudication proceedings against KCL that SEBI imposed a penalty of Rs. 1.5 lakh on KCL, vide order dated April 25, 2023. Considering the same, as well as the mitigating factors mentioned above, I am inclined to take a lenient view as regards the penalty warranted in the matter.

E. ORDER

15. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15HB, I hereby impose monetary penalty of Rs. 1,00,000 (Rupees one lakh only) on the Noticee.

    I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

16. The Noticee shall remit/pay the said total amount of penalty jointly and within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT >Orders >Orders of AO> PAYNOW;or by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

17. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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 of Noticee.

18. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to Noticee viz. Utkarsh Small Finance Bank and also to SEBI.

Date: September 20, 2023
Place: Mumbai

BIJU S
ADJUDICATING OFFICER