BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2024-25/30719]

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

In respect of:

VISTRA ITCL (INDIA) LIMITED

PAN AAACI6832K

In the matter of inspection of Vistra ITCL (India) Limited

A. BACKGROUND

1. Vistra ITCL (India) Limited (hereinafter referred to as '**Noticee'**) is registered with Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) as a Debenture Trustee (hereinafter referred to as '**DT'**) having registration number IND000000578.

2. SEBI had conducted an inspection of the Noticee for the period from October 01, 2021 to December 31, 2022 (hereinafter referred to as **'inspection period'**). The findings of the said inspection were communicated to the Noticee vide letter dated June 07, 2023. In response to the findings in the inspection report, Noticee submitted a reply vide letter dated June 20, 2023.

3. Based on the findings of the inspection of the Noticee and considering the reply of the Noticee, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the following provisions:

3.1. Regulations 15(1)(r), 15(1)(s) and 16 of SEBI (Debenture Trustee) Regulations, 1993 (hereinafter referred to as '**DT Regulations**'),

3.2. Clauses 4, 13 and 15 of Schedule III of DT Regulations, 3.3. Clause B of Annexure of SEBI Circular CIR/MIRSD/3/2013 dated March 15, 2013,

3.4. Clause 4(c)(vii) read with Annexure II of SEBI Circular CIR/IMD/DF/17/2013 dated October 22, 2013,

3.5. Clause C of SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/230 dated November 12, 2020,

3.6. Clause 3.5 read with Annexure III of SEBI Circular SEBI/HO/DDHS/DDHS1/P/CIR/2021/572 dated June 04, 2021 and

3.7. Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as '**AO'**) vide communique dated August 02, 2023 under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter referred to as '**SEBI Act'**) and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under Section 15HB of the SEBI Act for the alleged violations committed by Noticee as mentioned above.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter referred to as '**SCN**') bearing No. SEBI/HO/EAD2/NH/RJ//2024/40438 dated September 27, 2023, was issued to the Noticee under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HB of SEBI Act for the aforesaid alleged violations.

6. The SCN dated September 27, 2023, *inter alia*, alleged the following:

"…

6.1. *<u>Failure to carry out due diligence with regard to Material change in NCDs and default recognition in the case of Paranjape Scheme (Construction) Limited (hereinafter referred to as 'PSCL')</u>*

Failure to carry out due diligence with regard to Material change in NCDs

*6.1.1. Regulation 59 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR'**) inter alia states as under:*

*"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 non-convertible debt securities debenture in terms of coupon, redemption, or otherwise. …"** (Emphasis added)*

*6.1.2. During the course of the inspection, it was observed that the Noticee was acting as the DT for non-convertible debentures (hereinafter referred to as '**NCDs'**) issued by Paranjape Schemes (Construction) Limited (hereinafter referred to as '**PSCL'**). Initially, the date of redemption of the said NCDs was October 31, 2019. It was observed that the redemption date of the said NCDs issued by PSCL was changed three times vide 4th, 5th and 6th amendments to the trust deed. The details of the said 4th, 5th and 6th amendments to the trust deed are provided below:*

- *Vide 4th amendment to the trust deed dated November 14, 2019, the date of redemption of the said NCDs was extended to three dates:*
    - *20% redemption on October 31, 2020,*
    - *30% redemption on January 31, 2021 and*
    - *50% redemption on April 30, 2021*
- *Vide 5th amendment to the trust deed dated October 22, 2020, the date of redemption of the said NCDs which were due on October 31, 2020 and January 31, 2021 was extended to April 30, 2021 and*

- *Vide 6th amendment to the trust deed dated November 24, 2021, the date of redemption of the said NCDs was extended to March 31, 2022.*

6.1.3. *In the PIA, it is alleged that Noticee vide email dated April 21, 2023 to SEBI has, inter alia, mentioned that the prior approval of the Stock Exchange was not taken by PSCL before undertaking the aforesaid modifications to the structure of said NCDs. In this context, it is alleged that the said 4th, 5th and 6th amendments to the trust deed were made without the prior approval of the Stock Exchange in contravention of Regulation 59 of LODR.*

6.1.4. *It is noted that Regulation 15(1)(r) of DT Regulations inter alia requires DT to inform SEBI immediately of any breach of the trust deed or provision of any law, which comes to the knowledge of the trustee. Further, Regulation 15(1)(s) of DT Regulations inter alia requires DT to exercise due diligence to ensure that the Issuer complies with the provisions of the Companies Act, LODR or any other regulations issued by the Board.*

6.1.5. *In this regard, it is alleged in the PIA that the Noticee has failed to exercise due diligence to ensure compliance by PSCL with the provisions of Regulation 59 of LODR. Further, it is alleged that the Noticee has not informed SEBI about the breach of Regulation 59 of LODR by PSCL as per the mandate of Regulation 15(1)(r) of DT Regulations.*

6.1.6. *Therefore, Noticee is alleged to have violated Regulations 15(1)(r), 15(1)(s) and 16 and Clause 4 of Schedule III of DT Regulations, 1993.*

Failure to disclose the event of default

6.1.7. *As per the 6th amendment to the trust deed dated November 24, 2021, the date of redemption of the NCDs issued by the PSCL was March 31, 2022. However, it is alleged in the PIA that PSCL did not pay the redemption amount which was due on March 31, 2022.*

6.1.8. *In terms of Regulation 15(1)(s) of the DT Regulations read with Clause C of SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/230 dated November 12, 2020 (hereinafter referred to as '**SEBI Circular dated November 12, 2020'**), DTs are required to exercise due diligence and disclose the event of* *default and status of payment of interest/principal for listed NCDs on its website.*

6.1.9. *In this context, it is alleged in the PIA that despite the non-payment of the redemption amount by PSCL on March 31, 2022, Noticee did not declare the said NCDs issued by PSCL as 'default' in the 'default disclosure' made on its website. Further, it is alleged that the said instrument of PSCL was not included in the disclosure made in respect of the 'status of payment of interest/principal by the listed entity'.*

6.1.10. *Thus, it is alleged in the PIA that Noticee has failed to exercise due diligence in disclosing the said event of default and the status of payment of interest/principal for the NCDs of PSCL on its website. Therefore, it has allegedly violated Regulations 15(1)(s) and 16 and Clause 4 of Schedule III of DT Regulations read with Clause C of SEBI Circular dated November 12, 2020.*

6.2. *<u>Failure to share information with Credit Rating Agency (CRA)</u>*

6.2.1. *During the inspection, Noticee was asked to share all the intimations sent to CRA about the delay in payment and restructuring for the said instruments issued by PSCL from the date of first rescheduling in terms of redemption to the end of the inspection period. In this context, it was observed during inspection that PSCL had not paid the redemption amount for its NCDs on March 31, 2022 as per the 6th amendment deed to the trust deed.*

6.2.2. *It is noted that Regulation 16 and Clauses 4 and 13 of Schedule III of DT Regulations read with Clause B of Annexure of SEBI Circular CIR/MIRSD/3/2013 dated March 15, 2013 inter-alia mandates DT to share information regarding the default committed by the Issuer including the default in payment of interest or redemption of debentures or delay in creation of security with CRA.*

6.2.3. *In this context, it is alleged in the PIA that there was no communication from Noticee to CRA regarding the non-payment of the redemption amount for the said NCDs issued by PSCL. Therefore, it is alleged that the Noticee has failed to inform CRA about the payment status of the said NCDs issued by PSCL.*

6.2.4. *In this context, the Noticee is alleged to have violated Regulation 16 and Clauses 4 and 13 of Schedule III of DT Regulations read with Clause B of Annexure of SEBI Circular dated March 15, 2013.*

6.3. Failure/Delay in updating default history in Centralized Database for Corporate Bonds/Debentures

6.3.1. *During the inspection, it was also observed that Noticee has delayed in updating the default history in the Centralized Database for Corporate Bonds/Debentures for the following Issuers:*

Issuer Name	***ISIN***	***Interest due Date***	***Default updated on the database***	***Delay in days***
Hindustan National Glass and Industries Limited	*INE952A07037*	*November 23, 2020*	*February 21, 2023*	*813*
		November 23, 2018	*February 21, 2023*	*1544*
		November 23, 2019	*February 21, 2023*	*1179*
	INE952A07045	*February 03, 2020*	*February 17, 2023*	*1103*
Blue Horizon Hotels Private Limited	*INE416S07035*	*May 31, 2022*	*April 20, 2023*	*317*

6.3.2. *Further, it was observed that Noticee had failed to update the default history in the Centralized Database for Corporate Bonds/Debentures for the following Issuer:*

Issuer Name	***ISIN***	***Redemption Date (Defaulted in redemption)***
PSCL	*INE694I07061*	*March 31, 2022*
	INE694I07046	*March 31, 2022*
	INE694I07012	*March 31, 2022*
	INE694I07038	*March 31, 2022*

6.3.3. *In terms of SEBI Circular no. CIR/IMD/DF/17/2013 dated October 22, 2013, SEBI/HO/DDHS/DDHS1/P/CIR/2021/572 June 04, 2021 and*

SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021, DT has to verify and update default history information about an instrument/issuer in Centralized Database for Corporate Bonds/Debentures within 7 days of the knowledge of default.

6.3.4. In this context, it is alleged in the PIA that the default by the Issuers, Hindustan National Glass and Industries Limited and Blue Horizon Hotels Private Limited were updated in the said Centralized Database by the Noticee after a substantial delay. Further, it is alleged that despite having information that the Issuer, PSCL has not undertaken final redemption as per the 6th amendment deed, Noticee did not update the said default by PSCL in the said Centralized Database.

6.3.5. In view of the above, Noticee is alleged to have violated Regulation 16 and Clause 15 of Schedule III of DT Regulation read with Clause 4 (c) (vii) read with Annexure II of SEBI Circular CIR/IMD/DF/17/2013 dated October 22, 2013, Clause 3.5 read with Annexure III of SEBI Circular SEBI/HO/DDHS/DDHS1/P /CIR/2021/572 June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021….”

7. From the record, I note that Noticee, vide letter dated October 11, 2023, submitted its reply to the SCN. Noticee, *inter alia,* submitted as under:

“….

7.1. *Vistra states that it always carries out independent due diligence to ensure that the issuer complies with, among other things, the LODR Regulations. It is submitted that the obligation to take approval of stock exchange(s) before material modification to the structure of non-convertible debt securities under Regulation 59(1) of the LODR Regulations is on the issuer or the listed entity and not on Vistra.*

7.2. *In the present case, there are only two subscribers of the NCDs and both had approved the execution of various amendment agreements (Amendment Agreements) to the trust deed.*

7.3. *Further, it is submitted that on a purposive interpretation of Regulation 59 of the LODR Regulations, a change in date of redemption of the debentures may not* *amount to a 'material' change in structure of the debentures especially when the underlying beneficiaries / debenture holders are agreeable to the same. Hence, prior approval of stock exchange may not be considered as a mandatory prior requirement for execution of the Amendment Agreements. Given such a purposive interpretation and the fact that there was no down selling of debentures proposed, Vistra ought not to be considered to be in breach of any of its obligations as a debenture trustee as set out in the DT Regulations and the circulars issued by SEBI with reasonable diligence.*

<u>Execution of the Amendment Agreements do not constitute material modification to structure of the NCDs</u>

7.4. *Amendments to the structure of the NCDs would occur only if there is a monetary impact on the issuer or the nature of the security is altered. On a purposive interpretation of Regulation 59 of the LODR Regulations, it is plausible for a debenture trustee to not strictly insist on the issuer's compliance with Regulation 59 of the LODR Regulations, particularly, when the agreement only alters the terms for redemption of the NCDs with the consent of all the debenture holders.*

7.5. *In the present case, under the Amendment Agreements, there has been no negative monetary impact on the d8ebenture holders. In view of the above, it is submitted that the consent of stock exchange(s) was not strictly required under Regulation 59 of LODR Regulations prior to execution of Amendment Agreements.*

<u>Vistra exercised due diligence to ensure that the Regulation 59 of the LODR Regulations was complied with by PSCL</u>

7.6. *SEBI has alleged in the Show Cause Notice that Vistra failed to exercise due diligence to ensure compliance by PSCL with Regulation 59 of the LODR Regulations, and thus, breached its due diligence obligations. As stated above, in the case of execution of the Amendment Agreements, approval of the relevant stock exchange prior to the issuer and debenture holders agreeing to extend the timelines for redemption of the NCDs was not necessarily required. Hence, it is submitted that Vistra was not required to ensure that PSCL complies with Regulation 59 of the LODR Regulations.*

7.7. *In any event and without prejudice to the above, as a law-abiding intermediary, Vistra had informed PSCL over a call that it should, as a matter of good order,* *seek approval of the stock exchange prior to execution of the aforesaid Amendment Agreements to the trust deed. Hence, it is submitted that Vistra exercised due diligence to ensure that Regulation 59 of the LODR Regulations was complied with by PSCL.*

7.8. *Further, Vistra submits that it is trite law that an intermediary cannot be simplicitor implicated for failure of due diligence when there are findings of non-compliance with respect to the entities which interface with it. Indeed, this position has been crystallised with respect to the responsibilities of certain intermediaries, with the Hon'ble Securities Appellate Tribunal having concluded that "specific material evidence" ought to be brought on record for a charge of lack of diligence against an intermediary to be maintained. Further, this proposition has been reiterated on multiple occasions by the Hon'ble Tribunal. As such, it is submitted that the Show Cause Notice, having failed to lead specific material vis-à-vis the role of Vistra with respect to non- compliances primarily at the end of the issuers, does not make out any circumstance of the continuation of the present inquiry or imposition of any penalty against Vistra.*

Vistra complied with its disclosure obligations under law and acted as a responsible intermediary

7.9. *SEBI has alleged in the Show Cause Notice that Vistra failed to inform SEBI about breach by PSCL of the Regulation 59 of the LODR Regulations. As stated above, on a purposive interpretation Regulation 59 of the LODR Regulations, it is plausible that prior approval of stock exchange was not required for execution of the Amendment Agreements. Consequently, Vistra was not required to make disclosures to SEBI with respect to any purported breaches of Regulation 59 of the LODR Regulations by the issuer.*

7.10. *Without prejudice to the above, we state that Vistra has set up a robust process and policy to (a) ensure that issuers take consent of stock exchanges prior to executing amendments to the trust deeds which extend the timelines for redemption of non-convertible debentures; (b) update SEBI about any breach of Regulation 59 of the LODR Regulations by issuers; (c) inform stock exchange about any breach of Regulation 59 of the LODR Regulations, besides scheduling a meeting of debenture holders within three (3) days of breach of any covenant and obtaining their instructions at the said meeting.*

<u>Disclosure of PSCL's default in payment of redemption amount</u>

7.11. *Pursuant to the 6th amendment to the trust deed, PSCL was required to redeem the NCDs by 31 March 2022.*

7.12. *Despite the continued default, as late as 15 June 2023, the debenture holders instructed Vistra to not take any action against PSCL as the same may have an adverse impact the value of the security/NCDs or PSCL's ability to redeem the NCDs unless specifically instructed in writing by them (debenture holders). Further, to verify the redemption confirmation of the NCDs, the stock exchange website was checked on a regular basis. However, there was no disclosure available on the website regarding the payment of the redemption amount and the requisite disclosure was made only on 11 May 2023.*

7.13. *Vistra submits that it has always acted in the best interests of the debenture holders and the two debenture holders were aware of the defaults in payments by PSCL under the NCDs and Vistra was informed of such knowledge. Further, in view of the instructions received from the debenture holders, it is submitted that Vistra had made the appropriate disclosures and was not required to disclose details regarding the status of payment of interest / principal for the NCDs on its website.*

7.14. *Vistra's actions pursuant to instructions from debenture holders as set out above cannot invite penalties, more so when the purpose of the DT Regulations and the circulars issued by SEBI are to protect interests of debenture holders and their right to receive information regarding any defaults.*

7.15. *Without prejudice to the above, Vistra submits that it shall amend its internal policies to include that details of all defaults be disclosed on its website even if relevant disclosures are made to debenture holders directly.*

<u>Vistra has adequate system in place to share information with the CRA</u>

7.16. *Regulation 16 read with clauses 4 and 13 of the code of conduct defined in the Schedule III of the DT Regulations and the 15 March 2013 Circular require a debenture trustee to inform the CRA on an as and when basis if there is any default / delay in the payment of interest or redemption of debentures or any delay in creation of security.*

7.17. *Vistra submits that it diligently tracks payment of interest / principal as per the interest payment calendar disclosed for every financial year on Vistra's website.*

Further, as a matter of practice, Vistra first seeks payment confirmation from the issuer company, and if the issuer company does not revert within the required timeline, we follow up with the debenture holder for confirmation, and thereafter, Vistra checks disclosures made by the issuer company on stock exchanges.

7.18. *Moreover, the tracking of payment of interest/ principal is done through an in-house developed Bond System by which automatic reminders are directly sent to the issuer companies reminding them about the payment due dates. This system generated communication is sent directly on T-7 basis, in compliance with the regulatory framework.*

7.19. *Vistra submits that as a debenture trustee, we had reached out to the debenture holders and informed about the default in payment of the redemption amount (i.e., by 31 March 2022). As stated above, the two debenture holders were aware of the defaults in payments by PSCL under the NCDs and the debenture holders had instructed Vistra to not take any action which may have an adverse impact the value of the security/NCDs or PSCL's ability to redeem the NCDs unless specifically instructed in writing. Further, Vistra understands from the debenture holders that they were in discussions with Issuer. Vistra submits that it has not informed the CRA given that debenture holders were already directly deliberating the matter with the Issuer.*

7.20. *It is evident that Vistra, to the best of its ability, has complied with its obligations under the DT Regulations and the 15 March 2013 Circular. In light of the evolving facts regarding the restructuring of the NCDs and acting on the clear instructions of the debenture holders, Vistra was unable to proceed unilaterally in the absence of consent/approval from the debenture holders to do so.*

Vistra is diligent in updating default history on the Centralized Database

7.21. *SEBI's circular numbered CIR/IMD/DF/17/2013 dated 22 October 2013 (22 October 2013 Circular), and the 4 June 2021 Circular mandates a debenture trustee to verify and update default history information about an instrument / issuer, as applicable in the Centralized Database, within 7 days of knowledge of default.*

Inadvertent delay in updating the Centralized Database

7.22. *Vistra submits that it regularly updates default cases in the Centralized Database. However, there has been an inadvertent delay in updating the default* *history of Hindustan National Glass and Industries Limited (INE952A07037 and INE952A07045) for the interest payments due on 23 November 2018, 23 November 2019, 23 November 2020 and 3 February 2020 and Blue Horizon (INE416S07035) for the interest payments due on 31 May 2022. Vistra submits that these defaults are unique and do not demonstrate systemic failure on part of Vistra. Further, in the instances mentioned by SEBI in the Show Cause Notice, Vistra had regularly updated all stakeholders including the debenture holders and issuers about the defaults. It is also pertinent to mention that Vistra is the debenture trustee for debentures issued by numerous entities and there have been only two sets of lapses identified in the Show Cause Notice which demonstrates that the delay in updating the Centralised Database arose from inadvertence instead of a systemic failure.*

7.23. *Without prejudice to the above, Vistra submits that it is constantly improving its processes and policies to ensure that such inadvertent delays in updating the Centralized Database are prevented. Therefore, Vistra requests SEBI that the delay in updating defaults in the Centralized Database may be excused.*

Instructions from the holders of debentures issued by PSCL to not take any action

7.24. *As stated above, Vistra had received specific instructions from the debenture holders to not undertake any action without written approval from them. Further, in light of the proposed extension of the timelines for redemption of the NCDs, PSCL's default in non-payment of the redemption amount was not updated in the Centralized Database. Given the unique circumstances of this case, Vistra submits that no inquiry ought to be held against Vistra on this allegation.*

The facts of the case neither warrant an inquiry nor imposition of any penalty

7.25. *It is submitted that since there is no violation of the DT Regulations, as alleged or otherwise, that can be demonstrated in light of the submissions made hereinabove, the facts of the case do neither warrant an inquiry as per Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act nor any imposition of a penalty in terms of section 15HB of the SEBI Act, or otherwise.*

7.26. *Vistra has undertaken sufficient steps and has appropriate mechanisms in place to comply with the DT Regulations. Moreover, Vistra abides by the code of conduct as per the DT Regulations and undertakes its duties earnestly. In such* *circumstances, Vistra submits that imposition of any penalty would be unreasonable.*

7.27. *Without prejudice to aforesaid, it is humbly submitted that on perusal of the Show Cause Notice itself, it becomes abundantly clear that Vistra has not affected the rights of any investor or market participant, nor has it made any unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally.*

7.28. *Additionally, there is also no case of any loss having been caused to anyone on account of the conduct of Vistra, whether intentionally or otherwise. Hence, it is submitted that in view of the parameters / factors laid down in section 15J of the SEBI Act, no penalty ought to be imposed on Vistra.*

7.29. *On the contrary, the material brought on record, unequivocally indicate that Vistra has taken due and adequate steps to inter alia mitigate against the risk of non-compliance by the issuers as well as menial and venial lapses which may creep into operations.*

7.30. *In the above background, it is relevant to note the observations of the Hon'ble Securities Appellate Tribunal in Piramal Enterprises Limited v. SEBI.*

7.31. *Additionally, in Adjudicating Officer, SEBI v. Bhavesh Pabari, the Hon'ble Supreme Court held that the factors laid down in section 15J of the SEBI Act are not exhaustive. Further, additional factors can also be considered in mitigating the quantum of penalty sought to be imposed in a given matter. As such, even without prejudice to Vistra's case that there has been no violation of the DT Regulations and the enumerated circulars, the aforesaid guiding factors may be considered while adjudging the matter…."*

8. In consonance with the Adjudication Rules, an opportunity of hearing on October 26, 2023 was granted to the Noticee vide Hearing Notice dated October 16, 2023. During the hearing held on October 26, 2023, Authorized Representatives (hereinafter referred to as '**ARs**') of the Noticee reiterated the submissions made by the Noticee in its reply dated October 11, 2023. Further, the Noticee submitted that it has filed a settlement application in the instant matter. Furthermore, based on the request of Noticee, Noticee was granted time till November 02, 2023 for additional reply.

9. Thereafter, vide reply dated November 02, 2023, Noticee submitted the following additional response:

"…

9.1. *There was direct interaction between the issuer and the debenture holders with respect to making these amendments took place due to their mutual agreement.*

9.2. *Vistra had informed PSCL over a call that it should, as a matter of good order, seek approval of the stock exchange prior to execution of the aforesaid Amendment Agreements to the trust deed. As such, it has exercised due diligence to ensure that Regulation 59 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) was complied with by PSCL.*

9.3. *Without prejudice to and notwithstanding the aforesaid, it is submitted that a purposive interpretation of Regulation 59 of the LODR Regulations, it is plausible for a debenture trustee to not strictly insist on the issuer's compliance with Regulation 59 of the LODR Regulations, particularly, when the agreement only alters the terms for redemption of the NCDs with the consent of all the debenture holders. This is because a change in date of redemption of the debentures may not amount to a 'material' change in structure of the debentures especially when the underlying beneficiaries I debenture holders are agreeable to the same, especially when there was no down selling of debentures proposed. In fact, under the Amendment Agreements, there has been no negative monetary impact on the debenture holder.*

<u>Direct instructions from the debenture holders</u>:

9.4. *Pursuant to the 6th amendment to the trust deed, PSCL was required to redeem the NCDs by 31 March 2022. However, there were no concrete instruction/directions from the debenture holders to Vistra for any actions to be taken in the matter.*

9.5. *Vistra submits that it has always acted in the best interests of the debenture holders and the two debenture holders were aware of the defaults in payments by PSCL under the NCDs and Vistra was informed of such knowledge.*

9.6. *As such, it is submitted that the alleged failure to make disclosure must be seen from the true and correct facts of the matter, viz., that there were only two* *debenture holders and that they were both aware of the defaults in questions and were engaged with the issuer in this regard.*

<u>Updating default history on the Centralised Database</u>

9.7. *As stated in the Response, there may have been an inadvertent delay in updating the default history of Hindustan National Glass and Industries Limited (INE952A07037 and INE952A07045) for the interest payments due on 23 November 2018, 23 November 2019, 23 November 2020 and 3 February 2020 and Blue Horizon (INE416S07035) for the interest payments due on 31 May 2022.*

9.8. *Vistra submits that these defaults are unique and do not demonstrate systemic failure on part of Vistra. Vistra is the debenture trustee for debentures issued by numerous entities and there have been only two sets of lapses identified in the Show Cause Notice which demonstrates that the delay in updating the Centralised Database rom inadvertence*

<u>Automation of processes</u>

9.9. *In any event, the tracking of payment of interest! principal is now done through an inhouse developed Bond System by which automatic reminders are directly sent to the issuer companies reminding them about the payment due dates. This system generated communication is sent directly on T-7 basis, in compliance with the regulatory framework. In addition to the same Vistra has also developed a module within the bond system with respect to automation of T+1 CRA/Stock exchange/SEBI/NSDL reporting through system and covenant monitoring which is in implementation phase.*

9.10. *By reducing the need for manual intervention and by automation of processes, Vistra ensures continued compliance with the regulatory requirements. …"*

Settlement Application

10. As mentioned in previous paragraphs, the Noticee informed the undersigned about the filing of the settlement application vide letter dated October 25, 2023. After the culmination of the hearing on October 26, 2023, the present matter was kept in abeyance in light of the mandate of Regulation 8(1) of the Securities and Exchange

Board of India (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as '**Settlement Regulation'**).

11. It is noted from the material on record that the settlement application of the Noticee was rejected by the panel of WTMs. The undersigned was informed about the rejection of the settlement application of the Noticee on July 30, 2024.

Hearing after rejection of settlement application

12. Thereafter, in the interest of natural justice, one more opportunity of hearing was granted to Noticee on August 08, 2024 vide Hearing Notice dated July 30, 2024.

13. The hearing was held on August 08, 2024. ARs of the Noticee attended the hearing and reiterated the submissions made by Noticee in its replies dated October 11, 2023 and November 02, 2023. During the hearing, Noticee was given additional time to make submissions till August 14, 2024.

14. In response, Noticee, vide letter dated August 14, 2024, *inter alia*, submitted as under:

"…

14.1. *The Noticee carried out its obligations with reasonable diligence in relation to extension of the timelines for redemption of the NCDs of Paranjape Schemes (Construction) Limited (PSCL). Notably, the decisions regarding amendments to the NCDs were made through direct engagement and mutual agreement between PSCL and the debenture holders. Further, as a responsible intermediary, the Noticee advised PSCL to obtain prior approval from the stock exchange before executing any Amendment Agreements.*

14.2. *The Noticee submits that it has consistently acted in the best interests of the debenture holders. The two debenture holders were fully aware of PSCL's payment defaults under the NCDs and had communicated this knowledge to the Noticee.*

Updating default history of Hindustan Glass on the Centralized Database

14.3. *In addition to the Submissions, the Noticee states that Hindustan National Glass and Industries Limited (Hindustan Glass) was declared as a non-performing asset by DBS Bank Limited on 31 December 2017 and the Hon'ble National Company Law Tribunal, Kolkata Bench admitted Hindustan Glass into corporate insolvency resolution process on 21 October 2021 (CP (IB) No.369 of 2020).*

14.4. *Given the unique circumstances, the Noticee submits that these defaults do not demonstrate systemic failure on part of the Noticee. In any event, the Noticee has set up a robust mechanism and is constantly improving its processes and policies to ensure maximum compliance with applicable laws and regulations.*

14.5. *The Noticee further submits that, during the process of updating the Centralized Database, a technical error was identified. This error resulted in the system inadvertently updating the verification dates of earlier records whenever a new entry with a subsequent default date was made. Upon detecting this issue, the Noticee promptly notified NSDL, which has since confirmed verbally that they are addressing the glitch.*

14.6. *The Noticee submits that the tracking of payment of interest/ principal is now done through an inhouse developed Bond System by which automatic reminders are directly sent to the issuer companies reminding them about the payment due dates. There are two (2) system generated communications (at different times of the day) which are sent directly to the Issuer on T-7 basis, in compliance with the regulatory framework. The system also marks the CRA in this system generated communication in order to ensure that all necessary parties are in loop.*

14.7. *We would also like to highlight that on T+1 basis, the system automatically issues payment confirmation to the CRA and Stock Exchange/s. Further, we wanted to bring to your attention that this system also issues a reminder to the Issuer on the "T" date, being the date of payment.*

14.8. *By reducing the need for manual intervention and by automation of processes, the Noticee ensures continued compliance with the regulatory requirements.*

14.9. *In view of the above, it is humbly requested that the proceedings against the Noticee may be disposed of without any adverse finding or imposition of penalty. The facts of the case do not warrant imposition of any penalty:*

14.10. *Without prejudice to the above, and the Noticee's contentions made in the Submissions, the Noticee humbly submits that the alleged non-compliances in the Show Cause Notice do not demonstrate that the Noticee has (a) affected the rights of any investor or market participant; (b) made any unlawful or disproportionate gains or attained any unfair advantage or avoided any loss illegally; and (c) made repetitive defaults. …"*

15. It is noted that the SCN along with the annexures and the Hearing Notice were duly served on the Noticee. The Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearings.

D. <u>CONSIDERATION OF ISSUES</u>

16. After careful perusal of the material on record, I note that the issues that arise for consideration in the present case are as follows:

I. Whether Noticee has failed to exercise due diligence to ensure compliance of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR'**) by Paranjape Scheme (Construction) Limited (hereinafter referred to as '**PSCL'**) and to inform SEBI about the breach of Regulation 59 of LODR by PSCL and thereby violated Regulations 15(1)(r), 15(1)(s) and 16 and Clause 4 of Schedule III of DT Regulations?

II. Whether Noticee has failed to disclose the event of default and status of payment of interest/principal for listed non-convertible debentures (hereinafter referred to as '**NCDs'**) of PSCL on its website and thereby violated Regulations 15(1)(s) and 16 and Clause 4 of Schedule III of DT Regulations read with Clause C of SEBI Circular dated November 12, 2020?

III. Whether Noticee has failed to share information with Credit Rating Agency (hereinafter referred to as '**CRA'**) regarding the failure of PSCL to pay the due amount of its NCDs and thereby violated Regulation 16 and Clauses 4 and 13 of Schedule III of DT Regulations read with Clause B of Annexure of SEBI Circular dated March 15, 2013?

IV. Whether Noticee has not updated the default history on the Centralized Database for Corporate Bonds/ Debentures in a time bound manner and thereby violated Regulation 16 and Clause 15 of Schedule III of DT Regulation read with Clause 4 (c) (vii) read with Annexure II of SEBI Circular dated October 22, 2013, Clause 3.5 read with Annexure III of SEBI Circular June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular dated August 10, 2021?

V. Does the violation, if any, on the part of Noticee attract a monetary penalty under Section 15HB of the SEBI Act?

VI. If so, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

17. The relevant extracts of the provisions of law[1], allegedly violated by Noticee, are mentioned under:

DT Regulations

"15. (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;

[1] SEBI Circular CIR/MIRSD/3/2013 dated March 15, 2013, SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/230 dated November 12, 2020, SEBI Circular no. CIR/IMD/DF/17/2013 dated October 22, 2013, SEBI Circular no. SEBI/HO/DDHS/DDHS1/P/CIR/2021/572 June 04, 2021 and SEBI Circular no. SEBI/HO/DDHS /P/CIR/2021/613 dated August 10, 2021 are available at SEBI website i.e. www.sebi.gov.in and have not been reproduced here for brevity.

…

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

Schedule III of SEBI (Debenture Trustee) Regulations, 1993

CODE OF CONDUCT

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

…

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

…

15.A Debenture Trustee shall ensure that adequate disclosures are made to the debenture holders, in a comprehensible and timely manner so as to enable them to make a balanced and informed decision.”

E. <u>FINDINGS</u>

I. Whether Noticee has failed to exercise due diligence to ensure compliance of LODR by PSCL and to inform SEBI about the breach of Regulation 59 of LODR by PSCL and thereby violated Regulations 15(1)(r), 15(1)(s) and 16 and Clause 4 of Schedule III of DT Regulations?

18. In the SCN, it was alleged that Noticee did not carry out due diligence with regard to material change in NCDs in the case of PSCL.

19. From the material on record, I note that the Noticee was acting as the DT for NCDs issued by PSCL. It is noted that initially, the date of redemption of the said NCDs of PSCL was October 31, 2019. In this regard, it is not disputed that the redemption date of the said NCDs issued by PSCL was changed thrice vide 4th, 5th and 6th amendments to the trust deed. The relevant details regarding the said 4th, 5th and 6th amendments to the trust deed are provided below:

19.1. Vide 4th amendment to the trust deed dated November 14, 2019, the date of redemption of the said NCDs was extended to three dates:

- 20% redemption on October 31, 2020,
- 30% redemption on January 31, 2021 and
- 50% redemption on April 30, 2021

19.2. Vide 5th amendment to the trust deed dated October 22, 2020, the date of redemption of the said NCDs which were due on October 31, 2020 and January 31, 2021 was extended to April 30, 2021 and

19.3. Vide 6th amendment to the trust deed dated November 24, 2021, the date of redemption of the said NCDs was extended to March 31, 2022**.**

20. I note that the Noticee was aware of the aforesaid three amendments in the trust deeds undertaken by the issuer. It is an admitted fact that the prior approval of the Stock Exchange was not taken by PSCL before making the aforesaid changes in the redemption date of the said NCDs of PSCL**.**

Observations on the submissions of Noticee

21. I note that Noticee has, *inter alia*, submitted various grounds as its defense which are discussed under different headings for ease of discussion:

Change in redemption date was not material change

21.1. Noticee has, *inter alia,* submitted that on a purposive interpretation of Regulation 59 of the LODR, a change in date of redemption of the debentures may not amount to a 'material' change in structure of the debentures especially when the underlying beneficiaries / debenture holders are agreeable to the same. In this regard, Noticee has contended that the prior approval of stock exchange may not be considered a mandatory prior requirement for execution of the Amendment Agreements.

21.2. I note that it is not disputed that the redemption date of the said NCDs issued by PSCL was changed three times vide 4th, 5th and 6th amendments to the trust deed without the prior approval of the stock exchange.

21.3. In this regard, I note that Regulation 59(1) of the LODR, *inter alia,* reads as under:

LODR

"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 non-convertible debt securities debenture in terms *of coupon****, redemption,*** *or otherwise. …"* (Emphasis supplied)

21.4. From the perusal of the aforesaid provision, I note that the Regulation 59(1) of LODR does not carve out any specific exemption from taking prior approval of the stock exchange even presuming that there is a consent of underlying debenture holders. In this context, I note that the change in the redemption date of the NCDs was a material modification in terms of Regulation 59(1) of the LODR. Accordingly, PSCL was under an obligation to take prior approval from the stock exchange before making a material modification to the structure of the NCDs in terms of redemption which the Noticee admittedly failed to do.

21.5. Therefore, the contention of the Noticee cannot be accepted.

Regulation 59 of the LODR would not be applicable

21.6. Noticee has, *inter alia,* contended that:

"Amendments to the structure of the NCDs would occur only if there is a monetary impact on the issuer or the nature of the security is altered. On a purposive interpretation of Regulation 59 of the LODR Regulations, it is plausible for a debenture trustee to not strictly insist on the issuer's compliance with Regulation 59 of the LODR Regulations, particularly, when the agreement only alters the terms for redemption of the NCDs with the consent of all the debenture holders."

21.7. Here, I note that the Hon'ble Supreme Court in the matter of **Raghunath Rai Bareja v. Punjab National Bank**[2], *inter alia,* held as under:

> *"… It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute.* ***Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule****, vide Swedish Match AB vs. Securities and Exchange Board, India, AIR 2004 SC 4219. …"* (Emphasis supplied)

21.8. In this regard, I note that when a statute is unambiguous and clear, recourse cannot be made to any other meaning which might suit one's convenience to justify the violations. Here, it is noted that Regulation 59(1) of the LODR does not provide any exception to the mandate. Further, it is clear that the ambit of Regulation 59(1) of the LODR is not just limited to amendments to the NCDs wherein there is a monetary impact on the issuer or when the nature of the security is altered. Thus, there lies no dispute that altering the terms for redemption of the NCDs even with the consent of all the debenture holders in no manner discharges the issuer from the mandate of Regulation 59(1) of the LODR, to take prior approval of the stock exchange.

21.9. In this context, I note that when the redemption date of the NCDs of PSCL were sought to be altered, necessary care ought to have been taken to ensure that the redemption date was altered only with the approval of the stock exchange as prescribed by law. There is no dispute regarding the fact that no prior approval from the stock exchange was taken by the issuer for altering the date of redemption of the said NCDs. In these circumstances, I note that the interpretation put forth by the Noticee that Regulation 59(1) of the LODR won't be applicable in the present case looks more like an attempt to interpret the LODR in a manner that undermines the core essence of the said Regulation.

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[2] 2007 (2) SCC 230.

21.10. Therefore, the contention of the Noticee cannot be accepted.

Informed issuer

21.11. Noticee has stated that it had informed PSCL over a call that it should, as a matter of good order, seek approval of the stock exchange prior to execution of the aforesaid Amendment Agreements to the trust deed. The Noticee has, further, submitted that therefore, it had exercised due diligence to ensure that Regulation 59 of the LODR was complied with by PSCL.

21.12. In regard to the instant submission, I note that the Noticee has not provided any material/ evidence to show that it had informed the issuer about the mandate of Regulation 59(1) of the LODR. This submission that Noticee informed PSCL without adducing any evidence seems to be an afterthought.

21.13. It is an admitted fact that the Noticee was aware of the three amendments which resulted in the change of redemption date of the NCDs. Here, I note that though the primary obligation of obtaining approval of the stock exchange vests with the issuer, the Noticee cannot wash its hands off the matter because, as a responsible registered intermediary, Noticee had to ensure that the Regulations are followed scrupulously by the issuer. Therefore, I find that the Noticee failed to exercise due diligence to ensure that the PSCL complied with the provisions of the LODR.

21.14. Thus, the contention of the Noticee cannot be accepted.

No specific material brought on record

21.15. Noticee has contended that "specific material evidence" ought to be brought on record for a charge of lack of diligence against an intermediary to be maintained. As such, Noticee has submitted that the Show Cause Notice, having failed to lead specific material vis-à-vis the role of Noticee with respect to non-compliances primarily at the end of the issuers, did not make out any circumstance for the continuation of the present inquiry.

21.16. It is noted that Regulation 15(1)(r) of DT Regulations, *inter alia,* requires DT to inform SEBI immediately of any breach of the trust deed or provision of any law, which comes to the knowledge of the trustee. Further, Regulation 15(1)(s) of DT Regulations, *inter alia,* requires DT to exercise due diligence to ensure that the Issuer complies with the provisions of the Companies Act, LODR or any other regulations issued by SEBI.

21.17. In the present case, the issuer had altered the date of redemption of the NCDs three times without complying with the mandate of Regulation 59(1) of the LODR. This fact is not disputed by the Noticee. In this regard, it has been clearly stated in the SCN that Noticee, in its capacity of DT, has failed to exercise due diligence to ensure compliance by PSCL with Regulation 59(1) of the LODR. Further, it was mentioned that the Noticee has not informed SEBI about the breach of Regulation 59 of the LODR by PSCL in terms of Regulation 15(1)(r) of DT Regulations.

21.18. Accordingly, it noted that the SCN has specifically demonstrated with factual evidence that the Noticee, in its capacity as DT, has failed in its duties. It appears that the contention of the Noticee in this regard is an effort to justify its failure to comply with the DT Regulations.

21.19. Therefore, it cannot be said that the SCN failed to provide specific material vis-à-vis the role of Noticee.

22. I note that the issuer, i.e. PSCL was duty bound to take prior approval from the stock exchange before making changes in the redemption date of the NCDs as per Regulation 59(1) of the LODR. In the present case, admittedly, PSCL had altered the redemption date of the NCDs on three instances without the prior approval of the stock exchange. I note that the DT, i.e. Noticee, despite being aware of the alteration without any prior approval from the exchange, took no steps whatsoever to inform SEBI about the breach of Regulation 59(1) of the LODR by the issuer. Further, the Noticee failed to exercise due diligence to ensure that the PSCL complied with Regulation 59(1) of the LODR.

23. It is established that the Noticee has violated Regulations 15(1)(r), 15(1)(s) and 16 and Clause 4 of Schedule III of the DT Regulations.

II. Whether Noticee has failed to disclose the event of default and status of payment of interest/principal for listed NCDs of PSCL on its website and thereby violated Regulations 15(1)(s) and 16 and Clause 4 of Schedule III of DT Regulations read with Clause C of SEBI Circular dated November 12, 2020?

24. As per the 6th amendment to the trust deed dated November 24, 2021, the date of redemption of the NCDs issued by the PSCL was March 31, 2022. It was observed that PSCL did not pay the redemption amount, which was due on March 31, 2022. In this regard, it was alleged that Noticee has failed to exercise due diligence in disclosing the event of default and the status of payment of interest/principal for the NCDs of PSCL on the website of the Noticee.

25. I note that the fact that PSCL did not pay the redemption amount on March 31, 2022 has not been disputed. In this regard, it is an admitted fact that Noticee did not declare the said NCDs issued by PSCL as 'default' in the 'default disclosure' made on its website. Moreover, the fact that said instrument of PSCL was not included in the disclosure made in respect of the 'status of payment of interest/principal by the listed entity' on its website has also not been disputed.

Observations on the submissions of Noticee

Acting under the instructions of debenture holders

25.1. Noticee has submitted that it has always acted in the best interests of the debenture holders and the two debenture holders were aware of the defaults in payments by PSCL under the NCDs. Further, Noticee has submitted that in view of the instructions received from the debenture holders, it had made the appropriate disclosures and was not required to disclose details regarding the status of payment of interest / principal for the NCDs on its website.

25.2. I note that there is nothing on record to show or demonstrate that the decision of the Noticee to not disclose the status of payment of interest / principal for the

NCDs of PSCL on its website was based on the instructions of the debenture holders.

25.3. Further, I note that the Hon'ble Supreme Court in the matter of **Chandra Kishore Jha v. Mahavir Prasad & Ors.**[3], *inter alia*, held as under: *"... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner....".*

25.4. Therefore, if the salutary principle is kept in perspective, in the instant case, in terms of Clause C of the SEBI Circular dated November 12, 2020, it was incumbent on the Noticee to make disclosures in the 'default disclosure' and 'status of payment of interest/principal by the listed entity' on its website regarding the default by PSCL.

25.5. In this regard, I also note that the Noticee through its submission, is trying to create an impression that the instructions of "debenture holders" can prevail over any statutory law or compliance requirement. In this context, I note that the Noticee cannot show a wilful disregard for the extant laws under the pretext that it was acting under the direction of the debenture holders. Here, I find it pertinent to mention that the interest of debenture holders could have been better served by acting in terms of DT Regulations.

25.6. Therefore, the contention of the Noticee that it was acting under the instructions of debenture holders cannot be considered as a justification for its non-compliance.

26. I note that in terms of Regulation 15(1)(s) of the DT Regulations read with Clause C of SEBI Circular dated November 12, 2020, DTs are required to disclose the event of default and status of payment of interest/principal for listed NCDs on its website.

27. In this context, based on the discussion in the previous paragraphs, I note that despite the default in the payment of the redemption amount by PSCL on March 31, 2022, Noticee did not declare the said NCDs issued by PSCL as 'default' in the 'default disclosure' made on its website. Further, the Noticee failed to include the

[3] 1999 (8) SCC 266.

said instrument of PSCL in the disclosure made in respect of the 'status of payment of interest/principal by the listed entity'.

28. Therefore, I find that the Noticee has violated Regulations 15(1)(s) and 16 and Clause 4 of Schedule III of the DT Regulations read with Clause C of SEBI Circular dated November 12, 2020.

III. Whether Noticee has failed to share information with CRA regarding the failure of PSCL to pay the due amount of its NCDs and thereby violated Regulation 16 and Clauses 4 and 13 of Schedule III of DT Regulations read with Clause B of Annexure of SEBI Circular dated March 15, 2013?

29. It was alleged in the SCN that there was no communication from Noticee to CRA regarding the non-payment of the redemption amount for the NCDs issued by PSCL. Therefore, it was alleged that the Noticee has failed to inform CRA about the payment status of the said NCDs issued by PSCL.

30. As noted above, it is a fact that the PSCL defaulted on the redemption of the NCDs on March 31, 2022. In this regard, it is noted that the Noticee has not disputed the fact that it has not informed the CRA about the payment status of the said NCDs issued by PSCL.

Observations on the submissions of Noticee

Not informed CRA on the instructions of debenture holders

30.1. Noticee has contended that the debenture holders had instructed Noticee to not inform CRA as it may have an adverse impact on the value of the security/NCDs or PSCL's ability to redeem the NCDs. Noticee has submitted that it has not informed the CRA given that debenture holders were already directly deliberating the matter with the issuer.

30.2. In this context, it is noted that, as a SEBI registered intermediary, the Noticee was duty bound to comply with the mandate of the DT Regulations along with the extant Circulars in letter and spirit. It is incomprehensible to fathom how a registered intermediary can justify its non-compliance by claiming that it was acting under the instructions of the debenture holders despite knowing well that the law requires it to inform CRA about the default.

30.3. Therefore, the claim of the Noticee that it went by the instructions of debenture holders while knowing well what the DT Regulations expect them to do cannot be accepted.

31. It is noted that Regulation 16 and Clauses 4 and 13 of Schedule III of the DT Regulations read with Clause B of Annexure of SEBI Circular CIR/MIRSD/3/2013 dated March 15, 2013, *inter alia,* mandate DT to share information regarding the default committed by the issuer, including the default in payment of interest or redemption of debentures or delay in creation of security with CRA.

32. In this context, from the material available on record, I note that there was no communication from Noticee to CRA regarding the non-payment of the redemption amount for the said NCDs issued by PSCL. Therefore, it is established that the Noticee has failed to inform CRA about the payment status of the said NCDs issued by PSCL.

33. Accordingly, I hold that the Noticee has violated Regulation 16 and Clauses 4 and 13 of Schedule III of DT Regulations read with Clause B of Annexure of SEBI Circular dated March 15, 2013.

IV. Whether Noticee has not updated the default history on the Centralized Database for Corporate Bonds/ Debentures in a time bound manner and thereby violated Regulation 16 and Clause 15 of Schedule III of DT Regulation read with Clause 4 (c) (vii) read with Annexure II of SEBI Circular dated October 22, 2013, Clause 3.5 read with Annexure III of SEBI Circular

June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular dated August 10, 2021?

34. In the SCN, it was alleged that Noticee has delayed in updating the default history in the Centralized Database for Corporate Bonds/Debentures in five instances for the following issuers:

Table 1

Issuer Name	**ISIN**	**Interest due date**	**Default updated on the database**	**Delay in days**
Hindustan National Glass and Industries Limited	INE952A07037	November 23, 2020	February 21, 2023	813
		November 23, 2018	February 21, 2023	1544
		November 23, 2019	February 21, 2023	1179
	INE952A07045	February 03, 2020	February 17, 2023	1103
Blue Horizon Hotels Private Limited	INE416S07035	May 31, 2022	April 20, 2023	317

35. Further, it was alleged that Noticee had failed to update the default history in the Centralized Database for Corporate Bonds/Debentures for the following issuer:

Table 2

Issuer Name	**ISIN**	**Redemption date (Defaulted in redemption)**
PSCL	INE694I07061	March 31, 2022
	INE694I07046	March 31, 2022
	INE694I07012	March 31, 2022
	INE694I07038	March 31, 2022

36. In this regard, from the submissions of the Noticee, I note that the Noticee has admitted that there was an inadvertent delay in updating the default history of Hindustan National Glass and Industries Limited (INE952A07037 and

INE952A07045) for the interest payments and Blue Horizon Hotels Private Limited (INE416S07035) in the Centralized Database for Corporate Bonds/Debentures.

37. I note that the Noticee has submitted that Hindustan National Glass and Industries Limited was declared as a non-performing asset by DBS Bank Limited on December 31, 2017 and the Hon'ble National Company Law Tribunal, Kolkata Bench, admitted Hindustan Glass into corporate insolvency resolution process on October 21, 2021. Given the unique circumstances, Noticee has stated that these defaults do not demonstrate systemic failure on the part of the Noticee. In this regard, I note that Noticee has not mentioned this submission in its earlier replies dated October 11, 2023 and November 02, 2023. Further, I note that the fact that an issuer was declared a non-performing asset by a bank or was admitted by the Hon'ble National Company Law Tribunal, Kolkata Bench into the corporate insolvency resolution process does not absolve the duty of the Noticee to comply with the mandate of DT Regulations and other extant Circulars. Accordingly, this contention of the Noticee does not in any manner justify its non-compliance.

38. Further, the Noticee, in its reply, has acknowledged the fact that PSCL's default in non-payment of the redemption amount was not updated in the Centralized Database. In this regard, the Noticee has reiterated that it has received specific instructions from the debenture holders to not undertake any action without written approval from them. The Hon'ble Supreme Court in the matter of **P Sharif-Ud-Din v. Abdul Gani Lone**[4], *inter alia*, held as under: *"... Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow....".* Therefore, I note that if even there was any specific instruction from the debenture holders to not undertake any action against the PSCL, the Noticee was under a legal obligation to comply with the mandate of the extant law.

[4]1980 (1) SCC 403.

39. I note that in terms of SEBI Circulars dated October 22, 2013, dated June 04, 2021 and dated August 10, 2021, DT has to verify and update default history information about an instrument/issuer in the Centralized Database for Corporate Bonds/Debentures within seven days of the knowledge of default.

40. As noted in the preceding paragraphs, the Noticee has undeniably failed to update the default history information pertaining to PSCL, Hindustan National Glass and Industries Limited and Blue Horizon Hotels Private Limited in the Centralized Database for Corporate Bonds/Debentures within seven days of the knowledge of default.

41. Accordingly, I find that the Noticee has violated Regulation 16 and Clause 15 of Schedule III of DT Regulation read with Clause 4(c)(vii) read with Annexure II of SEBI Circular dated October 22, 2013, Clause 3.5 read with Annexure III of SEBI Circular dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular dated August 10, 2021.

V. Does the violation, if any, on the part of Noticee attract a monetary penalty under Section 15HB of the SEBI Act?

42. From the previous paragraphs, it has been established that Noticee has violated the following provisions of law:

42.1. Regulations 15(1)(r), 15(1)(s) and 16 of DT Regulations,

42.2. Clauses 4, 13 and 15 of Schedule III of DT Regulations,

42.3. Clause B of Annexure of the SEBI Circular dated March 15, 2013,

42.4. Clause 4(c)(vii) read with Annexure II of the SEBI Circular dated October 22, 2013,

42.5. Clause C of the SEBI Circular dated November 12, 2020,

42.6. Clause 3.5 read with Annexure III of the SEBI Circular dated June 04, 2021 and

42.7. Clause 2.5 of Chapter XIV of the SEBI Circular dated August 10, 2021.

43. Noticee has contended that no penalty ought to be imposed on it. Noticee further submitted that the material brought on record unequivocally indicated that it had taken due and adequate steps to, *inter alia,* mitigate against the risk of non-compliance by the issuers as well as menial and venial lapses which might creep into operations.

44. In this context, I take note of the decision of the Hon'ble Supreme Court in the matter of **The Chairman, SEBI v. Shriram Mutual Fund & Anr.**[5] wherein it was, *inter alia*, held: *"In our view,* ***the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial."*** (Emphasis supplied)

45. In light of the aforesaid judgment, I note that the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established. In the matter of **SEBI v. Sandip Ray**[6], the Hon'ble Supreme Court, *inter alia,* held as under:

> *"Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/-is not permissible under Section 15HB of the SEBI Act, 1992.After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992. Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/-as inflicted upon noticee no.5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/-in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of."*

[5] 2006 (5) SCC 361.
[6] Civil Appeal No. 791 of 2023.

46. Therefore, I find no merit in the contention of the Noticee, regarding imposition of monetary penalty.

47. I note that the Noticee has relied on the order of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT'**) in the matter of **Piramal Enterprises Limited v. SEBI[7].** In this regard, I note that the observation of the Hon'ble SAT in the said matter was specifically in the context of the violation of the Model Code of Conduct for Prevention of Insider Trading for listed companies read with Regulations 12(3) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015. Therefore, the said matter emanates from a different set of facts and laws and hence, cannot be applied to the present case.

48. Accordingly, the Noticee is liable for payment of a monetary penalty in terms of Section 15HB of the SEBI Act.

49. The text of the abovesaid Section 15HB of the SEBI Act is reproduced below:

SEBI Act

"15HB. Penalty for contravention where no separate penalty has been provided.

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."

VI. If so, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

[7]Appeal No. 466 of 2016 dated May 15, 2019.

50. While determining the quantum of penalty under Section 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

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."

Factors Considered While Imposing Penalty

51. The available material on records neither specify disproportionate gains/unfair advantage made by Noticee nor the loss, if any, suffered by the investors due to such violations. However, I take note of the fact that SEBI has imposed monetary penalties on Noticee earlier for violations of securities laws in its role as a registered DT.

52. I note that DTs play a vital role in ensuring that the trust deed's provisions are followed meticulously, so that the integrity of the debenture instruments is not undermined. In this regard, I, further, note that the extant Regulations, including the DT Regulations, primarily emphasize the protection of the interests of the debenture holder. Therefore, it becomes imperative that the DT complies with the mandate of the law in letter and spirit.

53. In the present matter, there lies no doubt that the Noticee was aware of the default on its NCDs along with the non-compliance with the LODR by PSCL. Despite being aware, the Noticee turned a blind eye to the compliance requirement. In doing so, the Noticee abdicated its duties and responsibilities.

54. Further, I note that timely and adequate disclosures are vital for the effective functioning of the securities market. I note that in the matter of **Mr. Ankur Chaturvedi v. SEBI**[8], the Hon'ble SAT has, *inter alia,* held that:

"…As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty...."

55. However, as established hereinabove, the Noticee did not disclose the event of default and status of payment of interest/principal for the NCDs of PSCL on its website during the inspection period, as required by the law.

56. Moreover, I note that there was a delay in updating the default history in the Centralized Database for Corporate Bonds/Debentures on five instances, wherein the period of delay ranged from 317 days to 1544 days. In this regard, I find it pertinent to mention that there was a delay of over 1100 days in updating the default history in the Centralized Database in three instances.

57. Further, the default by PSCL, on its NCDs, was not updated in the default history in the Centralized Database for Corporate Bonds/Debentures during the inspection period.

58. Thus, there was a failure on the part of the Noticee to discharge its duties in a manner that is expected from a registered intermediary. Such violations by a registered intermediary cannot be justified and condoned.

59. I have taken note of the judgment of the Hon'ble Supreme Court in the matter of **Adjudicating Officer, SEBI v. Bhavesh Pabari**[9] and the orders of the

[8]Appeal no. 434 of 2014 dated August 04, 2015.
[9](2019) 18 SCC 246.

Adjudicating Officers of SEBI in the matter of MITCON Credentia Trusteeship Services Limited and Beacon Trusteeship Limited, as submitted by the Noticee.

60. I have, also, taken note of the fact that there were only two debenture holders for the defaulted NCDs of PSCL. Further, I have noted the submission of the Noticee wherein it stated that it was constantly improving its processes and policies to ensure maximum compliance with applicable laws and regulations.

61. The aforementioned factors have been taken into consideration while adjudging the penalty.

F. ORDER

62. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I, hereby, impose the following penalty on Noticee:

Table 3

Noticee Name	**Violations**	**Penalty Provision**	**Penalty**
Vistra (ITCL) India Limited	o Regulations 15(1)(r), 15(1)(s) and 16 of DT Regulations, o Clauses 4, 13 and 15 of Schedule III of DT Regulations, o Clause B of Annexure of SEBI Circular dated March 15, 2013, o Clause 4(c)(vii) read with Annexure II of SEBI Circular dated October 22, 2013, o Clause C of SEBI Circular dated November 12, 2020, o Clause 3.5 read with Annexure III of SEBI Circular dated June 04, 2021 and o Clause 2.5 of Chapter XIV of SEBI Circular dated August 10, 2021.	Section 15HB of the SEBI Act	Rs. 12,00,000/- (Twelve Lakhs only)

63. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of Noticee.

64. Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through the 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.

65. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to the Securities and Exchange Board of India.

Date: August 29, 2024	**N HARIHARAN**
Place: Mumbai	**ADJUDICATING OFFICER**