BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/KG/2022-23/17219]

UNDER SECTION 15-I OF 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 RELIANCE CAPITAL LIMITED (L65910MH1986PLC165645)

BACKGROUND:

1. The Securities and Exchange Board of India ("SEBI") had received communications dated December 05, 2019 and January 23, 2020 from Vistra ITCL (India) Ltd (hereinafter referred to as "**Vistra** / **DT**"), a SEBI registered Debenture Trustee, information pertaining to default committed by Reliance Capital Limited (hereinafter referred to as '***Noticee / RC'***) in the repayment of interest/s and/or principal amounts to the various debenture holders. It was informed by DT that the first default by Noticee was committed on October 13, 2019.

2. Accordingly, SEBI had examined the non-compliances by Noticee of the relevant disclosure obligations specified in Chapter III and Chapter VI of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '***LODR Regulations, 2015***') (since both equity and debt securities of the issuer (Noticee) are listed on the stock exchanges). The period of examination was from April 01, 2019 to March 31, 2020.

APPOINTMENT OF ADJUDICATING OFFICER

3. Securities and Exchange Board of India (hereinafter referred to as ***'SEBI'***) has initiated adjudication proceedings in the captioned matter and had appointed Shri K. Sarvanan (Chief General Manager) as the Adjudicating Officer (**AO**) under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter

referred to as '***SEBI Act, 1992'***) read with Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as ***'Rules***'), to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992 the alleged violations of Regulation 56(1)(c)(ii) of the LODR Regulations, 2015 and Regulation 56(2) of LODR Regulations, 2015 read with Regulation 15 (1) (c) of the SEBI (Debenture Trustee) Regulations, 1993 (hereinafter referred to as '***DT Regulations, 1993***). However, pursuant to his transfer, the undersigned was appointed as the Adjudicating Officer vide order dated June 01, 2021, in the matter.

FACTS OF THE CASE:

4. As per information available on the Indiabondsinfo, i.e. a database on all corporate bonds maintained by NSDL, there are a total of 139 ISINs belonging to the Noticee, as of date. Of the total, 129 ISINs pertain to listed issues and 10 pertain to unlisted issues. All 129 listed ISINs are privately placed issues and Vistra is debenture trustee for all ISINs.

5. During the examination period, it was noted that one of the two statutory auditors of RCL *viz;* Price Waterhouse & Co. Chartered Accountants LLP, while carrying out the audit of RCL for FY 2018-19, had tendered its resignation on June 11, 2019 and filed a report under section 143(12)[1] of the Companies Act, 2013 with the Ministry of Corporates Affairs.

6. On further examination, it was observed that RCL in notes to its audited financial result for the FY 2019-20 had disclosed the following –

    (i) PWC, after resigning from the office in June 2019 submitted a report under Section 143(12) of the Companies Act, 2013 with the Ministry of Corporate Affairs for matters relating to Financial Year 2018-19. RCL stated that it,

[1]*As per Section 143(12), an Auditor is duty bound that if in the course of the performance of his duties as auditor, he has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government.*

subsequently, had examined the matter and also appointed legal experts, who independently carried out an in-depth examination of the matters and issues raised therein and concluded that there was no matter attracting the provisions of Section 143(12) of the Companies Act, 2013. It was stated that the matter is under consideration with the Ministry of Corporate Affairs.

It was also noted that the other joint auditor *viz;* M/s Pathak H D Associates had completed the audit for FY 2018-19 and certified the audit report for 2018-19. From BSE's website, it was observed that a disclosure under Regulation 30 of LODR Regulations 2015 was made by RCL on the same day which also carried the Company's denial vis-a-vis PWC's allegation.

(ii) With regard to Regulation 52(3), it was disclosed in the notes to financial statements of RCL that in terms of the SEBI Circular CIR/CFD/CMD/56/2016 dated May 27, 2016, auditor issued audit report with unmodified opinion on annual audited financial results for the year ended March 31, 2020. This is in line with the proviso to Regulation 52(3)(a) of LODR Regulations, 2015.

(iii) With regards to RCL's compliance with Reg. 52(7) i.e. material deviation in issue proceeds, the Company has submitted that there were no deviations during the period under examination. It was further noted that while there were no audit qualifications by the statutory auditor with regards to RCL's financials for FY 2019-20 on a standalone basis, there were two audit qualifications against it on a consolidated basis as loans advanced by two of RCL's subsidiaries i.e. RCFL and RHFL were observed to have been advanced with significant deviations.

<u>Non-submission of documents and Intimation sought by DT</u>

7. In the period subsequent to PWC's aforementioned resignation as one of the statutory auditors of RCL, there were several reports in sections of the print media with regards

to the above. Subsequently, DT vide its letter dated July 04, 2019 had sought clarification / information from RCL about, *inter alia,* the audited/unaudited financials of FY ended March 2019, etc. RCL responded to DT's aforesaid letter vide its letter dated July 22, 2019, *inter alia* informing it that since the Board meeting had not been held, the company did not have the audited financials as on March 31, 2019 and all relevant information i.e. security cover certificate, value of book debts would be provided post holding of Board meeting. It was observed that RCL did not provide the specific information sought by the DT thus hampering its ability to act in the interest of the investors.

8. It is observed that in the event of a default by the issuer company, a Debenture Trustee is required to undertake certain steps to safeguard the interests of the investors. These measures, *inter alia*, include seeking asset cover statement, enforcement of security, appointment of nominee director to the Board of the Issuer Company, etc.

9. From the copy of letter dated August 27, 2019 provided by the DT, it was observed that the DT had made attempts to ascertain the correct financial position of RCL with respect to the debentures issued by it. In this context, it is pertinent to note that a Debenture Trustee is entrusted with the responsibility of protecting the interest of investors. This, *inter alia*, includes calling for reports on the utilization of funds raised, taking steps to enforce the security in terms of the Debenture Trust Deed and the relevant SEBI regulations in the event of a default by the issuer, being declared. From the aforesaid letter, it is observed that the DT had sought to know important metrics relating to the financial position of RCL including total outstanding borrowings, projected cash flow till maturity of debentures, asset-liability ratio, total lending to group associates, etc. As submitted by the DT vide email dated December 16, 2020, this information was provided by the Noticee with a delay on September 16, 2019, and December 06, 2019 and which was allegedly not satisfactory. Importantly, it was *prima facie* observed that RCL had first defaulted on its commitments on October 13, 2019. In this regard, it has been *prima facie* observed that the following information sought by DT has not been provided by RCL –

a) Project cash flow statement not provided by the company.

b) Vistra had asked to provide the break-up of 'Receivables' however the breakup was not provided in satisfactory manner.

c) Company had failed to provide a statement on the criteria of repayment of debentures for the proceeds of the sale of subsidiary companies and process for the same.

d) Statement on monitoring of end-use of the proceeds from sale of RNAM not provided.

e) No confirmation provided by Reliance Capital if the Resolution plan from the issuer evidencing that the existing liabilities are/will be discharged without resorting to additional borrowing etc.

10. It was observed that DT vide its letters dated March 11, 2020, March 24, 2020 and May 14, 2020, had requested RCL for cooperation and assistance and informed on various pendency from Company's end. DT had submitted that it had not received any response from RCL in this regard.

11. Vistra, vide email dated March 18, 2021 and vide letter dated March 11, 2020 had *inter alia*sought several documents which were not provided by the Noticee (details of such documents sought and not received have already been provided to the Noticee along with the show cause notice dated May 7, 2021). It is observed that DT, vide its letter dated March 24, 2020, had also requested RCL to provide list of all 'no-lien', 'no-set off' accounts and details of all bank accounts, opened and operated in the name of Reliance Capital. However, RCL did not provide any information in this regard.

12. In view of the above, it was *prima facie* observed that RCL has violated Regulation 56(2) of LODR Regulations, 2015.

<u>Non-Submission of information pertaining to default in payment of interest/principal</u>

13. Further, Regulation 56(1) of the LODR Regulations, 2015 states that the listed entity shall forward the information mentioned therein to the debenture trustee promptly. However, as per information submitted by DT, RCL did not revert on their emails/phone calls with respect to the information of payment of interest/principal. Thus, DT had to rely on disclosures given by RCL to exchanges. Vide its email dated November 17, 2020, DT had submitted that RCL on many occassions did not revert on their email /phone calls with respect to payment of interest/principal. Thus, it was *prima facie* observed that the Noticee has not complied with Regulation 56 (1)(c) (ii) of the LODR Regulations, 2015 which requires intimation of any default in timely payment of interest or redemption or both in respect of the non-convertible debt securities.

<u>Non-submission of Quarterly Compliance Reports to DT</u>

14. As per Reg. 15(1)(c) of the DT Regulations, 1993, the DT is required to call for periodical status/ performance reports from the issuer company within 7 days of the relevant board meeting or within 45 days of the respective quarter whichever is earlier. As submitted by the DT, vide email dated December 24, 2020, RCL had provided the Quarterly Compliance Reports for June 2019 and December 2019 with a delay of 4 days and 5 days respectively. It is observed that since the company is ultimate source of that information/documents, it is the primary responsibility of the company to provide these documents/information to DT as and when sought by DT. It is observed that a Debenture Trustee cannot fulfill its obligations without the support / cooperation of the issuer company.In view of the above, it was *prima facie* observed that the Noticee has violated Regulation 56(2) for LODR Regulations, 2015 read with Regulation 15(1)(c) of DT Regulations, 1993.

<u>Non-submission of certificates from directors and statutory auditor</u>

15. Further, as per Reg. 15(1)(t) of DT Regulations, 1993, the DT is *inter alia*, required to obtain from the issuer a certificate of an independent chartered accountant giving the value of book debts / receivables. It is observed that the same has not been received by the DT from RCL for the quarter ended March 2020. In view of the above, it was

alleged that the Noticee has violated Regulation 56(2) for LODR Regulations, 2015 read with Regulation 15(1)(t) of DT Regulations, 1993.

16. The relevant provisions of LODR Regulations, 2015 and DT Regulations, 2013 alleged to have been violated by the Noticee are reproduced hereunder –

<u>LODR Regulations, 2015</u>

Documents and Intimation to Debenture Trustees.

56.(1) The listed entity shall forward the following to the debenture trustee promptly:

(c)intimations regarding :

….

(ii)any default in timely payment of interest or redemption or both in respect of the non convertible debt securities;

56.(2) The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.

<u>DT Regulations, 2013</u>

Duties of the debenture trustees.

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

…

(c)call for periodical status/ performance reports from the issuer company within 7 days of the relevant board meeting or within 45 days of the respective quarter whichever is earlier;

…..

(t) In case where listed debt securities are secured by way of receivables/ book debts it shall obtain the following,-

(i) On Quarterly basis-

(a) Certificate from the Director / Managing Director of the issuer company certifying the value of the book debts / receivables;

(b) Certificate from an independent chartered accountant giving the value of book debts / receivables.

(ii) On Yearly basis-

(a) Certificate from the statutory auditor giving the value of book debts / receivables

17. A show cause notice ("SCN") dated May 7, 2021, was issued to the Noticee containing the observations and allegations as already discussed in the preceding paragraphs. The aforesaid allegations, if established, make the Noticee liable for monetary penalty under Section 15A(b) of SEBI Act, 1992 and Section 15HB of SEBI Act, 1992. The Noticee was therefore, called upon to show cause as to why an inquiry should not be held against it in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 read with section 15I of SEBI Act for the aforesaid alleged violations.

18. The provisions of Section 15A(b) and 15HB of the SEBI Act, 1992 are reproduced hereunder –

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

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

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

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.

REPLY TO THE SHOW CAUSE NOTICE AND PERSONAL HEARING

19. The Noticee vide letters dated August 30, 2021 and September 14, 2021 had sought extension of time for filing its reply to the SCN. However, despite allowing such extensions of time, the Noticee had failed to file its reply to the SCN and an opportunity of personal hearing was provided to it on September 15, 2021, which was duly attended by its authorized representative. The said authorized representative of the Noticee sought an adjournment of the hearing which was allowed and the subsequent hearing was scheduled on September 24, 2021 and time was provided till September 25, 2021 for filing its reply. On September 24, 2021, the authorized representative of the Noticee appeared through webex video conference and submitted that denied and disputed the allegations contained in the SCN and submitted that all relevant information was provided to the Debenture Trustee and if there has been any delay in providing such information, there were genuine reasons for such delays. The authorized representative further undertook to file a detailed reply/written submissions to the SCN on or before September 27, 2021 and it was made clear to him that no further extension of time shall be provided for the said purpose. It was also submitted that the Noticee has filed an application seeking settlement of the present proceedings and details of such application were also undertaken to be provided along with its reply to the SCN.

20. The Noticee vide letter dated September 27, 2021, filed its reply, the contents whereof is summarized herein below:

"6. It is submitted that the SCN proposes to impose penalties on the Company. The burden of proof of commission or omission has to be discharged under the SCN. The Company states and submits that the SCN does not disclose any explicit material that could have been dealt with by the Company. The present proceedings

are in the nature of adjudication of penalties on the Company. The burden of proof that needs to be discharged by the SCN is much higher than mere preponderance of probability. We respectfully submit that neither the complaint filed by the Debenture Trustee, nor the material brought before SEBI discharge that very heavy burden of proof. The SCN is liable to be withdrawn or discharged by the Hon'ble Adjudicating Officer on this ground alone. By seeking the Company to respond to baseless allegations, the SCN should not and cannot shift the burden of proof to the Company. The Company further submits that the SCN is based on the complaint filed by the Debenture Trustee. As pointed out in subsequent paragraphs, the Debenture Trustee has been selective and conservative in disclosing material correspondence and emails that could self-demonstrate the bona-fides of the Company while dealing with information requests of the Debenture Trustee.

7. No inspection of documents provided to the Company -It is submitted that the SCN is completely opposed to the principles of natural justice and is liable to be quashed, set-aside/or withdrawn on this ground alone. Vide email dated August 30, 2021, the legal representatives of the Company had requested a complete inspection of documents and records in order to appraise all the material collected against the Company. However, vide e-mail dated September 8, 2021, such request was rejected stating that any document not provided to the Company along with the SCN would not be relied on in the proceedings. It is trite law, that The Hon'ble Supreme Court of India in the matter of ***Securities and Exchange Board of India vs. Price Waterhouse & Co. and others (Civil Appeal Nos 6003-6004 of 2012****), has held that all documents collected during investigation hasto be permitted to be inspected. The non-supply of all information collected, as evident from SEBI's e-mail dated September 8, 2021, is in violation of the principles of natural justice. In this regard, it is pertinent to note the decision of the Hon'ble Supreme Court of India in* ***D.K. Yadav v. J.M.A. Industries Ltd. (1993) 3 SCC 259****, wherein it was held that –*

"it is fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him /her an opportunity of putting forward his/her case. An order involving consequences must be made consistently with the rules of natural justice"

Para-Wise Reply

Our para-wise reply to the SCN is as under:

*8. With respect to paras 1-5, no submissions are being made as the same are factual/ formal in nature. Further, reference is invited to the prior correspondences exchanged between the Company and Vistra and also with the Department of Debt and Hybrid Securities of SEBI, which are annexed hereto and marked as "**Annexure – E".** It is respectfully submitted that SEBI has not taken into consideration our prior filings with the stock exchanges and the correspondence with the Debenture Trustee and, other relevant documents provided to the Debenture Trustee before issuing the SCN. Annexed and marked hereto as "**Annexure – F Colly**" are the Company's letter to the Debenture Trustee dated August 16, 2019, disclosure to stock exchange dated October 11,2019, the Company's letter to the Debenture Trustee dated November 07, 2019, November 11,2019, November 12, 2019, November 22, 2019, November 25, 2019, and December 06, 2019. In addition, pursuant to the asset monetisation process whereby the Debenture trustee had appointed advisors who have signed a Non-Disclosure Agreement ("**NDA**") with the Company thereafter which the Company has provided and continues to provide relevant information to the said advisors of the Debenture Trustee. In addition, pursuant to the asset monetisation process whereby the Debenture trustee had appointed advisors who have signed an NDA with the Company thereafter which the Company has provided and continues to provide relevant information to the said advisors of the Debenture Trustee. It is submitted that the access to virtual data room containing detailed information was provided to the Debenture Trustee (through its advisors) was provided in September 2020. Annexed hereto and marked as "**Annexure – G Colly**" is the*

Company’s letter dated May 19, 2020, and the email dated September 14, 2020. In the event that SEBI wants to consider such information, we shall be pleased to provide such access to SEBI as well.

9. With respect to para 6 -13, we reiterate the true and correct facts of the matter contained in para3.2 above pertaining to PwC’s resignation and its impact on the Company. Further, please note that PwC abruptly tendered its resignation at the unearthly hour of 4.32 am on June 11, 2019, and also filed the resignation letter with MCA on the same day. PwC chose not to attend the audit committee meeting on June 12, 2019 despite being invited to do so. PwC did not even share a copy of the letter with the Company or with SEBI, despite the Company’s repeated requests. The board of directors of the Company reviewed the matter arising out of the letter filed by PwC in the special meeting held on August 8, 2019, and took note of the following aspects:

(a) The joint statutory auditor (who has been the auditor of the Company for the last 3 financial years) was of the view that no violation of Section 143(12) of the Companies Act had been committed.

(b) Opinion of an independent and reputed law firm confirmed “No Violation” under Section 143(12) of the Companies Act and further concluded that the PwC letter was devoid of any rationale or basis and was therefore invalid.

10. The irrational and baseless correspondence from PwC led to the erosion of confidence and trust deficit of various stakeholders-lenders, investors and employees denting the Company’s reputation, despite the fact that the Company had filed a disclosure on the same day carrying a denial to PwC’s allegations. PwC’s actions, thus appear to be baseless, and had the result of severely prejudicing the Company. The submissions made by the Company and noted in the SCN in this regard are repeated and reiterated.

11. It is further submitted that PwC's resignation, built on baseless allegations, threw the Company amidst plethora of challenges including that of completing the audit of itself as well as its subsidiary companies to comply with the LODR Regulations and other SEBI regulations. The Company, vide its letter dated June 28, 2019 informed the stock exchanges that in view of the appointment of new Auditors by the Company's subsidiaries namely Reliance Home Finance Limited and Reliance Commercial Finance Limited, the financial statements whereof are required to be consolidated with the Company, a revised date of Board meeting, inter-alia, to consider and approve the audited financial results (both standalone and consolidated) for the quarter and financial year ended March 31, 2019, would be intimated in due course.

*12. The audit process got delayed and audit figures with respect to the assets including book debtswere not finalized when the letter was received from the Debenture Trustee on July 4, 2019.Further, providing of the information sought (items forming part of the financial statements and impacting the same) would have resulted in non-compliance of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**"). The Company had submitted specific information and explained its inability to provide the financial information sought by the Debenture Trustee in view of its financials not having been audited vide its letter dated July 22, 2019. The financial results were approved by the Company on August14, 2021, and the book debt certificate and asset cover certificates were provided thereafter vide Company's letter dated August 16, 2019, to the Debenture Trustee. It is pertinent to note that even stock exchanges where the Company is listed have weighed on the delay in declaration of financial results on account of resignation of statutory auditor and waived the SOP fine earlier imposed on the Company in light of their policy for exemption of fines levied as per the SEBISOP Circular, after having taken a view that the delay was on account of circumstances beyond the control of the Company. Annexed hereto and marked as "**Annexure – H**" and "**Annexure –I**" are copies of the letter received from stock exchanges dated January 07, 2020.*

13. The Company vide its letter dated October 11, 2019, i.e. prior to the default, had given an advance intimation on stock exchange platform stating that it expected debt servicing by the Company would be delayed. It is significant that the Company vide its letter dated November 12, 2019, had intimated the Debenture Trustee as follows "We would like to bring the above facts, which are already in public domain, to your specific attention and reaffirm that the impact of the Downgrade has resulted in certain lenders accelerating their respective facilities which has consequently impacted our debt servicing ability in the short term. We further understand that making any payment to any lender at this stage may be considered preferential in nature and open to challenge and scrutiny later." It is respectfully submitted that the Debenture Trustee cannot conveniently plead ignorance of the stock exchange disclosures made by the Company to the public at large and go on to allege that the Company did not provide it with specific information.

*14. With respect to the Debenture Trustee's letter to SEBI dated January 23, 2020 with its annexure placed at Annexure-4 of the SCN, it is submitted that the Company has been submitting Quarterly Compliance Report ("**QCR**") and has been constantly corresponding with various stakeholders regarding its inability to service debt as well as the attempts being made towards resolution. While the Debenture Trustee in the aforesaid letter has primarily contended that the Company had not provided a resolution plan, it is submitted that the Company was unable to proceed with asset monetisation process resulting in delay in debt servicing, due to prohibition on the company to dispose of, alienate, encumber either directly or indirectly, or otherwise part with the possession, of any assets except in the ordinary course of business such as payment of salary and statutory dues, pursuant to order dated November 20, 2019, passed by the Hon'ble Delhi High Court, and orders dated December 3, 2019, and December 5, 2019, passed by the Debts Recovery Tribunal (DRT), Mumbai. It is pertinent that multiple legal complexities hindered and have been hindering the various resolution mechanisms* *envisaged by the Company. The Debenture Trustee, without giving time to the Company to submit its resolution plan decided to initiate legal action basis the consent received from certain debenture holders. Despite the aforesaid, in the meeting of debenture holders held by the Company on January 17, 2020, the following agenda was discussed: 1) proposal for withdrawal of proceedings initiated by debenture holders against the company before DRT; and 2) constitution of a committee of debenture holders to discuss and arrive at a resolution outside the DRT process. After discussions inter alia on the above points the meeting was adjourned to January 30, 2020. The meeting was adjourned by the lenders and the information about the same was shared with the stock exchanges.*

15. Notably, in its Point No.4 of the letter dated January 23, 2020, the Debenture Trustee has acknowledged and admitted that they had not received required support and active participation from large debenture holders. Further, the Debenture Trustee has also acknowledged that it was still seeking support from large debenture holders viz LIC, EPFO, Insurance Companies and Banks in the proceedings before the Debt Recovery Tribunal and towards further action.

*16. In fact, the Company's repeated requests to convene a meeting of debenture holders was not only ignored but resisted by the Debenture Trustee, in complete violation of its obligations. Faced with such resistance by the Debenture Trustee, it was the Company which had taken the initiative and convened the meeting of debenture holders, in terms of the Trust Deeds, seeking constitution of a Committee of Debenture Holders (CoDH) for the purpose of considering the Debenture Holders' led Resolution Plan. It is also worth mentioning that the Debenture Trustee, which was present at the meeting of debenture holders, refused to even chair the meeting, which thereafter was chaired by one of the debenture holders. Minutes of the said meeting dated January 17, 2020is annexed hereto as "**Annexure – J**". The meeting of debenture holders convened by the Company on January 17, 2020, had to be adjourned and was held on January 30, 2020. At this meeting, debenture holders passed a resolution approving* *constitution of the CoDH. Pursuant to such resolution, the Trustees thereafter constituted CoDH comprising 50 debenture holders. The Company, convened the meetings and sought constitution of CoDH for driving the resolution process. Such facts, clearly establish the bona fides of the Company.*

17.CoDH at its meeting held on March 3, 2020 constituted a ten- member Steering Committee of Debenture Holders (SteerCo) - comprising LIC, EPFO, Yes Bank, Axis Bank and other debenture holders, representing 54% majority of outstanding debentures. While the Debenture Trustee held several meetings with SteerCo including during the Covid-19 period, the first effective step could be taken by the Trustee only after the expiry of more than 6 months on September 9, 2020, when the appointments of the advisors, SBI Capital Markets Limited and JM Financial Services Limited, was finalised to run a fair and transparent resolution and monetization process. Thereafter, on October 30, 2020, the Debenture Trustee invited EoI from potential investors to purchase the Company's key subsidiaries and assets. Accordingly, the process of monetization of the Company's assets was commenced with an advertisement was issued in this connection, which was published in the newspapers on October 31, 2020.

18. It is further pertinent to note that that the Company has been restrained by the Hon'ble Delhi High Court, the Hon'ble Bombay High Court and the Debt Recovery Tribunal – Mumbai from disposing off or alienating any of its assets. Despite the same, the Company, in the interest of all the debenture holders, is constantly and constructively engaged with the Debenture Trustee and SteerCo to resolve the legal issues and seek removal of the restraint placed on the Company by various courts/DRT to enable monetization of assets.

19. The Company has made timely submission of the QCR and the Company has complied with all applicable laws with respect to issuance of NCDs and clauses of various Trust Deed for issue of Debentures. Further, the Company kept the Debenture Trustee informed of the rating downgrade by CARE Ratings, which was *unjustified and inappropriate since April 19, 2019. The Company also informed the Debenture Trustee about the resignation of PwC as well as the unjustified rating action on September 20, 2019, by CARE, wherein the Company's entire outstanding debt was downgraded to default despite there being no overdue on principal or interest payment to any lender. The Company had, by way of the communication dated September 21, 2019, informed the stock exchanges and through them to the public at large that such biased, unwarranted and unjustified action by CARE would precipitate into a sequence of events that would eventually gravely harm the interests of large number of retail and institutional investors of the Company, having direct and indirect exposure to securities of the Company.*

20. Further, these actions of CARE and PwC catapulted the Company into grave difficulty resulting in pressure from multiple lenders to settle their dues, continuous discussions with various lenders and stakeholders, employee attrition and various other challenges. While the Company has endeavoured to provide timely information to the Debenture Trustee, on account of the aforesaid circumstances, the Company could respond to the Debenture Trustee vide its letter dated September 16, 2019. Based on the information available with the Company, information was shared with the Debenture Trustee without giving it any preferential treatment and without falling foul of other SEBI PIT Regulations. The Company has replied to the queries raised by the Debenture Trustee vide the reply dated September 16, 2019, and December 06, 2019. It would be pertinent for SEBI to examine the conduct of the Debenture Trustee, who is an important fiduciary and market intermediary and whether the Debenture Trustee was acting bona fide and with legitimate purpose and objective while seeking various information from the Company. It is respectfully submitted that the provisions of the LODR Regulations generally and in particular provisions of Regulation 56 does not exempt the Debenture Trustee from applicability of PIT Regulations.

a) In respect of the requirement of the projected cash flow statement not being provided by the Company, reference is drawn to the reply of the Company in *point 5 of the letter dated September 16, 2019 (**Annexed hereto and marked as Annexure- C)** wherein the Company had specifically stated that the Company, being a listed entity will not be able to share/ provide the projected cash flow statement. In compliance with various regulations and other compliances, the financial statements could not be shared with the Debenture Trustee to avoid preferential flow of information as they are other lenders who have exposure to the Company.*

b) In respect of the break-up of 'Receivables', reference is drawn to the Company's reply in point 8 of the letter dated September 16, 2019, wherein the Company had shared the detailed break-up of receivables.

c) In respect of the criteria of repayment of debentures from the proceeds of the sale of subsidiary companies and process for the same, reference is drawn to the Company's reply in point 10 of the letter dated September 16, 2019, wherein the Company had explained to the Debenture Trustee that the Company was in the process of monetising its assets. The Company had also announced its plan to monetise its stake in Reliance General Insurance Company Limited (a 100% owned company) with DRHP having been filed with SEBI. The Company specifically stated that it was committed to honor its debt obligations as per schedule of maturity. Further, as stated hereinbefore, despite the hindrance caused due to various litigation including the ones filed by the Debenture Trustee in November 2019, the process of asset monetisation was hindered. Nevertheless, the Company has been working diligently to monetize the assets and settle the dues of the various lenders.

*d) In respect of the monitoring of end-use of the proceeds from sale of Reliance Nippon Asset Management Limited ("**RNAM**"), it is submitted that the details of the fund utilization from RNAM proceeds was presented to the Debenture holders at the meeting held on December 6, 2019, wherein Debenture Trustee was also present.*

e) With respect of the confirmation provided by the Company regarding the resolution plan from the issuer evidencing that the existing liabilities are/ will be discharged without resorting to additional borrowing etc. It is submitted that at the time of the reply dated September 16, 2019, filed by the Company, the Company was diligently working on monetization of the assets and investments of the Company to reduce the debt obligations of the Company instead of resorting to additional borrowing, which has been conveyed to the Debenture Trustee through various correspondences. The Company was striving towards a resolution plan to settle the debt obligations at the earliest. As stated earlier, the process of monetization of the Company's assets was commenced. At the given point of time, the Company could thus, not have provided such information to the Debenture Trustee.

*21. With respect to paras 11 to 13, it is submitted that the letter of the Debenture Trustee dated March11, 2020, March 24, 2020 and May 14, 2020 were responded to by the Company on May 19, 2020. The delay was on account of the first phase of the Covid -19 lockdown from March onwards, whereby operations were severely hampered due to a complete lockdown. It is pertinent to note that such response, though not forming a part of the record, has been referred to in Annexure – 9 of the SCN, wherein on the first page, the Debenture Trustee has acknowledged that the Company has replied to their letter dated May 14, 2020. Marked and annexed hereto as "**Annexure – G Colly**" is the letter dated May 19, 2020, since the same does not form a part of the record. The key takeaways from the letter dated May 19, 2021 addressed to the Debenture Trustee are mentioned herein below.*

(a) Vide such letter, the Company had expressed difficulty in sharing information on account of national lockdown imposed by the Government of India on March 25, 2020 to contain the spread of Covid-19 pandemic, with Mumbai having been classified as 'red zone' leading to disruptions in public life, availability of extremely limited resources and severely affecting the Company's day to day

*functioning and extremely limited or no access to Company's records. With respect to paragraph 3(i) of the letter dated May 14,2020 from the Debenture Trustee, it was submitted that the Company had never denied the right of the Debenture Trustee to seek information under the provisions of the relevant debenture trust deeds from the Company. However, the Company had requested the Debenture Trustee to appreciate that the Company is a listed entity and hence, in accordance with the provisions of the PIT Regulations, any recipient of confidential information was required to execute agreements to contract confidentiality and nondisclosure obligations. Further, the Company had clarified that such non-disclosure agreements ("**NDA**") may possibly not be applicable in a normal case of debt restructuring, but as the Company's resolution plan envisages monetization of its core businesses, which are its key strategic assets, the same was necessary. This Company was apprehensive that providing such information involved not only the regulatory restrictions pertaining to price sensitive information but also anti-trust related issues. Proceeding on asset monetization transactions without a NDA, especially considering that the recipient of such confidential and price sensitive information may have a conflict of interest with the business to bemonetized, would not only be in the violation of legal provisions but would also beprejudicial to the interests of the Company and also of its debenture holders and other stakeholders. It is submitted that the Company has been constructively engaging with the Debenture Trustee to finalise the NDA since December 2019. All the concerns raised in relation to the NDAs were also being addressed, which is evident from some emails of the Company dated January 29, 2020, February 6, 2020, April 14, 2020, May 4, 2020, and May 6, 2020. Further, it is submitted that the NDA proposed to be executed with JM Financial Services Limited was finalized. It is reiterated that the Company has been driving the complete process with utmost enthusiasm for the benefit of its creditors. Hence, the assertion by the Debenture Trustee that the execution of the NDAs has been pending dueto non-cooperation on part of the Company is incorrect.*

*(b) With respect to para 3(ii) of the said letter, concerning information request of the Debenture Trustee's letter dated May 14, 2019, it was stated that the Company does not object to the right of the Debenture Trustee under the relevant debenture trust deeds to seek information from the Company. In addition to the same, the Company had also assured the Debenture Trustee vide its email dated April 14, 2020, that the Company was in the process of collating and forming a virtual data room and that the information will be shared once the NDA was executed between the parties. In fact, The Company had shared reminder emails dated March 03, 2020, April 14, 2020, April 20, 2020, April 23, 2020, and May 11, 2020, addressed to the Debenture Trustee by way of which it had been continuously following up with Debenture Trustee and requesting them to appoint the financial advisors for the resolution and asset monetisation purpose, when such an action was duly approved by the CoDH in the past meetings. Copies of reminder mails mentioned herein are annexed as "**Annexure - K Colly**". Further, it was also mentioned in the said letter that the Company had sent 8 reminders to the Debenture Trustee asking it to inform the Company regarding appointment of financial advisors and share with the Company their engagement letters. Furthermore, it is pertinent to note that in its email dated April 9, 2020 (copy of the letter as per "**Annexure - L**"), the Debenture Trustee had applauded the Company's efforts and enthusiasm in relation to the continuous efforts being made to finalise the appointment of financial advisors and follow ups in this regard. In view of the aforesaid, the Debenture Trustee's allegation of non-cooperation by the Company is clearly unfair and not justified. It is further submitted pursuant to the execution of the NDA, access to all information was provided in a virtual data room on September 14, 2020, to the advisors of the Debenture Trustee.*

(c) With respect to the briefing on litigations and the query raised by Debenture Trustee in para 3(iii) of the letter dated May 14, 2020, the Company had informed the Debenture Trustee that the same had already been provided to the extent available vide its email dated February 27, 2020, regarding the ongoing

*litigations initiated by other lenders and stakeholders against the Company, as well as orders passed by Courts there under. Further, it is noteworthy to mention here that the Company has promptly shared information pertaining to and connected with said litigations including the letter dated May 14, 2020, received from IDBI Trusteeship Services Limited in relation to Reliance General Insurance Company Limited, which was shared by the Company with SEBI on May 15, 2020. We had been requesting the Debenture Trustee to discuss the legal strategy to be pursued in a coordinated manner in the interests of all debenture holders. The Company has kept Trustee and their legal advisors informed of all litigation matters. Litigation update provided to Trustee and their legal advisors is attached as "**Annexure - M**".*

22. Notwithstanding the above, it is submitted that there is no violation of Regulation 56 (2) of the LODR Regulations. Additionally, as explained hereinabove, all relevant information mentioned in Regulation 56 (1) of the LODR Regulations have been provided to the Debenture Trustee. Regulation 56(1)(a) of the LODR Regulations, which pertains to the submission of annual reportalong with end use certificate to the Debenture Trustee has been complied with insofar as the Company has submitted the Annual Report for 33rd AGM held on September 30, 2019, vide letter dated September 11, 2019, and end use certificate has also been provided to the Debenture Trustee. The relevant correspondence is annexed hereto and marked as "Annexure –N". Further,it is submitted that Regulation 56(1)(b)(ii) of the LODR Regulations, which pertains to service of a copy of notices, resolutions and circulars relating to meetings of holders of non-convertible debt securities has been complied with, insofar as the intimation regarding the meeting of debenture holders on January 17, 2020, which was adjourned and resumed on January 30, 2020,had been served on the Debenture Trustee vide an email dated December 20, 2019. Regulation 56(1)(c)(i) of the LODR Regulations, which pertains to intimation to the Debenture Trustee regarding revision in rating has already been complied with, insofar as the Company has kept the Debenture Trustee updated at all times. Regulation

56(1)(c)(ii) of the LODR Regulations, which pertains to intimation to the Debenture Trustee regarding any default in timely payment of interest or redemption or both in respect of the non-convertible debt securities has been complied within so far as the Company had informed the Debenture Trustee as well as the public at large vide advance as well as timely intimations about the default by the Company's letter dated October11, 2019. The letter is annexed herewith and marked as "Annexure – O". Further, the aspersion casted by the Debenture Trustee alleging that it was unable to reach out to the Company vide its emails/ phones is vehemently denied. It has been the Company's endeavor to reach out various regulators, statutory agencies as well as various stakeholders in order to overcome this crisis and despite the various odds and restricted operations due to Covid 19 pandemic. The Company has coordinated and corresponded with lenders, stakeholders as well as strategic investors to arrive at a resolution plan for the subsidiaries of the Company and monetization of the investments of the Company. Regulation 56(1)(d) which pertains to service of half – yearly certificate regarding maintenance of 100% asset cover, along with the half-yearly financial results has been complied with, insofar as the Company has submitted the financial results for September 30, 2019, and March 31, 2020, to the Debenture Trustee vide emails dated November 1, 2019 and May 15,2020, respectively. Further, the Company has also submitted the certificate of asset cover as on September 30, 2019, and March 31, 2020, from a chartered accountant vide emails dated September 4, 2019, and July 27, 2020, respectively.

23. In light thereof, no violation can be alleged against the Company of Regulation 56 (2) of the LODR Regulations as all the relevant information required to be given under Regulation 56 (1)of the LODR Regulations has already been provided.

24. With respect to para 14, it is emphatically denied that the Company did not respond to the Debenture Trustee's emails/ phone calls in relation to payment of interest/principal. No proof of such baseless allegation has been brought on record in the SCN. It is submitted that it has been the Company's endeavor to reach out *to various regulators, statutory agencies as well as various stakeholders in order to overcome the circumstances including the resignation of the auditors, adverse ratings by rating agencies, in spite of the various odds and restricted operations due to the Covid -19 pandemic, has coordinated and corresponded with lenders, stakeholders as well as strategic investors to arrive at a resolution plan for the subsidiaries of Company and monetization of the investments of the Company. Further, the submissions made hereinabove, and more specifically paragraph 22 are reiterated, in light of which it is denied that the Company has violated Regulation 56 (2) of the LODR Regulations. In any event, the information regarding the defaults have been disclosed to the stock exchanges which have in fact, has been admittedly reliedon by the Debenture Trustee, as is the standard market practice. The Company shared the board resolution dated March 17, 2020, details of which were provided by the Debenture Trustee by an email on July 27, 2020. The copy of the said email and the board resolution is annexed hereto and marked as "**Annexure N Colly".** Notably, the board resolution records that it agreed to undertake and provide all assistance, information, cooperation in a timely manner, as may be required by the Steering Committee, Debenture Trustee and pursuant to which, information was provided through the virtual data room after execution of the relevant non-disclosure agreements. It may be noted that the certificate from the statutory auditor giving the value of book debts by receivables was provided by the Company.*

25. With respect to para 15, it is submitted that the Company has endeavored to submit the compliance reports within the prescribed time limits. The two instances mentioned of delayed submissions of the QCR, pertains to the QCR for June 2019 (submitted on August 19, 2019) and December 2019 (submitted on February 20, 2020), which were on account of the difficult and challenging times that the Company had to face on account of the sudden resignation of the auditor, which happened around June 2019. Post that the Company has been facing and handling a plethora of correspondences, compliances and legal complexities with limited resources available at its disposal. The two instances pointed out by the SEBI are *stray and inadvertent instances. It is significant that in all other instances, the Company has complied with Regulation 56(2) for the LODR Regulations read with Regulation 15(1)(c) of DT Regulations, and in light thereof, it is submitted that the benefit of doubt be afforded to the Company.*

26. With respect to para 16 and 17, it is submitted that the Company has furnished the requisite certificates to the Debenture Trustee on July 27, 2020. Further, it is submitted that the book debts/receivables as on March 31, 2020, be it for the quarter ended or the year ended March 31, 2020,are one and the same in light thereof, it cannot be said that such certifications were not provided to the Debenture Trustee for the quarter ended March 31, 2020. In view of the aforesaid, it is submitted that there has been no non-compliance of Regulation 56(2) of the LODR Regulations read with Regulation 15(1)(t) of the DT Regulations. No submissions are being made in respect of para 17 as no violations have been alleged on the basis of the contents thereof. It is submitted that as can be observed from the copy of emails placed at Annexure 12 of the SCN, that the Company has complied with the various applicable regulations of the LODR Regulations. It is submitted that any breach of the aforesaid is merely venial in nature and as stated herein before, was on account of the financial results for the year ended March 31, 2019, getting delayed for reasons beyond the control of the Company as mentioned hereinabove. It is significant that the exchange has taken a note of the reasons provided, and has reduced penalties accordingly.

27. SEBI must consider the mitigating factors applying to the case at hand: Strictly without prejudice, it is further submitted that as per the regulatory scheme of the SEBI Act, the Adjudicating Officer has to mandatorily consider the mitigating factors mentioned in Section 15-J to determine the quantum of penalty to be imposed in a given case. These are –

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made asa 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.

Judicial precedents have also established that such mitigating factors have to be taken into account by the adjudicating officer while determining the quantum of penalty being imposed. In this regard, it is submitted that the Company has not made any disproportionate gain or unfair advantage, the default alleged in the SCN is not repetitive, and that no loss was caused to investors as a result of the alleged default.

28. It is submitted without prejudice to all submissions on merits the following mitigating factors should be considered:

(a) the Company has been a compliant entity prior to 2019;

(b) The delay in disclosures or non disclosure by the Company, if any, is predicated by events that were beyond the control of the Company, being the resignation of the auditors in early2019 and the declaration of default by CARE in September 2019 resulting in further defaults due to accelerated loan recalls etc;

(c) the Company was severely prejudiced by legal impediments as well as the Covid-19induced challenges and despite the same, the Company has endeavoured to provide information to the extent possible; and

(d) the Company had undertaken steps for asset monetization so that no prejudice is cause to its stakeholders.

29. It is further submitted that Company has never violated any provision of securities laws and places great importance on complying with the law of the land. Considering the above, penalty, if any, on the Company ought to be minimal.

21. I find from the records that the application for settlement filed by Reliance Capital Limited (Settlement Application No 6604/2021 filed by Reliance Capital Limited) was rejected by SEBI and the said rejection was communicated to Reliance Capital Limited vide email dated March 16, 2022.

22. I further note that during the pendency of the instant adjudication proceedings, the Reserve Bank of India **("RBI")** in exercise of the powers conferred under section 45-IE(1) of the Reserve Bank of India Act, 1934, superseded the Board of Directors of Reliance Capital Limited on November 29, 2021 and appointed an Administrator for the said company. Subsequently, on December 2, 2021, the RBI filed an application for initiation of corporate insolvency resolution process **("CIRP")** against Reliance Capital Limited under section 227 read with section 239 (2)(zk) of the Insolvency and Bankruptcy Code, 2016 **("IBC")** read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 before the Hon'ble NCLT, Mumbai Bench. The Hon'ble NCLT vide order dated December 6, 2021 [in CP (IB) No. 1231/MB/2021] commenced the CIRP of Reliance Capital Limited inter alia ordering a moratorium under section 14 of the IBC. These facts have been brought on record by Mr. Nageswara Rao Y, Administrator of the Noticee inter alia through letter dated March 16, 2022, submitted on behalf of the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

23. I have perused the SCN and the documents which were annexed to it and the reply of the Noticee as well as considered the fact of initiation of CIRP against the Noticee. Before going to the merits of the case, it is now essential to deal with a preliminary issue of maintainability of the present proceedings in light of the fact that CIRP has already been initiated with respect to Reliance Capital Limited.

24. At this juncture, it would be appropriate to peruse section 14(1) of the IBC which is reproduced herein below:-

"*Moratorium*

14(1). Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: –

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

25. The applicability of the aforesaid section 14 of IBC on an adjudication proceedings initiated under Chapter VI A of the SEBI Act, has been considered by the Hon'ble Securities Appellate Tribunal ("SAT") in the case of *Dewan Housing Finance Corporation Ltd. Vs. SEBI* (SAT Appeal No. 206 of 2020). Vide its order dated October 9, 2020, it was held as reproduced herein below:

"11. A perusal of the aforesaid provision indicates that the adjudicating authority by order declare moratorium for prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement or order in any court of law, tribunal, arbitration panel or other authority.

12. In our view, the provision is clear and explicit and needs no further elaboration. Pursuant to a moratorium declared under section 14 the institution of suits or proceedings against the corporate debtor is prohibited or continuation of a suit or proceedings. Further, execution of any judgement or order in any court of law, tribunal, arbitration panel or other authority is also prohibited.

<u>13. Thus, where a moratorium has been declared under section 14 of IBC, the authority which in the instant case is SEBI/AO will have no jurisdiction to institute any proceedings. Where a proceeding has already been instituted and during the pendency of the proceedings a moratorium order is passed under section 14 then the authority is prohibited from continuing with the proceedings. This is clear from a bare reading of the provisions of section 14(1) of the IBC</u>."[emphasis supplied]

26. It is pertinent to note that in the absence of an order of the Hon'ble Supreme Court setting aside the aforesaid order of the Hon'ble SAT in *Dewan Housing Finance Limited,* and/or the Hon'ble SAT itself taking a different position in any other analogous case, the ruling in *Dewan Housing Finance Limited,* is the settled law in the given factual scenario, which cannot be deviated from.

27. On a perusal of the orders of the Hon'ble NCLT, Mumbai Bench in in CP (IB) No. 1231/MB/2021, I further Note that vide order dated June 2, 2022, the CIRP which was initiated vide order dated December 6, 2021, has been extended by a further period of 90 days, i.e., till September 2, 2022. As per the relevant provisions of IBC, the statutory moratorium under IBC commences from the admission of insolvency petition to the approval of resolution plan or liquidation. Thus, even as on date, the moratorium under section 14 of IBC is continuing with respect to Reliance Capital Limited.

<u>ORDER</u>

28. In view of the judgment of the Hon'ble SAT in *Dewan Housing Finance Limited,* relevant portions whereof have been cited in the preceding paragraphs, it becomes clear that the present adjudication proceedings against Reliance Capital Limited

cannot be continued and is accordingly disposed of without any directions, without going into the merits of the case.

29. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee through Mr. Nageswara Rao Y, Administrator and also to the Securities and Exchange Board of India.

Date : June 22, 2022 **G. Ramar**

Place : Mumbai **Adjudicating Officer**