BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/SM/2020-21/7791/25]

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

In respect of

Dewan Housing Finance Corporation Ltd.

(Address: 6th Floor, HDIL Towers, Kanekar Marg,
Station Road, Bandra (East), Mumbai – 400051)

In the matter of Dewan Housing Finance Corporation Ltd.

BACKGROUND

1. A department (in short **OD**) of Securities and Exchange Board of India (in short **SEBI**) received a reference from Catalyst Trusteeship Limited, a SEBI registered Debenture Trustee pertaining to Non-Convertible Debentures (in short **NCDs**) issued by Dewan Housing Finance Corporation Ltd. (hereinafter referred to as **Company/Noticee**). During examination, OD observed non-compliance with regards to provisions of regulation 16(1) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (in short **ILDS Regulations, 2008**) read with (r/w) rules 18(7)(b)(ii) and 18(7)(c) of Companies (Share Capital and Debentures) Rules, 2014 (in short **SCD Rules, 2014**) and regulation 52(1) r/w 52(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (in short **LODR Regulations, 2015**) by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. In view of the above, OD initiated instant Adjudication Proceeding against the Noticee to adjudicate upon the above mentioned alleged violations and appointed the undersigned as an Adjudicating Officer, under section 15-I of the Securities and Exchange Board of India Act, 1992 (in short **the SEBI Act, 1992**) r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **Adjudication Rules, 1995**) to inquire into and adjudge under sections 15A(b) and 15HB of the SEBI Act, 1992, the alleged violations of provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulation 52(1) r/w 52(4) of LODR Regulations, 2015. This was conveyed to me vide communique dated December 05, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice dated December 24, 2019 (in short **SCN**) was issued to the Noticee under rule 4 of the Adjudication Rules, 1995 advising Noticee to show cause as to why an inquiry should not be held against it and why penalty under sections 15A(b) and 15HB of the SEBI Act, 1992, be not imposed on it for the violations alleged and specified in the said SCN. The said SCN was sent through the speed post acknowledgment due (SPAD) and to Noticee's e-mail ids as available on record, secretarial@dhfl.com and vijay.tambe@dhfl.com. The said SCN was delivered to the Noticee and the proof of delivery is on record.

4. The allegations in the SCN with regard to Non-Convertible Debentures (in short **NCD**s) issued by Noticee are given below in brief:

   i. *OD observed that Noticee was incorporated in 1984 in Mumbai. Noticee is registered as a NBFC with RBI under section 45-IA of the RBI (Amendment) Act, 1997 and also registered as a Housing Finance Company (HFC) with National Housing Bank (NHB) with permission to accept public deposits. Noticee is primarily in the business of providing home loans and has its equity and some of its debt listed on the stock exchanges.*

   ii. *OD observed that as of May 31, 2019, there were 37 issuances of NCDs, which were publicly placed, and 201 issuance of NCDs which were privately placed by*

Noticee. All publicly issued NCDs are listed on both Stock Exchanges i.e. Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) and are secured. DHFL has following outstanding NCDs issued:

Type of Issuance (Public/Private Placement)	***BSE (Outstanding NCDs in Rs. crore)***	***NSE (Outstanding NCDs in Rs. crore)***	***Total (Outstanding NCDs in Rs. crore)***
Public Issue	*24944.00*	*24944.00*	*24944.00*
Private Placement	*12346.80*	*7284.00*	*19630.80*

iii.

iii. OD made the following allegations against the Noticee:

A. ***Non-creation of Debenture Redemption Reserve (DRR):***

(a) OD observed that as per regulation 16(1) of ILDS Regulations, 2008, the issuer company shall create DRR in accordance with the provisions of the Companies Act, 2013 and circulars issued by the Central Government for the redemption of the debt securities issued by a company, in this regard. Further, as per rule 18(7)(b)(ii) of Share Capital and Debentures Rules, 2014, the company shall create Debenture Redemption Reserve (DRR) in accordance with conditions that "For NBFCs registered with the RBI under section 45-IA of the RBI (Amendment) Act, 1997 [and for Housing Finance Companies registered with the National Housing Bank], 'the adequacy' of DRR will be 25% [of the value of outstanding debentures] issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures". Further, as per as per rule 18(7)(c) of Share Capital and Debentures Rules, 2014, every company is required to create DRR shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen per cent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the methods as specified in the Share Capital and Debentures Rules, 2014.

(b) During examination, OD observed that as of March 31, 2017, there were 25 issues/ISINs which were outstanding of which DRR was not created for 15 ISINs in FY 2016-17 in spite of the Company earning Rs.2896.50 crore as Net profit after taxes during FY 2016-17. Further, as of March 31, 2018, there were 37 ISINs were outstanding, however Noticee did not create any DRR for any of the ISINs during the year inspite of earning Rs.1263.32 crore as Net profit after taxes during FY 2017-18. OD observed from the financial statements for FYs 2016-17, 2017-18 & 2018-19 indicates that the DRR remained unchanged

*at Rs.1170 crore. The copy of e-mail dated June 13, 2019 received from Catalyst, the Debenture Trustee forwarding the list of issues wherein the Noticee did not create any DRR is provided to the Noticee as **Annexure-B** to the SCN.*

*(c) OD also observed from the reply of Catalyst that Noticee had to redeem an amount of Rs.4673.98 crore in the financial year 2019-20. As per rule 18(7)(c) of Share Capital and Debentures Rules, 2014, the DRR requirement, the company has to invest or deposit 15% of the amount maturing i.e. Rs 700.20 crore during the year ending on the 31st day of March of the next year in any prescribed method. In this regard, the Company has replied that "the company continue to maintain a DRR in terms of Rule 18 (7) of the Companies (Shares Capital and Debenture) Rule, 2014. DHFL has also informed that the company has requested the DT to consider an amount of Rs.473.82 crore from its liquid assets as a part of the amounts required to be maintained towards 15% of the NCDs maturing as of March 31, 2020. The company intends to provide for the additional sum of Rs.226.47 crore from internal accrual in days to come." Vide email dated October 18, 2019, Catalyst has denied that any such specific communication was received from Noticee with regard to consider an amount of Rs.473.80 from liquid assets as part of DRR. Copies of emails from Catalyst is provided to the Noticee as **Annexure-C** to the SCN.*

(d) In view of the above, It is alleged that Noticee violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of Share Capital and Debentures Rules, 2014.

B. Submission of Financial Statement

(a) As per regulation 52(1) of LODR Regulations, 2015, the listed entity has to submit unaudited or audited financial results on a half yearly basis within 45 days from the end of the half year to the stock exchange. In case, the listed entity chooses to submit unaudited financial half-yearly results, it has to be accompanied by a limited review report prepared by the statutory auditor. In this regard OD observed that Noticee vide its letter dated March 29, 2019 has made a submission to stock exchange(s) that due to the requirement of submission of the IndAS compliant Audited and Standalone and consolidated Financial Result for the first time requiring additional resources, time and effort as also full time engagement of its accounts and finance team in various non-routine audits and due diligence by various parties, the Company was not in a position to submit the Audited Standalone and consolidated Financial Statements for the financial year ended March 31, 2019. The Company in the aforesaid letter stated that it would ensure that its Standalone and Consolidated Audited Financial Statements for the financial year ended March 31, 2019 would be submitted on or before June 30, 2019. On perusal of BSE's website, it is observed that Noticee has submitted it audited financial result on July 22, 2019 Copy of the letter submitted to BSE is provided to the Noticee

*as **Annexure-D** to the SCN. Thus, it was alleged that Noticee did not make the submission of audited financial for FY 2018-19 within the prescribed time as specified under the provision of regulation 52(1) of LODR Regulations, 2015 and therefore Noticee alleged to have violated the said provision of regulation 52(1) of LODR Regulations, 2015.*

(b) Further, regulation 52(4) of LODR Regulations, 2015 states that listed entity has to submit line items to the stock exchange along with submission of half yearly and annual financial statements. It is observed by OD that Noticee submitted the line items with the audited financial result for year ended March 31, 2019 on July 22, 2019 with a delay of 52 days.

(c) In view of the above, it is alleged that, Noticee did not make the submissions of the audited financial result and line items within the prescribed time as required under regulations 52(1) r/w 52(4) of LODR Regulations, 2015 and hence violated the provisions of regulations 52(1) r/w 52(4) of LODR Regulations, 2015.

iv. In view of the above, it is alleged that Noticee violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of Share Capital and Debentures Rules, 2014 and regulations 52(1) r/w 52(4) of LODR Regulations, 2015.

5. Noticee replied to the SCN vide letter dated January 09, 2020 signed by Shri R. Subramaniakumar on behalf of the Noticee. He replied that the Noticee is under Corporate Insolvency Resolution Process (in short CIRP) by an order dated December 3, 2019 passed by the Hon'ble National Company Law Tribunal, Mumbai (in short **NCLT**) and that he is appointed Administrator for the Noticee. Vide hearing notice dated January 17, 2020, an opportunity of hearing was granted to the Noticee, scheduled on January 30, 2020. The said hearing Notice was sent through SPAD and by e-mail at secretarial@dhfl.com and vijay.tambe@dhfl.com. As seen from record the same was delivered to the Noticee. Officials and authorized representatives (ARs) of the Noticee attended the said hearing on the scheduled date and re-iterated the submissions made by the Noticee vide its reply dated January 09, 2020. During the proceedings of hearing, the ARs requested for additional time to submit additional information and acceding to the said

request, time granted till March 02, 2020. Hearing minutes are on record. Noticee submitted the information vide letter dated January 29, 2020. Replies submitted by the aforesaid Administrator of the Noticee is given below:

- *Noticee submitted that RBI under Section 45-IE (I) of the Reserve Bank of India Act, 1934 superseded the Board of Directors of DHFL and appointed the undersigned as the Administrator under Section 45-IE (2) of the Act.*

Subsequently the Reserve bank of India ("RBI") on November 29, 2019 files an application for initiating corporate insolvency resolution process ("CIRP") against DHFL under Section 227 read with clause (zk) of sub-section (2) of Section 239 of the Insolvency and Bankruptcy Code, 2016 ("Code"), 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 ("FSP Insolvency Rules"). On December 3, 2019 the National Company Law Tribunal bench at Mumbai ("NCLT") commenced the CIRP of DHFL and appointed the undersigned as the Administrator of DHFL ("Administrator").

- *As per Rule 5(b)(i) of the FSP Insolvency Rules read with the Code, an interim moratorium commences on and from the date of filing of the application (i.e. November 29, 2019) and a moratorium commences from the date of admission (i.e. December 3, 2019) of the financial service into CIRP ("Moratorium"). Section 14 of the Code, imposes a moratorium on inter alia:*

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

(b) transferring, encumbering, alienating or disposing off by the Company or 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; and

(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.

- *Accordingly, the Hon'ble NCLT, Mumbai, while passing order dated December 3, 2019 to admit a Regulatory Petition on behalf of Reserve Bank of India to initiate Corporate Insolvency Resolution Process against DHFL, also pronounced as under vide para 7.4 of the order which is reproduced as under (copy of order provided by the Noticee):*

7.4. Upon Admission it is hereby pronounced the "Moratorium" as defined u/s. 14 of the insolvency Code shall commence with effect from the date of Application i.e. 29.11.2019 as prescribed under Rule 5(b)(i) of FSP Rules 2019. On commencement of "moratorium" the institution of any Suit or continuation of proceedings or execution *of any decree against the Financial Service Provider (DHFL) shall be prohibited. Likewise, transferring alienating or disposing of any asset of the FSP is hereby forbidden. Further, any action to foreclose, recover or enforce any security interest created by FSP in respect of its property is also debarred. However, supply of essential goods or services to FSP shall continue uninterrupted and not to be terminated or suspended during "Moratorium" by the Supplier. As prescribed u/s. 14(4), the Order of "Moratorium" shall have effect till the completion of Insolvency Process.*

- *With reference to your show cause notice, I would like to inform as under –*

  Point no 5.A.- Non-Creation of Debenture Redemption Reserve (DRR)

  As per the financial records available, the company had created DRR of Rs.1,170 crore in the financial year 2016-2017 on the outstanding amount of NCDs issued by way of public issue. The DRR amount is more than 25% of the redemption proceeds for the debenture issued through public issue and due for redemption in FY 2020. However, the please do note that we have already initiated a review/audit of the books of accounts and the correctness of this information will subject to outcome of such review/audit.

  However, the Companies (share Capital and Debentures Rules, 2014 ("SCD Rules") were amended on August 16, 2019 and the new rules have been give effect to. The amended Rule 7 of the SCD Rules provides that (amongst other cases), DRR is not required in case of public issue of debentures or privately placed debentures, for Housing Finance Companies ("HFCs") registered with National Housing bank. Since DHFL is a HFC registered with the NHB, as per the amended SCD Rules, the requirement to maintain 25% DRR is not applicable to DHFL. Based on the legal view obtained by the Company, the exemption from maintaining DRR also applies for issuances which have already been made prior to August 2019.

  Further, Rule 7(v) of the SCD Rules requires a company covered in item (A) or item (B) of sub-clause (iii) of clause (b) (which includes public issue and private placement of debentures by HFCs) to invest or deposit (on or before the 30th day of April in each year) at least 15% of the amount of its debentures maturing during the year ending on the 31st day of March of the next year ("Debenture Redemption Fund" or DRF"). Additionally, the proviso to Rule 7(v) of the SCD Rules provides that "the amount invested or deposited as above shall not be used for any purpose other than for redemption of maturing during the year referred above".

  The term security interest has been defined under section 3(31) of IBC to mean:

  "right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.."

  Given the above, contribution towards maintaining DRF for the benefit of NCD holders would be analogous to creation of an encumbrance to secure the payment of amounts due to them. As DHFL is undergoing CIRP process a moratorium has *been imposed under Section 14 of the IBC inter alia on "transferring, encumbering, alienating or disposing off by the Company or any of its assets or any legal right or beneficial interest therein". Therefore, creating of an encumbrance is prohibited by s.14 of the IBC. Hence, there appears to be inconsistency between Section 14 of the IBC and Rule (v) of the SCD Rules.*

In this regard, Section 238 of the IBC provides that: "The provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law" Given the conflict between the provisions of the IBC and the SCD Rules, under s.238 of the IBC, the provisions of the IBC would prevail over the SCD Rules to the extent of the inconsistency. Additionally, kindly note that Section 28(1) of the IBC provides that "notwithstanding anything contained in any other law for the being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely…(b) create any security interest over the assets of the corporate debtor". "For DHFL to be able to maintain DRF during the CIRP process, the Administrator will need to obtain prior approval of the committee of creditors by way of a 66% positive vote for the creation of the encumbrance.

On this basis our legal advisors have advised us that there are legal restrictions in maintaining DRF on an ongoing basis during the CIRP process as it could be in violation of the moratorium under Section 14 and would confer a preferential benefit to a class of debenture holders to the exclusion of other creditors.

I, therefore, request that no proceedings be initiated or penalty imposed for non-maintenance of DRR and DRF.

Further, in point no.5.A.(c) it has been mentioned that "vide email dated October 18, 2019, Catalyst has denied that any such, specific communication was received from Noticee with regard to consider an amount of Rs.473.80 crore from liquid assets as part of DRR. Copies of emails from Catalyst is enclosed in Annexure C." in this regard we would like to draw your kind attention to our email dated April 23, 2019, annexed herewith as Annexure A, whereby DHFL has sent the communication to the Catalyst on the said matter..

Point no.5.B - Submission of Financial Statements

As mentioned above, RBI superseded the erstwhile Board of DHFL on November 20th, 2019 and subsequently files the application for initiating the CIRP against DHFL which was commenced by the Mumbai bench of NCLT on December 3rd. the erstwhile management had submitted their response for the delay in submission of results. However, given that the earlier management is no longer in control and the company is undergoing CIRP with the objective of finding a resolution, kindly condone the delay in submission of results for March 31, 2019 and waive off ant penalty for the same.

I would also like to inform you that the results for the half year ended September 2019 are not yet submitted by the company. The Board meeting for taking the results on record was scheduled for November 25, 2019. However, with the supersession of the Board, the meeting was cancelled. As the Administrator, I have asked for fresh *results to be prepared for 6 months ended September 30, 2019 and also balance sheet as of November 30, 2019 which is required for CIRP process. The audit for the same is in process.*

Also please refer our latter ref no. DHFL/CSD/2019-20/1738 dated 28th November, 2019 addressed to your good-office wherein we had requested you to kindly grant on exemption to the Company from compliance with the applicable SEBI regulation including the SEBI LODR Regulation 2015 for publication of periodical results etc to stock exchanges in view of the actions taken by RBI in respect of the Company

I request SEBI to kindly extend its support in the orderly resolution process of DHFL. I also request that a meeting be held between us to apprise SEBI of the various steps being taken to ensure a satisfactory resolution for the current situation of DHFL.

This letter is without prejudice to and without waiver of any rights, remedies or claims available to DHFL under applicable laws, equity or otherwise and DHFL reserves the right to contest and respond to each averment made in due course. Nothing contained in the SCN may be deemed to be admitted for want of a specific denial.

*(*Noticee, in its reply letter dated January 29, 2020 submitted the following :)

- *The RBI on November 29, 2019 filed C.P.(IB)-4258/MB/2019 before the Hon'ble National Company Law Tribunal, Mumbai bench, ("NCLT") through its General Manager, Department of Regulation in Form No.1 as prescribed under Sub-Clause (i) of clause (a) of Rule 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019 ("FSP Rules") to initiate Corporate Insolvency Resolution Process ("CIRP") against DHFL under the Insolvency & Bankruptcy Code, 2016 ("Code").*
- *As per Rule 5(b)(1) of the FSP Rules, the moratorium under Section 14 of the Code commences from the date of the filing of the Petition by the Financial Sector Regulator i.e. the RBI before Hon'ble NCLT. The Hon'ble NCLT by its order dated December 3, 2019, admitted the Petition filed by the RBI against DHFL and confirmed appointment of the undersigned as the Administrator to perform all the functions of Resolution Professional; complete the Corporate Insolvency Resolution Process of DHFL and ordered commencement of "moratorium" from the date of filing the Petition by RBI i.e. November 29, 2019. Noticee provided a copy of the Order dated December 3, 2019 passed by the Hon'ble NCLT.*
- *It is submitted that Section 14 of the Code provides for moratorium for a corporate debtor undergoing Corporate Insolvency Resolution Process. The Section 14 of the Code reads as under:*

  "... 14. Moratorium - (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 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; ..."

- *Noticee submitted that upon commencement of moratorium period, no proceedings can be instituted and/ or continued against the Corporate Debtor (in the present case DHFL) before any court or authority. The present inquiry initiated against DHFL under Rule 4(1) of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 are proceedings within the meaning of Section 14 of the Code and the present proceedings therefore cannot continue and ought to be stayed during the moratorium period, as mandated by the Code.*
- *Noticee further submitted that the Code is a subsequent statute and the provisions of the Code shall prevail upon the provisions of the SEBI Act in view of the Section 238 of the Code. It is respectfully submitted that this issue has been dealt with and decided by the Hon'ble National Company Law Appellate Tribunal in its order dated May 9, 2019 passed in the case of Bohar Singh Dhillon vs. Rohit Sehgal & Ors. - Company Appeal No. 665 of 2018. In the said judgment and order, the Hon'ble National Company Law Appellate Tribunal held that the provisions of Code will prevail over the provisions of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and SEBI cannot take any coercive action and /or step against the Corporate debtor during the moratorium period. A copy of the said Order passed by National Company Law Appellate Tribunal provided.*
- *In view of the above, it is respectfully submitted that there is a bar in law against SEBI from initiating and I or continuing with the present proceedings against DHFL during the moratorium period. The present proceedings initiated against DHFL cannot proceed further and I or continued during the moratorium period.*
- *Further to above, apart from our submissions made in letter no. DHFL.CSD. 2020:1761 dated January 9, 2020, during the personal hearing granted to us on January 30, 2020 we have also requested your goodself to consider that the entire present management team of DHFL is under tremendous pressure of IBC timelines and that it is utmost important that the spirit of moratorium under the Code needs to be observed in right ernest to enable timely lnsolveny Resolution in this case. Your good self-have been kind enough to appreciate our situation as none of the earlier KMPs are continuing with the company and the erstwhile Board of the Company was superseded on November 20, 2019. In these circumstances, it is respectfully prayed that the present inquiry I proceedings initiated against DHFL pursuant to the SCN dated December 24, 2019 be stayed during the moratorium period.*

6. After taking into account, the allegations levelled in the SCN, reply to SCN and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

7. The issues arising for consideration in the instant proceedings before me are:-

   a. **Whether the Noticee has violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulations 52(1) r/w 52(4) of LODR Regulations, 2015?**

   b. ***Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee?***

   c. ***If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?***

8. Before proceeding further, I refer to the relevant provisions of SEBI ILDS Regulations, 2008, SCD Rules, 2014 and LODR Regulations, 2015 which are reproduced hereunder:

ILDS Regulations, 2008
Debenture Redemption Reserve

16*(1): For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard.*

Share Capital and debentures Regulations, 2014
Debentures

18. (7)*: The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below—*

(a)…..

(b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:—

(i)….

(ii) For NBFCs registered with the RBI under section 45-IA of the RBI (Amendment) Act, 1997 and for Housing Finance Companies registered with the National Housing Bank, 'the adequacy' of DRR will be 25% of the value of

outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

(c) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen per cent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:—

(i) …

(ii) …

LODR Regulations, 2015

Financial Results.

52. *(1)The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty five days from the end of the half year to the recognised stock exchange(s).*

Provided that in case of entities which have listed their equity shares and debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees on the same day the information is submitted to stock exchanges.

(4) *The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:*

(a) credit rating and change in credit rating (if any);

(b) asset cover available, in case of non convertible debt securities;

(c) debt-equity ratio;

(d) previous due date for the payment of interest/ dividend for non-convertible redeemable preference shares/ repayment of principal of non-convertible preference shares /non convertible debt securities and whether the same has been paid or not; and,

(e) next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest/ dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India.

Provided further that the requirement of this sub- regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

<u>FINDINGS</u>:

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue a: Whether the Noticee has violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulations 52(1) r/w 52(4) of LODR Regulations, 2015?

(a) It is alleged in the SCN that for the NCDs issued by Noticee, it did not create Debenture Redemption Reserve (DRR) for 15 ISINs in the financial year 2016-17 and 37 ISINs in the financial year 2017-18. Further, it is alleged that in the financial year 2019-20, Noticee did not invest/deposit 15% amounting to Rs 700.20 crore, of the NCDs maturing as of March 31, 2020 towards DRR requirement. Hence, Noticee violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014. It is also alleged that Noticee did not submit audited financial result and line items within the prescribed time as required under regulations 52(1) r/w 52(4) of LODR Regulations, 2015 and hence violated the provisions of regulations 52(1) r/w 52(4) of LODR Regulations, 2015.

(b) From the reply of the Noticee, it is noted that the Noticee is undergoing insolvency proceedings in the Hon’ble NCLT and that the Hon’ble NCLT, vide its order dated December 03, 2019 in the matter of Reserve bank of India vs

Dewan Housing Finance corporation Ltd. [in CP(IB) No. 4258/MB/2019], has ordered the initiation of CIRP against the Noticee and declared moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 (in short **IBC**). The said NCLT order states that "*Upon Admission it is hereby pronounce that "Moratorium" as defined u/s 14 of the Insolvency Code shall commence with effect from the date of Application i.e. 29.11.2019 as prescribed under rule 5(b)(i) of FSP Rules 2019. On commencement of "Moratorium" the institution of any suit or continuation of proceedings or execution of any decree against the Financial Service Provider (DHFL) shall be prohibited. Likewise. Transferring, alienating or disposing of any asset of the FSP is hereby forbidden. Further, any action to foreclose, recover or enforce any security interest created by FSP in respect of its property is also debarred. However, supply of essential goods or services to FSP shall continue uninterrupted and not to be terminated or suspended during "Moratorium" shall have effect till the completion of Insolvency Process."*

In this regard, I to refer section 14 of IBC:

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 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
(b) transferring, encumbering, alienating or disposing of 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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

As per section 14(1) of the IBC, declaration of moratorium *inter alia* prohibits 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. The section 14(4) of the IBC states that – "*The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*" In this regards, available record shows that, no liquidation order has been passed.

In view of the above, and the various contentions of Noticee, the question before me is whether the instant adjudication proceedings having been instituted can be continued or not? In this regard, I refer to the Report of the Insolvency Law Committee, which was constituted by the Ministry of Corporate Affairs, issued in March, 2018 and is available on the website of IBC in public domain. The said report states the following with respect to the scope of moratorium declared under the IBC:

"….On a plain reading, section 14 is wider in its ambit as firstly, any suit or proceedings cannot be instituted or continued with the consent of the NCLT, and second, the bar on "the institution of suits or continuation of pending suits or proceedings against the corporate debtor" is on first blush, not linked to the assets of the corporate debtor.

The notes on clauses for section 14, read as follows (emphasis supplied): "the purposes of the moratorium include keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default" and "the moratorium on initiation and continuation of legal proceedings, including debt enforcement action ensures a stand-still period during which creditors cannot resort to individual enforcement action which may frustrate the object of the corporate insolvency resolution process." Thus, the intent does not appear to be to debar only those suits or proceedings which affect the assets of the corporate debtor, as these appear to be only one of the components that is barred.

Having said that, it is well understood that a proceeding to assess or determine liability, and a proceeding to recover the assessed or determined liability stand at a different footing. The realisation of the dues is a consequence to the determination of liability. Such an amount determined by any court or authority during the moratorium period may not form part of the insolvency resolution process, as the claims by a IRP/RP are verified as "on the insolvency commencement date"1. However, for such claims to be filed in liquidation, they should stand determined as on the liquidation commencement date. As per section 33(5) of the Code, in liquidation, no suit or other legal proceedings shall be instituted by or against the corporate debtor without the prior approval of the NCLT. Thus, it appears that suits or proceedings which were barred from being continued under CIRP can be re-started. However, since the claims in liquidation are determined as on the liquidation commencement date, the wider moratorium under section 33(5) may not be useful for a claim which could not be assessed due to the moratorium under CIRP.

Thus, if a purposive interpretation is given to section 14, a moratorium on the mere determination of the amount (and not its enforcement) may not have been the intent of the Code….."

I note from the above observations of the Insolvency Law Committee that a proceeding for assessing or determining the liability is different from a proceeding initiated to recover the assessed or determined liability. The Committee further observes that a moratorium on determination of the liability may not have been the intent of the IBC. Hence, I am of the view that the moratorium declared under section 14 of the IBC will not prevent instant proceeding from determining the liability of the corporate debtor and the moratorium declared under the IBC will be applicable to the enforcement / recovery of the determined liability. I note that the instant adjudication proceedings against the Noticee are in the nature of determining the liability of the Noticee for the alleged non-compliance of relevant provisions of the ILDS Regulations, 2008 and LODR Regulations, 2015 and hence the same can be continued.

In view of the above observations, contentions of the Noticee that instant proceedings be not continued, have been addressed and I now proceed further on merits of the matter, based on material on record.

(c) As regards, the allegation of non-creation of DRR, the Noticee has *interalia* contended that i) The DRR it has created is more than 25% of the redemption proceeds for of the said NCDs due for redemption in FY 2020, also Noticee has initiated a review/audit of the books of accounts and the correctness of this information regarding DRR will be subject to outcome of such review/audit. ii) DRR is not required in case of public issue of debentures or privately placed debentures by Noticee as per the amended SCD Rules, 2014, and the exemption from maintaining DRR also applies for issuances which have already been made prior to August 2019. As regards the said contentions of the Noticee, I observe from the available record that 25 ISINs were outstanding for the financial year 2016-17, of which DRR was not created for 15 ISINS, also that 37 ISINs were outstanding in the financial year 2017-18 and DRR was not created for all of them. I further note from reply of Debenture Trustee (in short DT) available on record that in the financial year 2016-17, the amount of outstanding ISINs (15 in no.) was Rs. 14000 crore for which required DRR amounted to Rs. 3500 crore i.e. 25% of the outstanding amount as specified in the provision of rule 18(7)(b)(ii) of SCD Rules, 2014, but as seen from the financial statements of the Noticee for the year 2016-17, the amount of DRR is Rs. 1170 crore. Further, available record also shows that in the financial year 2017-18 the outstanding amount for the ISINs (37 in no.) was Rs. 24944.78 crore, for which required DRR was Rs. 6236.19 crore i.e. 25% of the outstanding amount as specified in the provision of rule 18(7)(b)(ii) of SCD Rules, 2014, but as seen from the financial statements of the Noticee for the financial year 2017-18, the amount of DRR is Rs. 1170 crore. Noticee has not submitted any evidentiary proof regarding having created the requisite DRR and Noticee has also contended that the said amended SCD Rules, 2014 exempt Noticee from creation of it. In this regard, I note that the SCD Rules, 2014 were amended on August 16, 2019 and came into force on the date of their publication in the Official Gazette i.e. vide the notification dated August 16, 2019 whereas the allegations against the Noticee pertain to periods prior to the said amendment, hence Noticee's contentions regarding its exemption are not acceptable to me. Therefore, by not creating the required DRR for the outstanding issues, Noticee violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) of SCD Rules 2014. As regards, non-creation of DRR, I observe that, allegations against Noticee that it violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 are established.

(d) As regards the allegation that Noticee has not invested/deposited 15% amounting to Rs. 700.20 crore, of the amount maturing during the financial year 2019-20, Noticee has submitted evidentiary proof that Noticee had sent a communication to DT (vide email and letter dated April 23, 2019) wherein Noticee requested DT to consider an amount of Rs.473.82 crore from its liquid assets as a part of the amounts required to be maintained towards 15% of the NCDs maturing as of March 31, 2020. Noticee has also contended that it has communicated to DT that, Noticee *intends to provide for the additional sum of Rs.226.47 crore from internal accrual in days to come,* but Noticee has not provided any evidentiary proof in this regarding having deposited the said amount towards the required total of Rs. 700.20 crore. Thus, record shows evidentiary proof of invest/deposit of Rs. 473.82 crore as against the required Rs. 700.20 crore. In this regard, I observe that, allegation against Noticee that, by not investing/depositing the 15% of the amount maturing during the year ending on the 31st day of March of the next year in any prescribed method, Noticee violated the provisions of regulations 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(c) of SCD Rules, 2014 stands established.

(e) Further, it is also alleged in SCN that Noticee did not submit audited financial statement alongwith the line items for the financial year 2018-19 within the prescribed time as specified under the provision of regulations 52(1) and 52(4) of LODR Regulations, 2015, Noticee has *interalia* contended that, i) *RBI superseded the erstwhile Board of DHFL on November 20th, 2019 and subsequently files the application for initiating the CIRP against DHFL which* *was commenced by the Mumbai bench of NCLT on December 3rd. the erstwhile management had submitted their response for the delay in submission of results. However, given that the earlier management is no longer in control and the company is undergoing CIRP with the objective of finding a resolution, kindly condone the delay in submission of results for March 31, 2019 and waive off ant penalty for the same. ii) results for the half year ended September 2019 are not yet submitted by the company. The Board meeting for taking the results on record was scheduled for November 25, 2019. However, with the supersession of the Board, the meeting was cancelled. iii) vide letter no DHFL/CSD/2019-20/1738 dated 28th November, 2019 Noticee requested exemption from compliance with the applicable SEBI regulation including the SEBI LODR Regulation 2015 for publication of periodical results etc to stock exchanges.* I note from the said contentions of Noticee that the non-submission of the financials and line items within prescribed time is an admitted position, I also observe that none of the contentions are acceptable to me for any leniency requested, as Noticee has submitted no evidentiary proof of OD having accepted the said request by Noticee, which has brought these charges. As per regulation 52(1) of LODR Regulations, 2015, Noticee was required to submit unaudited or audited financial results on a half yearly basis within 45 days from the end of the half year to the stock exchange and as per regulation 52(4) of LODR Regulations, 2015, Noticee was required to submit line items to the stock exchange along with submission of half yearly / annual financial statements. I note from the record that the allegation against Noticee that by not making the said financial statements alongwith the line item within the prescribed timeline as specified in the said provisions of LODR Regulations. 2015, Noticee violated the provisions of regulations 52(1) and 52(4) of LODR Regulations, 2015, stands established.

(f) In view of the above, I am of the view that Noticee violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 by not creating the DRR for all the outstanding ISINs as alleged in SCN and violated regulations 52(1) and 52(4) of LODR Regulations, 2015 for not making the said financial statements for the financial year 2018-19 alongwith the line item within the prescribed timeline as specified in LODR Regulations. Therefore, all the allegations of violation provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulations 52(1) and 52(4) of LODR Regulations, 2015 mentioned in SCN stand established.

Issue (b): Do the violations, if any, on the part of the Noticee attracts monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992 for the alleged violation by the said Noticee?

After taking into account the aforesaid entire facts / circumstance of the case, it is noted that the said violations of provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulations 52(1) and 52(4) of LODR Regulations, 2015 by the Noticee attract the imposition of monetary penalties upon the Noticee under of sections 15A(b) and 15HB of the SEBI Act, 1992 which are reproduced below:

The 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,—*

(a)…

(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.*

Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?

a) While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995 , which reads as under:-

The SEBI Act, 1992
15J*: "Factors to be taken into account by the adjudicating officer-*
While adjudging quantum of penalty under section 23 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."

b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee violated the provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulations 52(1) and 52(4) of LODR Regulations, 2015.

c) Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 20,00,000 (Rupees Twenty Lakh only) will be commensurate with the violations of provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulations 52(1) and 52(4) of LODR Regulations, 2015 under sections 15A(b) and 15HB of the SEBI Act, 1992 committed by the Noticee.

ORDER

10. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 20,00,000 (Rupees Twenty Lakh only) on the Noticee i.e. Dewan Housing Finance Corporation Ltd. under sections 15A(b) and 15HB of the SEBI Act, 1992 for violations of provisions of regulation 16(1) of ILDS Regulations, 2008 r/w rules 18(7)(b)(ii) and 18(7)(c) of SCD Rules, 2014 and regulations 52(1) and 52(4) of LODR Regulations, 2015.

11. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

   a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html
   b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

12. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

a) Case Name
b) Name of the 'Payer/Noticee'
c) Date of Payment
d) Amount Paid
e) Transaction No.

f) Bank Details in which payment is made
g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

13. In the event of failure to pay the said amount of penalty within prescribed time of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 against the Noticee.

14. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules, 1995.

Date: May 29, 2020 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**