BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/BM/2022-23/22322]

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 COMMERCIAL FINANCE LIMITED

PAN: AABCR6898M

BACKGROUND:

1. The Securities and Exchange Board of India **("SEBI")** had received letters dated November 7, 2019, December 6, 2019, January 7, 2020 and January 27, 2020 from Vistra ITCL (India) Ltd., (hereinafter referred to as "**Vistra** / **DT**"), a SEBI registered Debenture Trustee, providing information regarding various defaults committed by Reliance Commercial Finance Limited., (hereinafter referred to as '***Noticee / RCFL'***) in the repayment of interest/s and/or principal amounts to the debenture holders and the subsequent events thereafter. It was informed by DT that the first default by Noticee was committed on October 13, 2019.

2. Accordingly, SEBI examined the non-compliances by the Noticee of the relevant disclosure obligations specified in Chapter III and Chapter V of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '***LODR Regulations, 2015***') (since only 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. Based on the aforesaid examination, Securities and Exchange Board of India (hereinafter referred to as ***'SEBI'***) initiated adjudication proceedings in the captioned matter and appointed the undersigned as the Adjudicating Officer (**AO**) vide communique dated January 05, 2021 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) and 15HB of the SEBI Act, 1992 for the alleged violations of Regulation 50(1), 52(7), 54(1), 54(2), 56(1)(a), 56(2), 57(1) and 60(2) of the LODR Regulations, 2015 read with Regulation 15(1)(c) and 15(1)(t) of the SEBI (Debenture Trustee) Regulations, 1993 (hereinafter referred to as '***DT Regulations'***).

FACTS OF THE CASE:

4. As per information available on the 'Indiabondsinfo', i.e. a database on all corporate bonds maintained by NSDL, it was observed that, there were a total of 21 ISINs belonging to RCFL, as of date and of these 18 ISINs pertained to listed issues. Further, all these 18 listed issues of RCFL were private placements and Vistra was the debenture for all 18 listed ISINs of RCFL.

5. The compliance status of relevant regulations by the RCFL was sought from both NSE and BSE vide email dated December 13, 2019. NSE, vide its email dated January 02, 2020 informed that RCFL was not listed at their platform. Further, BSE vide its emails on various dates submitted the compliance status of RCFL. Similarly, compliance status was also sought from the DT through emails on various dates.

6. Further, BSE was also advised to seek the compliance status of certain regulations from the issuer (RCFL) and to include the same in its submissions to SEBI. Accordingly, BSE submitted its comments along with the reply received from RCFL.

7. Based on the information received from the above, following allegations were made in the SCN with regards to relevant regulations of SEBI LODR Regulations, 2015:

Compliance of RCFL with Regulation 50(1) of LODR Regulations - Intimation to stock exchange(s):

8. Regulation 50(1) of LODR Regulations requires the listed entity to give prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable.

9. In this regard, BSE, vide its email dated October 20, 2020 had submitted that the Noticee has not complied with Regulation 50(1) for 2 ISINs of 18 ISINs: 'INE126D07057' & 'INE126D07180'.

10. Hence, it was alleged that the Noticee did not complied with the said regulations for the aforementioned 2 ISINs.

Compliance of RCFL with Regulation 57(1) of LODR Regulations – Other submissions to stock exchange (s):

11. Regulation 57(1) of LODR Regulations requires the listed entity to submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non-convertible debt securities.

12. In this regard, BSE, vide its email dated October 27, 2020 had submitted that with regard to one ISIN (‘INE126D07024'), company has not complied with Regulation 57(1).

13. Hence, it was alleged that RCFL did not complied with the said regulation for the aforementioned one ISIN.

Compliance of RCFL with Regulation 60(2) of LODR Regulations - Delay in submission of the notice of record date:

14. As per Regulation 60(1) of LODR Regulations, the listed entity shall fix a record date for purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange. Further, Regulation 60(2) requites the listed entity to give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognized stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

15. In this regard, BSE, vide its emails dated January 15, 2020 and September 24, 2020 submitted that Noticee has not complied with Regulation 60(2) w.r.t. 2 ISINs - 'INE126D07057' (w.r.t interest due on August 06, 2019), and 'INE126D07180' (w.r.t. payment due on September 30, 2019).

16. Hence, based on the submission of BSE, it was alleged that the Noticee did not complied with Regulation 60(2) with regard to 2 ISINs out of total 18 listed ISINs.

Compliance of RCFL with Regulation 52(7) of LODR Regulations - Material Deviations in use of issue proceeds:

17. As per Regulation 52(7) of LODR Regulations, the listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of debt securities and non-convertible redeemable preference shares from the objects stated in the offer document.

18. BSE vide its email dated January 15, 2020, submitted the compliance status of Regulation 52(7) provided by RCFL, in which RCFL has submitted to BSE that the said clause applies if there has been a material deviation in the use of proceeds of NCDs and since there has been no material deviation in the use of proceeds of NCDs, the clause will not apply to the Company. However, it is noted that the

statutory auditor of RCFL viz; M/S Shridhar & Associates, Chartered Accountants had issued a qualified opinion in the audited financial result of RCFL for the half year ended March 31, 2020 which, inter-alia, stated as under:

'loan sanctioned under the Corporate Loan book with significant deviations to certain bodies corporate including group companies, and outstanding as at March 31, 2020 aggregating to Rs. 5,171.73 crores and secured by charge on current assets of borrowers. As stated in the said note, in certain cases the corporate borrowers of Companies, have undertaken onward lending transactions and end use of the borrowings from the Company included borrowings by or for repayment of financial obligation to some of the group companies. These exposures to borrowers are secured against charge on current assets including in certain cases it's further guaranteed by the Group Companies. The recovery against these loan is dependent on the recovery of onward lending of the borrowers which further depends on external factors not wholly within control of the Company/ borrower. We were unable to obtain sufficient audit evidence about the recoverability of the aforesaid loans. Accordingly, we were unable to determine the consequential implications arising therefrom and it may have implications of adjustments, disclosures or compliances on certain elements in the accompanying standalone financial results of the Company. '

19. From the aforesaid qualified opinion of the statutory auditor, it appeared that proceeds raised from issue of debt securities/ NCDs may have been diverted towards certain bodies corporate including group companies. Further, RCFL has not made any disclosure under Regulation 52(7).

20. Therefore, in view of the above, it was alleged that RCFL did not complied with Regulation 52(7) of SEBI (LODR) Regulations.

<u>Compliance of RCFL with Regulation 54(1) and 54(2) of LODR Regulations — Maintenance of 100% security cover and disclosure of nature and extent of security in financial statements:</u>

21. Regulation 54(1) requires that the issuer of NCDs shall maintain 100% asset cover sufficient to discharge the amount at all times. Further, Regulation 54(2) mandates the issuer to disclose to the stock exchanges the extent and nature of the security created and maintained with respect to its NCDs.

In this regard, it was noted that Vistra, vide its letter dated July 24, 2019 to RCFL, had, *inter-alia*, sought reassurances from RCFL about the safety and adequacy of the security charged under the Debenture Trust Deed. Further, vide another letter dated November 7, 2019, Vistra informed SEBI about, *inter-alia*, the lack of clarity/information from RCFL in addressing the aforesaid issues.

Vistra's aforesaid letters were forwarded by SEBI to RCFL seeking an explanation on the issues raised therein. In its reply to SEBI, vide its letter dated December 09, 2019, RCFL had, inter-alia, admitted the following:

'…the financial position of RCFL is under severe stress on account of severe deterioration in our cash flows'

Vistra also, vide emails dated September 24, submitted that it had repeatedly sought clarifications from RCFL, inter-alia, on its compliance with the clauses of Debenture trustee deed ('DTD'), security cover, etc. However, RCFL, initially, did not provide the requisite information. BSE, too vide email dated October 1, 2020, sought evidence from RCFL w.r.t. compliance with Regulation 54(1) and 54(2) of SEBI (LODR) Regulations. However, RCFL did not provided any evidence when specifically sought by BSE.

In response to SEBI's specific queries pertaining to Regulation 54(1), RCFL, vide its email dated October 15, 2020, cited adverse developments in the financial sector and further, *inter-alia*, admitted that:

'The Company incurred losses in the last two financial years which has resulted in shortfall of desired asset cover.'

Therefore, in view of the above, it was alleged that RCFL did not complied with Regulation 54(1).

22. With regard to Regulation 54(2), Vistra, vide its email dated September 18, 2020, *inter-alia*, submitted that total outstanding amount of debt securities of RCFL as on that date amounted at Rs.1895.57 crore.

Further, RCFL, vide its email dated October 15, 2020, had submitted that the financial results submitted to BSE mentions the details of security created and maintained by the company. Response of BSE was also sought, who, vide its email dated October 20, 2020 submitted that RCFL in the financial notes to financial results for the half year ended September 30, 2019 stated the following:

'the Rated, Listed, Secured, Redeemable, Non-convertible Debentures ("Secured NCDs") amounting to Rs. 1,821 crores are secured by way of a first charge mortgage over the company's Gujarat Immovable Property and first pari-passu charge on all present and future book debts, business receivables, current assets, investments and all other assets of the Company.'

Similarly, in the annual financial results for the ended March 31, 2020, the following disclosure was observed—

'Rated, Listed, Secured, Redeemable, Non-convertible Debentures ("Secured NCDs") amounting to Rs. 1,822.75 crores are secured by way of a first charge & mortgage over the Company's Gujarat Immovable Property and first pari-passu charge on all present and future book debts, business receivables, current assets, investments and all other assets of the Company.'

In this regard, Vistra vide email dated December 01, 2020, submitted that RCFL had, inter-alia, provided to it an Asset Cover Statement in the form of a Statement of Loan Asset and Secured Borrowings certified by an independent chartered accountant as on March 31, 2020, wherein it was observed that the total secured borrowings of RCFL, amount to Rs.8,334.17 crores against Total Standard Loan Assets of Rs.4,131.44 crores. However, the aforesaid total secured borrowings also included secured borrowings from Banks and Financial Institutions to the tune of Rs.6,519.60 crores. Further the aforesaid standard assets included an asset cover of Rs.1,160.31 crore earmarked for loans of Rs.987.50 crore drawn from NABARD secured by way of first charge.

Hence notwithstanding the fact that the annual financial results of RCFL for the period ended March 31, 2020 carries the amount of secured NCDs issued by RCFL, the extent to which these NCDs are secured was not specifically mentioned in line with Regulation 54(2) of LODR Regulations.

23. In view of the above observations, it was alleged that RCFL did not complied with Regulation 54(2) of LODR Regulations.

Compliance of RCFL with Regulation 56 of LODR Regulations — Submission of information and documents to Debenture Trustee:

24. Regulation 56(1)(a) requires that the issuer shall forward to the debenture trustee a copy of the annual report along with a copy of certificate from its statutory auditors in respect of utilization of funds. In this regards, Vistra, vide its email dated September 24, 2020 submitted that RCFL had not provided it with the Annual Report which it later obtained from the stock exchange. Further, vide email dated October 22, 2020, Vistra submitted that RCFL had provided an end use certificate from Independent Chattered Accountant, but not provided from the Statutory Auditor of the Company as per the regulatory requirement.

25. Hence, it was alleged that RCFL did not complied with Regulation 56(1)(a) of LODR Regulations read with Regulation 15(1)(t) of the SEBI (Debenture Trustee) Regulations, 1993.

26. Further, Regulation 56(2) requires that 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. Vistra, also, submitted that RCFL had, initially, not provided the following information despite repeated reminders:

    a) Clarifications from RCFL w.r.t DTD, CA Certificate of 100% security cover, current value of book debts etc.

b) Quarterly Compliance Report ('QCR'), Security Cover certificate, Book Debt Certificate, Investor Grievance Report etc. for the quarters ended Sep 2019, Dec 2019 and March 2020.

c) Appointment of a nominee director on the board of RCFL.

Subsequently, Vistra, vide email dated October 22, 2020, submitted that post its follow ups, QCR, Security Cover Certificate, Book Debt Certificate, Investor Grievance Report, of nominee director etc. for the quarters ended September 2019, December 2019 and March 2020 was received from RCFL on October 07, 2020 i.e., after a substantial delay of around one year, Thus, RCFL has not provided the aforesaid information to the debenture trustee promptly/ within the requisite timeline.

27. Therefore, in view of the above, it was alleged that RCFL did not complied with Regulation 56(2) of LODR Regulations read with Reg.15 (l)(c) of the SEBI (Debenture Trustee) Regulations, 1993 (for non-submission of quarterly compliance report within requisite timeline) and Regulation 56(2) of LODR read with Reg.15 (l)(t) of the SEBI (Debenture Trustee) Regulations, 1993 (for non-submission of other requisite information).

SHOW CAUSE NOTICE, REPLY AND HEARING

28. Show Cause Notice No. EAD4/ADJ/GR/RK/OW/1690/1/2021 dated January 21, 2021 (hereinafter be referred to as, the "**SCN**") with aforesaid allegations was served upon the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under the provisions of Section 15A(b) and 15HB of the SEBI Act, 1992, for the alleged violations of Regulations 50(1), 52(7), 54(1), 54(2), 56(2), 57(1) and 60(2) of LODR Regulations read with Regulations 15(1)(t) and 15(1)(c) of DT Regulations.

29. I note from available records that the SCN was duly delivered to the Noticee. Thereafter, vide mail dated February 16, 2021, the Noticee was granted an

opportunity of personal hearing on March 03, 2021. However, the Noticee did not attend the said hearing and filed a settlement application with SEBI on February 26, 2021 which was later withdrawn on June 11, 2021. Subsequently, the Noticee, vide mail dated March 03, 2022, sought inspection of various documents which was granted to it and accordingly, the Authorized Representative (AR) of the Noticee inspected the following documents on March 14, 2022:

a) Letter of Vistra to SEBI dated November 7, 2019 along with annexures.

b) Letter of Vistra to SEBI dated December 6, 2019 along with annexures.

c) Letter of Vistra to SEBI dated January 7, 2020 along with annexures.

d) Letter of Vistra to SEBI dated January 27, 2020 along with annexures.

e) Vistra email dated September 18, 2020 to SEBI along with attachment.

f) Examination report in the said matter

The Noticee was advised to submit its reply by March 21, 2022. The Noticee, vide mail dated March 22, 2022 sought additional time to file reply which was granted to it, however no reply was filed. Thereafter, vide another hearing notice dated July 01, 2022, another opportunity of personal hearing was granted to the Noticee on July 13, 2022. Meanwhile, second settlement application was filed by the Noticee on May 18, 2022 which was later rejected by SEBI on July 13, 2022. Hearing in the said matter was finally concluded on July 13, 2022 and AR of the Noticee attended the said hearing. The Noticee filed the following reply vide letter dated July 20, 2022:

a) *It is submitted that the penal provisions invoked in the SCN for the alleged violations pertaining to non-submission of information to the stock exchanges, i.e. violations of Regulations 50 (1), 57 (1), 60 (2), 52 (7), 54 (2), are wholly not applicable. For non-submission of information required to be provided to the stock exchanges, the applicable penal provision is Section 23 A of the Securities Contracts (Regulation) Act, 1956 ("SCRA"). However, the SCN has erroneously invoked Section 15 A (b) of the SEBI Act to penalize the Noticee for such alleged viola0tions. On this ground alone, the SCN is liable to be* *withdrawn. In this regard, it is further submitted once an SCN charges the Noticee under a wrong penal provision, no penalty may be imposed therein. Such position has been upheld by the adjudicating officer of SEBI itself in the matter of Reliance Industries Limited dated September 20, 2021, wherein, inter alia upon becoming cognisant of the fact that the penal provision invoked, being Section 23 E of the SCRA was not applicable, the Adjudicating Officer did not impose any penalty.*

b) *Further, at the outset, we submit that the non-compliances alleged in the SCN are technical in nature. We understand from the SCN that the present proceedings have been initiated on account of a complaint received from Vistra ITCL (India) Limited, the Debenture Trustees to the issue. We submit that the allegations levelled in the said complaint are denied and are untenable. It is further submitted that complaints made by the Debenture Trustee of the Company, has to be viewed from the perspective that instead of participating in the resolution plan approved by the lenders of the Company pu rsuant to the Inter-Creditor Agreement (ICA) signed between its lenders, the Debenture Trustee delayed taking part in the resolution process of the Company, which duly displays that the Debenture Trustee was not acting in the best interests of the debenture holders of the Company.*

c) *It is significant that due to severe stress in the Company due to mounting losses, the lenders of the Company entered into the ICA on July 6, 2019 in terms of the circular dated June 7, 2019, issued by the Reserve Bank of India on Prudential Framework for Resolution of Stressed Assets ("Circular"). In spite of requests by the lenders, the Debenture Trustee did not sign the ICA. On July 15, 2021, the Resolution Plan submitted by Authum Investment and Infrastructure Limited / the Intervenor ("Authum") came to be approved by RCFL's lenders with a majority of over 75% in value and 60% in number.*

d) *In terms of the Resolution Plan, debenture holders of the Company, being non-ICA lenders, have been offered a compromise and settlement, which has, pursuant to the directions of the Bombay High Court vide order dated October 28, 2021 (in a suit filed by certain debenture holders, inter alia, challenging the ICA), been modified/enhanced. It is significant that by such order, the Hon'ble*

Bombay High Court directed the Debenture Trustee to convene a meeting of all other debenture holders in accordance with debenture trust deeds to consider the enhanced compromise/settlement offered, within 30 days of passing of the order, in terms of the said debenture trust deeds. The Debenture Trustee called for a meeting of the debenture holders on December 8, 2021. SEBI filed an Appeal challenging the order passed by the Ld. Single Judge of the Bombay High Court, on the ground that voting should be at ISIN level and not at debenture trust deed level. The Appeal was dismissed by a Division Bench of the Bombay High Court by an Order dated March 21, 2022. SEBI then filed an SLP challenging such order. The SLP was allowed by the Supreme Court on March 30, 2022 and the Appeal is being presently heard by a Division Bench of the Supreme Court. The result of voting has been submitted to the Supreme Court in a sealed cover by the Debenture Trustee.

Submissions on Merits

Alleged non-compliance of Regulation 50(1) of I-ODR Regulations:

e) *The SCN under Paragraphs 7 to 9 alleges that an eleven-day prior intimation has not given to the Stock Exchange with respect to certain NCDs. The specification with respect to the due date of payment and the date of intimation is give below:*

ISIN Number	*Due Date*	*Date of Intimation*
INE126D07180	*September 30, 2019*	*September 6, 2019*

The copy of the intimation made to the stock exchange dated September 6, 2019 pertaining to INE126D07180 is attached as Annexure-A.

f) *From the aforesaid, it is clear that the interest/principal was payable on the due date and sufficient advance notice was given, let alone the prescribed eleven days' notice as mandated under the regulation 50(1) of the LODR Regulations. It is pertinent to note in this regard that regulation 50(1) of the LODR Regulations mandates that an eleven days' prior notice is required to be given from the date interest/principal is payable and not from the record* *date. It is therefore submitted that RCFL is in compliance of this requirement and the allegation in the SCN is incorrect in this regard, borne of an incorrect reading of Regulation 50 (1) of the LODR Regulations.*

Alleged non-compliance of Regulation 57(1) of LODR Regulations:

g) The SCN under Paragraphs 10 to 12 alleges that there has been non-compliance of Regulation 57(1) of the LODR Regulations. Regulation 57(1) requires all entities with listed nonconvertible debentures to submit a certificate to the stock exchange within 2 days of the interest/principal becoming due, a confirmation of payment made. It is submitted that with regards to ISIN INE126D07024 no such disclosure confirming payment could be made as no payment was possible in relation to the NCDs on the due date due to circumstances beyond the control of the Company.

h) It is significant that, as stated earlier, the lenders of the company had entered into an ICA for arriving at a debt resolution plan in accordance with the circular dated June 7, 2019, issued by the Reserve Bank of India on Prudential Framework for Resolution of Stressed Assets. After entering into the ICA, the Company had been directed by the lenders led by the lead bank not to service, inter alia, the said debt obligation considering the cash position of RCFL. Thus, the Company was precluded from servicing payments in relation to, inter alia, the aforesaid ISIN. The fact that no payments could be made in light of such agreement was thereafter intimated to the NCD holders vide letter dated September 19, 2019 sent to the BSE. A copy of letter dated September 19, 2019 from RCFL to BSE is attached as Annexure-B.

i) Given that no payments could be made, the question of providing a confirmation of payment, upon payment being made does not arise. Any such disclosure would have been false and misleading. In this regard, it is pertinent to note that it is a settled principle of law that where the law creates a duty, but a party is disabled from performing such duty without any fault on its part, then the law would in general, excuse such an entity for non-performance, as observed in the case of Raj Kumar Dey Vs. Tarapada DeyAIR 1987 SC 2195 *and by the Hon'ble Securities Appellate Tribunal in the case of UBS Securities Vs. SEBI (Appeal No. 97 of 2005, decided on September 9, 2005). Given that the Company was prohibited from making payments under the aegis of the process initiated under the mandate of the Circular issued by RBI, and that it is due to such preclusion that consequent confirmation of payment could not be provided, the charge is liable to be dismissed.*

Regulation 60(2) of LODR Regulations:

j) The SCN under Paragraph 7 to 9 alleges that a prior intimation has not been given to the stock exchange with respect to ISINs INE126D07057 and INE126D07180 with regards to the record date as required under Regulation 60(2) of the LODR Regulations.

k) In this regard, it is pertinent to note that payment dates for the NCDs were fixed at the time of listing of the ISINs, which was already intimated to the stock exchange. However, as stated hereinabove, after entering into the ICA, the Company was directed by the lenders led by the lead bank not to service the said debt obligations considering the cash position of RCFL. Thus, the Company was precluded from servicing payments. Such fact was intimated to the stock exchange vide letter dated September 19, 2019. It is in this context that where no payment could have been made with respect to the aforesaid ISINs, an intimation of record date is meaningless. In any event, with respect to ISIN INE126D07180, a disclosure of record date was in fact provided to the stock exchanges vide disclosure dated September 6, 2019.

Regulation 52(71 of LODR Regulations:

l) At the outset, the SCN has failed to bring out any cogent material to level the allegations pertaining to Regulation 52 (7) of the I-ODR Regulations. Regulation 52 (7) requires that a listed entity has to submit to the stock exchange on a half yearly basis, alongwith its half yearly financial results, a *statement indicating material deviations, if any, in the use of proceeds of, inter alia, non-convertible debt securities from the objects stated in the offer document. The Noticee had vide their email dated October 15, 2020 confirmed to SEBI that the proceeds of NCDs have been utilized as per the objects of issue as mentioned in the Information Memorandums, which is in fact correct. It is submitted that SEBI has based the aforesaid charge on surmises and conjectures given that it has only relied on the observation of the auditor on the entire corporate loan book to state that it 'appeared' that proceeds of the issuance of NCDs were diverted to certain group companies. The auditor has, in fact, at no point made any reference to any deviation of issue proceeds of the NCDs of the Company, but has merely stated the following-*

"Company had given General Purpose Corporate Loan/Working Capital Term Loan to certain bodies corporate in the ordinary course of business, the terms of which are at arms' length basis. None of these loans constitute as transactions with related parties. However, in few cases, the Company's borrowers had undertaken onward lending transactions to companies which are identified as Group Companies by Reliance Capital Limited (holding company) in terms of the Core Investment Companies (Reserve Bank) Directions, 2016. These loans are secured and, in few cases, its further guaranteed by the Group Companies"

"We draw attention to Note 5 of the standalone financial results with regards to the loan sanctioned under the Corporate Loan book with significant deviations to certain bodies corporate including group companies, and outstanding as at March 31, 2020 aggregating to Rs. 5,171.73 crore and secured by charge on current assets of borrowers. As stated in the said note, in certain cases the corporate borrowers of Company's have undertaken onward lending transactions and end use of the borrowings from the Company included borrowings by or for repayment of financial obligation to some of the group companies. These exposures to borrowers are secured against charge on current assets including in certain cases it's further guaranteed by the Group Companies. The recovery against these loan is dependent on the

recovery of onward lending of the borrowers which further depends on external factors not wholly within control of the Company/borrower. We were unable to obtain sufficient audit evidence about the recoverability of the aforesaid loans. Accordingly, we were unable to determine the consequential implications arising therefrom and it may have implications of adjustments, disclosures or compliances on certain elements in the accompanying standalone financial results of the Company."

m) *Thus, while the thrust of the auditor's observations were pertaining to recoverability of loans given by the Company which were on an arm's length basis, SEBI has, without any investigation/evidence to support its charge, stated that such observation by the auditor by itself makes it appear that there was a material deviation of issue proceeds of the NCDs, which warranted a consequent disclosure in terms of Regulation 52 (7) of the LODR Regulations. The auditor, in fact, never went into the issue of whether or not issue proceeds of the NCDs were used in accordance with the objects of their issue. Similarly, nowhere in the SCN has SEBI in fact established that issue proceeds were used for purposes other than that mentioned in the objects clauses contained in their respective Information Memorandums. In fact, there is not a whisper of the Information Memorandums and the objects clauses of the NCDs of the Company in the SCN.*

n) *It is settled law that a regulator bringing a charge has to base it on evidence and prove the same with evidence to that effect. The burden of proof is always upon the prosecution, namely, SEBI, as has been held by the Hon'ble Securities Appellate Tribunal in the case of Pranshu Bhutra vs. SEBI (Appeal No. 689 of 2021, decided on April 25, 2022). In gross dereliction of the same, SEBI has, without clearly stating evidence proving that there was a material deviation in issue proceeds of NCDs, chosen to base the charge on a wholly unrelated observation by the auditor, and charged the Company with the charge of non-disclosure of material deviation in usage of issue proceeds of NCDs. Such charge displays a total non application of mind, and a total lack of fact finding prior to issuance of the SCN and deserves to be withdrawn at the outset.*

o) Without prejudice to the above, it is pertinent to note that as per the object clauses of the Information Memorandums of all listed NCDs of the Company, such NCDs were issued to raise resources to meet the ongoing funding requirements for, inter alia, the Company's business activities. Given that RCFL is in the business of giving loans as stated in its charter documents, use of any issue proceeds towards business activities such as providing general purpose corporate loan/working capital term loan to certain bodies corporates in the ordinary course of business, cannot in any event be construed to be a material deviation from the objects of issue of the Company's NCDs. It is submitted that the fact that in a few cases the Company's borrowers had subsequently undertaken onward lending transactions, cannot post facto result in such use of issue proceeds of NCDs being classified as 'material deviation' from objects of the issue as it has nothing to do with the dispatch of loans by the Company. In any event, it is significant that loans provided by the Company are secured, and, in few cases, there were guarantees provided. In the absence of any material deviation, the question of providing a statement indicating material deviations does not arise. Any such disclosure when the Company was of the bonafide belief that no deviation had occurred, would have in fact, been misleading and false.

Regulation 54(4) and (2) of LODR Regulations:

p) Regulation 54(1) of the LODR Regulations requires that a 100% security cover sufficient to discharge the principal amount of NCDs shall be maintained by the issuer at all times. It is the Noticee's humble submission that there was shortfall in the security cover as the Company incurred heavy losses in FY 2018-2019 and FY 2019-2020. On account of losses, RCFL was under severe stress as there was severe deterioration in its cash flow. Even in these challenging times RCFL endeavoured its best to maintain maximum security cover though it could not achieve 100% asset cover.

q) With regards to Regulation 54 (2) of the LODR Regulations, which mandates that an issuer of NCDs has to disclose to the stock exchanges the extent and *nature of securities created in relation to such NCDs, it is submitted that while as correctly recorded in the SCN itself, the notes to the financial results for the half year ended September 30, 2019 and the notes to the financial results for the year ended March 31. 2020 contained details of securities created in relation to the NCDs there was an inadvertent error in disclosing the breakup of total secured borrowings and total standard loan assets of RCFL. It is submitted that given such inadvertent lapse, and the fact that on March 31, 2020 the Company had provided the Statement of Loan Assets and Asset Cover statement to the Debenture Trustee containing all relevant information, a lenient view is ought to be taken by SEBI.*

Regulation 56 of LODR Regulations:

r) The primary allegation contained in the SCN is with respect to not providing a copy of the Annual Report of RCFL to the Debenture Trustee and the providing of certain other documents with a delay. It is submitted that the Annual Report is a public document available on the website of stock exchange. Therefore, it is incorrect to state the Debenture Trustee was kept aloof from the Annual Reports of the Company. The other documents mentioned in Paragraph 23 of the SCN were also provided to the Debenture Trustee, albeit with a delay on account of the fact that at the relevant time RCFL had undergone frequent changes in directors and KMPs. Further, due to the sudden onset of the Covid-19 pandemic and the nationwide lockdown due to which the Company was functioning with bare minimal staff, the submission of such documents to the Debenture Trustee was further delayed. In any event, though there was shortage of staff, RCFL ensured to provide the documents and information sought at the earliest. It is in light of the above that it is submitted that a lenient and considerate view be taken by SEBI as such lapse/delayed compliance was due to circumstances beyond the control of the Company.

30. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been duly followed in the matter by granting the Noticee, an

opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

31. Before going into the merits of the case I would deal with the preliminary issue raised by the Noticee. The Noticee has contended that for non-submission of information required to be provided to the stock exchanges, the applicable penal provision is Section 23 A of the Securities Contracts (Regulation) Act, 1956 ("SCRA"). However, the SCN has erroneously invoked Section 15 A (b) of the SEBI Act to penalize the Noticee for such alleged violations. In this regard, I note that Section 15A(b) of the SEBI Act has been invoked as the SEBI (LODR) Regulations were made under the power provided under Section 30 of the SEBI Act, 1992. In view of the same, I find no merit in the above contention of the Noticee.

32. Considering the findings of Investigation, the allegations made out in the SCN and the submissions made by the Noticees, I find that following issues require consideration in the present case:

Issue 1: Whether Noticee have violated the provisions of Regulation 50(1), 52(7), 54(1), 54(2), 56(2), 57(1) and 60(2) of the LODR Regulations, 2015 read with Regulation 15(1)(c) and 15(1)(t) of the SEBI (Debenture Trustee) Regulations, 1993?

Issue 2: Does the violation, if any, attract penalty under Section 15A(b) and 15HB of the SEBI Act, 1992?

Issue 3: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

OBSERVATIONS AND FINDINGS

33. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the PFUTP Regulations, alleged to have been violated by the Noticee. The same are reproduced below:

LODR Regulations

Intimation to stock exchange(s).

50 (1) The listed entity shall give prior intimation to the stock exchange(s)at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable.

(2) The listed entity shall intimate the stock exchange(s), its intention to raise funds through new non-convertible debt securities or non-convertible redeemable preference shares it proposes to list either through a public issue or on private placement basis, prior to issuance of such securities:

Provided that the above intimation may be given prior to the meeting of board of directors wherein the proposal to raise funds through new non convertible debt securities or non-convertible redeemable preference shares shall be considered.

(3) The listed entity shall intimate to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non convertible debt securities or any other matter affecting the rights or interests of holders of non convertible debt securities or non convertible redeemable preference shares is proposed to be considered.

Financial Results.

52 (7) The listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of non convertible debt securities *and non-convertible redeemable preference shares from the objects stated in the offer document.*

(8) The listed entity shall, within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results and statement referred to in sub-regulation (4), in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

Asset Cover.

54 (1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred percent. Asset cover or asset cover as per the terms of offer document/Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.

(2) The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.

Documents and Intimation to Debenture Trustee.

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

(a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised: Provided that in the case of debentures or preference shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.

(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.

Other submissions to stock exchanges(s).

57 (1) The listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non convertible debt securities

Record Date.

60 (2) The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

<u>SEBI (Debenture Trustee) Regulations, 1993</u>

Duties of the debenture trustees.

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

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(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;

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(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) carry out the necessary due diligence and monitor the asset cover in the manner as may be specified by the Board from time to time.

(ii) On a Half-Yearly basis- (a)obtain a certificate from the statutory auditor of the issuer giving the value of receivables/book debts including compliance with the covenants of the Offer Document/Information Memorandum in the manner as may be specified by the Board from time to time.

Issue 1: Whether Noticee have violated the provisions of Regulation 50(1), 52(7), 54(1), 54(2), 56(2), 57(1) and 60(2) of the LODR Regulations, 2015 read with Regulation 15(1)(c) and 15(1)(t) of the SEBI (Debenture Trustee) Regulations, 1993?

34. With regards to the charge of violation of Regulation 50(1) of LODR Regulations, I note that the Noticee was required to give prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds was payable, however, as submitted by BSE vide its email dated October 20, 2020, the Noticee failed to do so for 2 ISINs i.e. INE126D07180 and INE126D07057.

35. In this regard, Noticee has submitted that for ISIN INE126D07180, vide intimation dated September 06, 2019, the Noticee had intimated the stock exchange (BSE) with respect to the due date of payment of interest due on September 30, 2019. The Noticee has also submitted the copy of the said intimation made to the stock exchange dated September 06, 2019. However, I note that the similar submission was also made during the investigation wherein comments were sought from BSE vide mail dated October 16, 2020, to which BSE specifically replied vide mail dated October 20, 2020 that it was *not submitted*. I also note that no document was produced by the Noticee indicating the receipt of the said letter by the exchange.

In this regard, in *Mega Resources Limited vs. SEBI 2002 SCC OnLine*, Hon'ble SAT, while interpreting word "disclose" as used in Regulation 7(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 held that:

"that regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement. But Regulation 7(1) requires the acquirer to disclose the aggregate of his holding in the Target Company to the company. Sub regulation (2) prescribes the time limit within which the disclosure is required to be made. Therefore the crucial question is whether the requisite disclosure has been made by the Appellant. For the purpose it is necessary to know what is meant by "disclosure" in the sense in which it is used in the regulation. Disclosure is required to be made to the Target Company. "Disclose to the company" is the clue. "Disclose" according to Websters 33 Encyclopedic Dictionary means - to make known, reveal or uncover- to cause to appear, allow to be seen, lay open to view. According to Blacks Law Dictionary "Disclosure" means- act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."

Further, Hon'ble SAT in the matter of NDTV vs. SEBI (Appeal No. 358 of 2015) SAT order dated Aug 07, 2019, held that:

"Thus, the burden was upon the appellant to prove by necessary evidence that the disclosure sent through a letter by a courier was duly received by the Stock Exchange. Filing of dispatch receipts given by the courier was not sufficient to prove service. What was necessary was the delivery receipt which in the instant case was not produced. In our view, proof of dispatch of courier was not sufficient to disclose that the information was sent within the stipulated period."

In view of the above, I find no merit in the above contention of the Noticee.

36. Further, with regards to the alleged violation regarding the other ISIN i.e. INE126D07057, I note that Noticee has not contended the same.

37. Accordingly, the above facts establish that Noticee has violated Regulation 50(1) for both the ISINs.

38. With regards to the charge of violation of Regulation 57(1) of LODR Regulations, I note that the Noticee was required to submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non-convertible debt securities. However, I note that BSE, vide its email dated October 27, 2020, had submitted that with regard to one ISIN ('INE126D07024), Noticee had not complied with Regulation 57(1).

39. Further, with regards to the charge of violation of Regulation 60(2) of LODR Regulations, I note that under Regulation 60(1) the Noticee was required to fix a record date for purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange. Further, under Regulation 60(2), the Noticee was required to give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the exchange of the record date or of as many days as the stock exchange may agree to or require specifying the purpose of the record date. However, I note that BSE, vide its emails dated January 15, 2020 and September 24, 2020 submitted that the Noticee has not complied with Regulation 60(2) w.r.t. 2 ISINs - 'INE126D07057' (w.r.t interest due on August 06, 2019), and 'INE126D07180' (w.r.t. payment due on September 30, 2019).

40. In this regard, the Noticee has submitted that no such disclosure confirming payment could be made as no payment was possible in relation to the NCDs on the due date due to circumstances beyond the control of the Company and given that no payments could be made, the question of providing a confirmation of payment, upon payment being made does not arise and any such disclosure would have been false and misleading. The Noticee has further submitted that the fact that no payments could be made in light of such agreement was thereafter

intimated to the NCD holders vide letter dated September 19, 2019 sent to the BSE. I also note that the Noticee has submitted the aforesaid letter dated September 19, 2019 along with the reply.

In this regard, I note that the required disclosure under Regulation 57(1) was due on May 18, 2019 (interest due date was May 16, 2019), however the Noticee submitted the proof of intimation of the disclosure of its inability of making payment, only vide letter dated September 19, 2019 which was four months from the due date. Hence, the submission of Noticee in this regard is not in line with regulation and accordingly the same cannot be accepted. Similarly, for violation of Regulation 60(2) of LODR also, the contention of the Noticee is not acceptable on the same ground.

41. With regards to the charge of violation of Regulation 52(7) of LODR Regulations, I note that the Noticee was required to submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of debt securities and non-convertible redeemable preference shares from the objects stated in the offer document.

42. In this regard I note that from the qualified opinion of the statutory auditor in the audited financial result of RCFL for the half year ended March 31, 2020, it appeared that proceeds raised from issue of debt securities/ NCDs may have been diverted towards certain bodies corporate including group companies which was not disclosed by the Noticee under Regulation 52(7) of LODR Regulations.

43. Noticee, in this regard has contended that SEBI has, without clearly stating evidence proving that there was a material deviation in issue proceeds of NCDs, chosen to base the charge on a wholly unrelated observation by the auditor, and charged the Company with the charge of non-disclosure of material deviation in usage of issue proceeds of NCDs. In this regard, I note that the statutory auditor in its qualified opinion had clearly observed that in certain cases (and not all), the Noticee's corporate borrowers have undertaken onward lending transactions which was ultimately used for borrowing or repayment of financial obligation of the group

companies. This clearly indicates that the funds raised through NCDs were diverted towards the group companies.

44. Further, at this juncture, I would like to quote the observations of the Hon'ble High Court of Andhra Pradesh in a recent matter in 2016 pertaining to the ***duties of Auditors in ICAI vs. Mukesh*** **Gang** "The Chartered Accountant is a professional whose expertise in accountancy is acknowledged. He is a member of an expert body and of a premier institute in India. The certificate issued by an Auditor has its own impact on the public at large, as it is largely on the basis of this certificate that the general public subscribe to the shares of the company. Reckless certification by an Auditor, which has resulted in the public being misled into subscribing to the shares of the company in the public issue, would undoubtedly amount to gross negligence. Large sections of society rely on the certification by the Chartered Accountants for taking many vital decisions. It is imperative that utmost care and caution is exercised in issuing such certificates, and the objectivity, integrity, reliability and credibility of the information therein is ensured. Of late, several instances have come to light where, due to the erroneous/ambiguous advice tendered by Chartered Accountants, borrowal accounts have had to face quick mortality resulting in huge losses for banks and financial institutions. To ensure public faith and protect gullible small investors from being cheated of their life savings, the Institute should ensure that its members possess competence of a high order, their character is above board, and their integrity beyond reproach. Chartered Accountants are responsible to the public for their actions, as heavy reliance is placed on their credibility by the general public consisting of investors, banks, financial institutions, governments etc. The Chartered Accountants duty is not merely to his client, but extends to various segments of society, more particularly in the commercial field, on whose expertise, integrity and impartiality they rely on in taking various decisions."

    In light of the above observations on importance of auditor's role and importance of it's observations, I find no reason to disagree with the observations made by the statutory auditor in the audited financial result of RCFL. Therefore, the contention of the Noticee in this regard is without merit.

    This establish that Noticee has violated Regulation 52(7) of LODR Regulations.

45. With regards to the charge of violation of Regulation 54(1) and 54(2) of LODR Regulations, I note that the Noticee was required to maintain 100% asset cover sufficient to discharge the amount at all times and to disclose to the stock exchanges the extent and nature of the security created and maintained with respect to its NCDs. In this regard, I note from the examination report that though Vistra and BSE sought evidence from the Noticee w.r.t. compliance with Regulation 54(1) and 54(2) of SEBI (LODR) Regulations, it did not provide any evidence when specifically sought by BSE. Further, the Noticee admitted to SEBI that the financial position of RCFL is under severe stress on account of severe deterioration in our cash flows.

46. With regards to the alleged violation of Regulation 54(1), the Noticee have admitted that *'even in these challenging times RCFL endeavored its best to maintain maximum security cover though it could not achieve 100% asset cover'*.

    Further, with regards to the alleged violation of Regulation 54(2), the Noticee admitted that *'there was an inadvertent error in disclosing the breakup of total secured borrowings and total standard loan assets of RCFL'*.

47. In view of the above, it is an admitted fact that the Noticee has violated the provisions of Regulation 54(1) and 54(2) of LODR Regulations.

48. With regards to the charge of violation of Regulation 56 of LODR Regulations, I note that under Regulation 56(1)(a), the Noticee was required to forward a copy of the annual report along with a copy of certificate from its statutory auditors in respect of utilization of funds to the debenture trustee and under Regulation 56(2), it was required to forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee. In this regard, I note that Vistra informed SEBI that the Noticee had not provided the Annual Report which it later obtained from the stock exchange and Noticee provided an end use certificate from Independent Chattered Accountant, but not provided from the Statutory Auditor of the Company as the regulatory

requirement. Vistra further informed that post its follow ups, QCR, Security Cover Certificate, Book Debt Certificate, Investor Grievance Report, of nominee director etc. for the quarters ended September 2019, December 2019 and March 2020 was received from the Noticee after a substantial delay of around one year.

49. Noticee has contended that the Annual Report is a public document available on the website of stock exchange and accordingly Debenture Trustee was not kept aloof from the Annual Reports of the Company. In this regard, I note that though the Annual Report could be obtained from other sources, this does not relieve the Noticee from its obligation of providing the same to the DT under Regulation 56(1)(a) of LODR. I further note that an end use certificate was provided from Independent Chattered Accountant instead of the Statutory Auditor of the Company, as required. Therefore, I find no merit in the aforesaid contention of the Noticee.

    Further, with regards to the alleged violation of Regulation 56(2), the Noticee has admitted that there was delay in submitting other documents to Vistra as there were frequent changes in directors and KMPs and because of Covid-19.

50. The above facts clearly establish that the Noticee has violated Regulation 56(1)(a) and 56(2) of LODR Regulations.

51. I therefore hold RCFL of non-compliant of Regulation 50(1), 52(7), 54(1), 54(2), 56(1)(a), 56(2), 57(1) and 60(2) of the LODR Regulations, 2015 read with Regulation 15(1)(c) and 15(1)(t) of the SEBI (Debenture Trustee) Regulations, 1993. The said violations make the Noticee liable for penalty under sections 15A (b) and 15HB of the SEBI Act, the text of which is reproduced herein below:

<u>SEBI Act, 1992</u>

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.

52. While determining the quantum of monetary penalty under Section 15A(b) and section 15 HB of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

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

    While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

    a) the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default

    b) the amount of loss caused to an investor or group of investors as a result of the default

    c) the repetitive nature of the default"

53. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India held that:-

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…..".

54. At this juncture, I note that there is nothing on record to establish that Noticee/RCFL has derived any profit from the impugned conduct. The Noticee has stated that the aforesaid non-compliances had happened under circumstances beyond the control of the Noticee. I agree on the limited point that it was difficult for RCFL to be compliant with the timeline for disclosures due to the then prevailing situations during the period of lockdown under COVID-19 pandemic. Besides this, all the other "circumstances" mentioned by RCFL do not justify the non-compliances established in the preceding paragraphs.

55. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by RCFL and the loss suffered by the investors as a result of its act. It is an established fact that the Noticee, being a listed company, in the instant case had failed to abide by its obligations towards its debenture holders. In the present context of a disclosure-based regime of the securities market, any default in making requisite disclosures/ submission of necessary information/document cannot be considered lightly. Further, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. The fact that RCFL has not made any unfair gains or has caused loss to investors do act as mitigating factors while determining the quantum of penalty, they do not nullify the fact of regulatory non-compliance of RCFL.

ORDER

56. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby impose penalty of

Rs.10,00,000/- (Rupees Ten Lakh only) on Reliance Commercial Finance Limited payable under Sections 15A(b) and 15 HB of the SEBI Act, for his violation of Regulations 50(1), 52(7), 54(1), 54(2), 56(1)(a), 56(2), 57(1) and 60(2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and 15(1)(c) and 15(1)(t) of the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993.

57. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

58. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department- DRA-IV), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai – 400 051."

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

59. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

60. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : December 21, 2022 **G. Ramar**

Place : Mumbai **Adjudicating Officer**