BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: Order/GR/HK/2022-23/22343]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (HEREINAFTER REFERRED TO AS 'SEBI ACT') READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 (HEREINAFTER REFERRED TO AS 'ADJUDICATION RULES'), IN RESPECT OF:

Name of the Noticee	Registration Number	PAN
IDBI Trusteeship Services Limited	**IND000000460**	**AAACI8912J**

In the matter of IDBI Trusteeship Services Limited

FACTS OF THE CASE

1. **IDBI Trusteeship Services Limited** (hereinafter referred to as "**the Noticee/ IDBI**") is registered with the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a registered Debentures Trustee (**'DT'**) under the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as **"DT Regulations, 1993"**) having SEBI Registration No. IND000000460. The Noticee has its registered address at "*Ground Floor, Asian Building, 17, R Kamani Rd, Ballard Estate, Fort, Mumbai, Maharashtra 400001.* The inspection of the Noticee was conducted during February 16-22, 2022 and the period covered under inspection was from April 01, 2020 to

November 30, 2021 (**'Inspection Period / IP'**). The said inspection had *prima facie* brought out certain deficiencies in the functioning of the Noticee as a Debentures Trustee.

2. A copy of the findings of the inspection was shared with the Noticee vide the letter No. SEBI/HO/MIRSD/CRADT/P/OW/2022/18453 dated April 29, 2022, to which the Noticee had replied in details vide its reply dated May 13, 2022. The comments/explanation provided by the Noticee was not found to be satisfactory with regard to the followings irregularities.

    a) In some cases, it was observed that asset cover certificates, submitted to the stock exchanges by the Noticee, did not confirm compliance with the covenants/ terms of the issue. It only provided reference to the CA certificate provided by the issuer which certifies compliance with terms of the issue. However, as per the requirements of the format (provided in the SEBI Circular of November 12, 2020) is to certify the compliance of all the covenants/ terms of the issue by the listed entity. Hence, the Noticee is alleged to have violated Clause 2.1 of the SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/230 dated November 12, 2020 (hereinafter referred to as **'SEBI Circular of November 2020'**)

    b) Discrepancies were observed in the asset cover certificate submitted to Stock Exchange in the case of *Lendingkart Finance*

Limited and *Patanjali Ayurved Limited* where the date mentioned in the asset cover certificate was wrong and ISIN wise details were not provided respectively. Hence the Noticee is alleged to have violated Clause 2.1 of the SEBI Circular of November 2020 and clause 3 and clause 4 of Code of Conduct mentioned in the Schedule III of DT Regulations 1993.

c) In the case of APG Premium Homes Private Limited, the intimation to debenture holder was sent beyond 3 days for breach of covenant. Hence, the Noticee is alleged to have violated Clause 3 of SEBI Circular of November 2020.

d) The Noticee had not updated the default history information about the instruments mentioned below in the database. Hence, the Noticee is alleged to have violated Clause C of Annexure-I of SEBI Circular no. CIR/IMD/DF/17/2013 dated October 22, 2013 (hereinafter referred to as **'SEBI Circular of October 2013'**), Clause 10 of Annexure-III of SEBI circular no. SEBI/HO/DDHS/DDHS1/P/CIR/2021/572 dated June 04, 2021 (hereinafter referred to as **'SEBI Circular of June 2021'**).

S.No.	**Issuer**	**ISIN**	**Default date**
1	Reliance Home finance Limited	INE217K07AT8 INE217K08107	28 Jan 2021 7 Feb 2021
2	IL & FS Transportation Networks Limited	INE975G08199	10 Feb 2021, 10 August 2021

3. In view of the above, SEBI initiated adjudication proceedings under Section 15HB of the SEBI Act, 1992 against the Noticee for the violations alleged above.

APPOINTMENT OF ADJUDICATING OFFICER

4. In this regard, the undersigned has been appointed as the Adjudicating Officer **("AO")** by SEBI, vide order dated October 20, 2022, under Subsection 1 of Section 15-I of the SEBI Act read with Rule 3 of Adjudication Rules to inquire into and adjudge under Section 15HB of the SEBI Act for the aforesaid alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. EAD-4/ADJ/GR/HK/56708/1/2022 dated November 07, 2022 (hereinafter referred to as "**SCN**") was issued to 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 under Sections 15HB of the SEBI Act for the aforesaid alleged violation.

6. The SCN was served through Speed Post - SPAD to the address mentioned above and was duly delivered.

7. The Noticee has submitted its reply to the SCN as well as an additional reply *vide* emails dated November 28 and December 08, 2022. The summary of the replies is provided herein:

a. For the first time SEBI had prescribed *vide* SEBI circular dated November 12, 2020 the format of the asset cover certificate to be issued by the Debenture Trustee which was never required to be issued on the same prior to the said circular.

b. There was some confusion regarding the manner of certifying compliance of covenants under the said circular as the burden was shifted to the Debenture Trustees to certify compliance of covenants when that was not the case earlier. Hence more clarity was required in this regard.

c. The Circular of November 2020 required Debenture Trustee to incorporate terms and conditions of periodical monitoring in the debenture trust deed wherein listed entity shall be liable to provide relevant documents / information. Hence, relying on the same data provided by the company while confirming the covenants are complied with should not be treated as violation of the circular.

d. After several representations were made to SEBI, issued circular dated May 19, 2022 vide which the format for asset cover certificate provided under circular dated November 12, 2020 was rescinded and once again the Debenture Trustee is not required to certify compliance of the covenants.

e. For the allegations mentioned in Para 3B of the SCN, for Lendingkart Finance Limited, SEBI has analyzed the matter and has concluded the same as deficiency and advised the Noticee to strengthen its process and systems. Hence, this matter should be treated as close.

f. For Patanjali Ayurved Limited, it was submitted that the Noticee had always complied with the requirements of LODR. It was only for the first time that a format was prescribed under the SEBI Circular of November 2020 that required the details to be provided of ISINs. However, in the new Circular of May 19, 2022 that requirement has been done away with and that format has been rescinded. However, the omission was only with respect to the two separate ISINs pertaining to only two NCD issued in 2020 and 2021. The ISINs of which were already captured in the certificates that were issued. Further, as an act of abundant caution fresh certificates have been provided hence there is no violation as alleged in the SCN.

g. For the allegations mentioned in Para 3C of the SCN, it was submitted that the Debenture Holder (APG Premium Homes PTE Ltd.) is the sole debenture holder and also a group company of the Issuer (APG Premium Homes. Pvt. Ltd.). Hence, being group companies, the debenture holder was aware of the breach and at the request of the issuer also granted waiver to the issuer which was in force till February 2023. Further, it was informed to the Noticee that both the companies were handling the matter and no further intervention of the Noticee was needed. Letters of such communication were also annexed alongwith the reply. In view of this there is no violation of SEBI Circular of November 2020.

h. In addition to the above submission, it was stated that since the issue was an unsecured one, the requirement of asset cover has already been done away with vide SEBI Circular dated April 11, 2022.

i. For the allegations mentioned in Para 3D of the SCN, it was submitted that the default details have been updated on the regular basis on the depository website. However, due to system glitches or technical errors on the website the updation gets delayed. Also, during the inspection period NSDL portal was under upgradation. Hence, this clearly establishes the Noticee’s consciousness about the updation of default history on NSDL website.

j. Further the Noticee submitted that it has already initiated enforcement in both the cases where default was observed during the inspection.

8. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on August 29, 2022, through video conferencing on the Webex platform, vide e-mail dated August 19, 2022, which was duly delivered. The Noticee requested adjournment for

hearing, accepting the said request the Noticee was given another hearing date i.e., September 02, 2022. Subsequently, the hearing was conducted through video conferencing on the Webex platform. The Noticee appeared through its Authorized Representative and reiterated the written submission made earlier.

9. Considering the above, I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notice were duly served upon the Noticee and sufficient opportunity was granted to it to reply to the SCN and appear for the personal hearing.

CONSIDERATION OF ISSUES

10. I have carefully perused the charges levelled against the Noticee and the documents / material available on record. The issues that arise for consideration in the present case are:

I. Whether the Noticee is in violation of Clause 2.1 and 3 of the SEBI Circular of November 2020, Clause C of Annexure-I of SEBI Circular of October 2013, Clause 10 of Annexure-III of SEBI Circular of June 2021 and clause 3 and clause 4 of Code of Conduct mentioned in the schedule III of DT Regulations 1993?

II. If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

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

11. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Circulars and DT Regulations 1993, alleged to have been violated by the Noticee. The same are reproduced below:

DT Regulations 1993

Schedule III

"CODE OF CONDUCT

1….

2….

3. A Debenture Trustee shall fulfill its obligations in a prompt, ethical and professional manner.

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

SEBI Circulars

Circular of November 12, 2020

A. Monitoring of 'security created' / 'assets on which charge is created'

….

2.1. Debenture trustee shall incorporate the terms and conditions of periodical monitoring in the debenture trust deed wherein listed entity shall be liable to provide relevant documents/ information, as applicable, to enable the debenture trustee(s) to submit the following reports/ certification to Stock Exchange(s) within the timelines mentioned below:

Reports/Certificate	***Periodicity***	***Format***
Asset cover Certificate	*Quarterly basis within 60 days from end of each quarter*	***Annexure A***

Annexure A

…

c) Compliance of all the covenants/terms of the issue in respect of listed debt securities of the listed entity

We have examined the compliances made by the listed entity in respect of the covenants/terms of the issue of the listed debt securities (NCD's) and certify that the such covenants/terms of the issue have been complied by the listed entity except as stated below:

"B. Action to be taken in case of breach of covenants or terms of issue

3. In case of breach of covenants or terms of the issue by listed entity, the debenture trustee shall take steps as outlined in para 6.1 and 6.3 of SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/203 dated October 13, 2020 and thereafter take necessary action as decided in the meeting of holders of debt securities in this regard.

The clause 6.1 and 6.3 mentioned above are stated as below:

6.1 "The Debenture Trustee(s) shall send a notice to the investors within 3 days of the event of default by registered post/acknowledgement due or speed post/acknowledgement due or courier or hand delivery with proof of delivery as also through email as a text or as an attachment to email with a notification including a read receipt, and proof of dispatch of such notice or email, shall be maintained."

6.3 Debenture Trustee(s) shall convene the meeting of all investors within 30 days of the event of default (as per para 6.1 above):

"Provided that in case the default is cured between the date of notice and the date of meeting, then the convening of such a meeting may be dispensed with."

Circular of October 22, 2013

Annexure-I

…

(C)Default History Information:

Default history details: Whether there have been any defaults/delays in servicing any other debentures/bonds issued by the Issuer? If yes details thereof:

Nature of the Issue	*Issue size*	*Due date of interest/redemption*	*Actual Payment date and details*	*Default details*

The above mentioned information shall be uploaded by Debenture Trustees.

Circular of June 04, 2021

Annexure-III

…

Sr. No.	***Activity***	***Responsibility***	***Remarks***
10	*Verification and Updating of default history information about the instrument/ issuer, as applicable in the database*	*Debenture Trustees*	*within 7 days of knowledge of default*

ISSUES

I. Whether the Noticee is in violation of Clause 2.1 and 3 of the SEBI Circular of November 2020, Clause C of Annexure-I of SEBI Circular of October 2013, Clause 10 of Annexure-III of SEBI Circular of June 2021 and clause 3 and clause 4 of Code of Conduct mentioned in the Schedule III of DT Regulations 1993?

For violation of Clause 2.1 of the SEBI Circular of November 2020 and clause 3 and clause 4 of Code of Conduct of DT Regulations, 1993.-

- **Discrepancy in the asset cover certificate with respect to compliance with covenants of the Issue:**

12. SEBI Circular of November 12, 2020 *inter alia* prescribes the format of asset cover certificate in respect of listed debt securities to be submitted by the DT to the stock exchanges. One of the requirements of the said format is that the DT shall certify the compliance of all the covenants/ terms of the issue by the listed entity. In this regard, I note that during the inspection it was observed that the asset cover certificates submitted to the stock exchanges by the Noticee, did not comply with the prescribed format of the said circular certifying the compliance with covenants/ terms of the issue by the issuer in the following cases:

S. No.	Name of the Issuer Company	Period
1	Adani Ports and Special Economic Zone Limited (ISIN - INE742F07502)	September 2021 and June 2021
2	The Ramco Cements Limited (INE331A07224,INE331A07232)	September 2021 and June 2021
3	Achiievers Finance India (P) Ltd	September 2021 and June 2021
4	PVR Ltd.	September 2021
5	Oxyzo Financial Services Ltd.	September 2021
6	Patanjali Ayurved Limited	September 2021
7	Trident Ltd	September 2021 and June 2021

13. For the aforesaid instances, I note that during the inspection it was observed that the asset cover certificates only referred to the CA certificates provided by the issuer company which certifies the compliance with terms of the issue. However, as per the requirement of the SEBI Circular of November 2020, the DT or its advisors/experts necessarily has to certify independently after examining the compliance with covenants/terms of the issue of listed debt securities rather than merely relying on the certification of the issuer's appointed CA provided to the DT by the issuer company.

14. In respect of the above, the Noticee in its reply has contended that there was confusion regarding the nature of compliance of the said format as it was newly introduced through the said circular. Further, SEBI had also extended the timeline for compliance of the said circular twice *vide* circular dated May 03, 2021 and July 20, 2021 respectively. It was also contended that the main aim of an Asset Cover Certificate is primarily to check for availability of adequate asset cover. For any covenant confirmation i.e. financial, general or case specific, Debenture Trustee will prima facie rely on the data submitted by the issuer company.

15. With regard to the above contentions of the Noticee, it is pertinent to mention that monitoring of security cover has always been the responsibility of the DT and therefore the purpose of SEBI Circular dated November 2020, prescribing the format of Asset Cover Certificate, for independent due diligence by DT on the creation of security, periodical

monitoring of security created and enhanced disclosures by DT. Further, the DT, under the said circular, was also required to necessarily carry out independent due diligence and check whether the issuer company is in compliance with the covenants of the terms of the issue.

16. Accordingly, the format of the certificate also specifically mentioned to certify as '*We have examined the compliances made by the listed entity in respect of the covenants/terms of the issue of the listed debt securities (NCD's) and certify that the such covenants/terms of the issue have been complied by the listed entity except as stated below'* (emphasis supplied). However, contrary to the above, during the inspection it was observed that the certificates submitted by the Noticee to the stock exchange, merely stated that 'The CA of the issuer company certificated the compliance made by the listed entity in respect of the covenants/terms of the issue of the listed debt securities'.

17. Any breach of the covenants of the issue will trigger event of default and therefore it becomes crucial that compliance with the same needs to be monitored and accordingly certified by DT. It is therefore the said act of the Noticee, not exercising due diligence, amounts to failure of duty that was entrusted upon the Noticee being a Debenture Trustee, through the said format, may have repercussions which may lead to cause financial loss to the debenture holders. This act of the Noticee is tantamount to shifting the responsibility which is against the spirit of the said circular.

18. Here it is also pertinent to mention that a Debenture Trustee is required to observe the code of conduct which under Schedule 3 of DT Regulations, 1993 r/w Regulation 16 of the same regulation states '*A Debenture Trustee shall…….abide by the provisions of the Act, regulations and circulars and guidelines.'*

19. Further, it is noted that the Noticee has finally complied with the aforesaid circular for the subsequent period (i.e. November 2022) and submitted the certificates to the exchange in compliance of the format specified in the said circular.

- **Discrepancy in the asset cover certificate submitted to Exchange:**

20. With regard to the discrepancy in the asset cover certificate submitted to Exchange by the Noticee, I note that as per SEBI Circular of November 12, 2020 the Debenture Trustees require to submit Asset Cover Certificate to Stock Exchanges on Quarterly basis within 60 days from end of each quarter as per Annexure-A format. However, during the inspection, in the below mentioned cases, various discrepancies were observed in the asset cover certificates submitted to Stock Exchange by the Noticee:

    a. In the case of Lendingkart Finance Limited, the date mentioned on the asset cover certificate for quarter ending September, 2021 as 24 February, 2022, as against for the date on which discrepancy was noticed i.e. 22 February, 2022. The same was not pointed out by the Debenture Trustee to the empanelled CA and thus indicates negligence on part of the Debenture Trustee.

b. In the case of Patanjali Ayurved Limited, it was observed that DT had not followed the format specified in the Annexure-A of the SEBI Circular of November 12, 2020. The format requires DT to disclose ISIN wise details of the instruments. However, DT has not disclosed ISIN wise details of the instruments in the asset cover certificate for quarter ending September, 2021.

21. In respect of Lendingkart Finance Limited I note that a deficiency letter has already been issued to the Noticee. Further, the Noticee has also acknowledged that a letter dated September 20, 2022 has been received by them advising to strengthen the processes and system so that the lapses, pointed out do not occur in future.

22. As regards to Patanjali Ayurved Limited, the Noticee has submitted that the new format was prescribed under SEBI Circular of November, 2020, for the first time which required to give ISINs. It was also submitted that there were only two NCD issues having two separate ISINs which were issued in 2020 and 2021 respectively, whose DTD details were already captured in the certificate that had been issued. However, in contrary to the aforesaid submission, I note that for the other NCD issues, during the same period of inspection it was observed that the Noticee had fully

complied with the format and had also mentioned the ISINs in the Asset cover Certificates that were submitted to the exchange.

23. In view of the above, the contention of the Noticee cannot be accepted and hence the Noticee has violated Clause 2.1 of the SEBI Circular of November 2020 and clause 3 and clause 4 of Code of Conduct mentioned in Schedule III of DT Regulations, 1993.

For violation of Clause 3 of the SEBI Circular of November 2020

- **Delay in communicating breach of covenant to Debenture holders**

24. SEBI circular of November 12, 2020 *inter alia* mentions that in case of breach of covenants or terms of the issue by listed entity, the debenture trustee shall take steps as outlined in para 6.1 and 6.3 of SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/203 dated October 13, 2020 and thereafter take necessary action as decided in the meeting of holders of debt securities in this regard. However, it was observed that in the case of APG Premium Homes Private Limited, the intimation to debenture holder was sent beyond 3 days for breach of covenant i.e. there was delay of 22 days observed for the said intimation. The details of which is given below:

Issuer	ISIN	Covenants / terms of issue (if breached	Date of detecting the breach by the DT	Date of intimation given to debenture	Delay in days

		during the quarter		**holders**	
APG Premium Homes Pvt. Ltd	INE851 T0803 9	Non-maintenance of 100% asset for Listed Unsecured NCDs	09.07.2021	03.08.2021	22

25. In respect of the above, the Noticee submitted that the Debenture Holder (APG Premium Homes PTE Ltd.) is the sole debenture holder and also a group company of the Issuer (APG Premium Homes. Pvt. Ltd.). Hence, being group companies, the debenture holder was aware of the breach and at the request of the issuer, the debenture holder also granted waiver to the issuer which was in force till February 2023. Further, it was informed to the Noticee that both the companies were handling the matter and no further intervention of the Noticee was needed.

26. The above justification for delay may not be accepted as no such exemption was provided to the Debenture Trustees from compliance on the ground of debenture holder and the issuer belonging to same group of companies or are holding-subsidiary. As observed from the reply submitted by the Noticee, I note that, the Noticee informed the Debenture Holder regarding the 'Breach of minimum asset cover requirement' through email dated August 03, 2021 which could have been done in the required time period as the Noticee became aware

about the same breach on July 09, 2021 itself, since the asset cover certificate for the quarter ending March 2021 was submitted to the Noticee on July 08, 2021.

27. Further, the Noticee has claimed that the debenture holder had provided waiver to the issuer with respect to the said compliance. In support of the said claim a letter from APG Premium Homes PTE Ltd. (Debenture Holder) to APG Premium Homes. Pvt. Ltd. (Issuer) was submitted by the Noticee. It is observed that the said letter was dated July 23, 2021 and was worded '*considering the request received and shall provide the waiver shortly*.' The said letter was dated 14 days after the breach was detected by the Noticee and I also note that the waiver was not materialized through the said letter which is contrary to the claim of the Noticee.

28. Hence, the aforesaid contention of the Noticee cannot be accepted as the Noticee being a Debenture Trustee, is obligated to comply with the rules and regulations governing them and also with the specific circulars that are issued from time to time as brought out in the paragraphs above. In view of the same, it is established that the Noticee has violated Clause 3 of the SEBI Circular of November 2020.

For violation of Clause C of Annexure-I of SEBI Circular of October 2013 and Clause 10 of Annexure-III of SEBI Circular of June 2021

- **Centralized database for Corporate Bonds/Debentures**

29. SEBI *vide* Circular of October 22, 2013 and subsequently *vide* circular of June 04, 2021, on 'Centralized Database for Corporate Bonds/ Debentures' has mandated DTs to update default history information about an instrument, as applicable in the database, within 7 days of knowledge of default. However, it was observed during inspection that for the issues of Reliance Home Finance Limited and IL&FS Transportation Networks Limited, the Noticee had not updated the default history information in the centralized database within the specified time period.

S.No.	Issuer	ISIN	Default date	Date of Inspection when the alleged violation was observed	Duration when the alleged violation continued
1	Reliance Home finance Limited	INE217K07AT8 INE217K08107	28 Jan 2021 7 Feb 2021	February 16-22, 2022	Approx. 1 year
2	IL & FS Transportation Networks Limited	INE975G08199	10 Feb 2021,		Approx. 1 year
			10 August 2021		Approx. 6 months

30. In this regard, the Noticee submitted that though they have been complying with the directions and updating the default details on regular basis on the depository website, it is only at times that due to system glitches or technical errors on the website that updation gets delayed. Further, it was stated that during the inspection period the NSDL portal was under upgradation and also there were login issues due to changes in NSDL Corporate Bond Database which has been resolved recently.

31. Further, the Noticee has also submitted that it has obtained order against Reliance Home Finance Limited from NCLT, Mumbai on June 21, 2021 from Hon'ble NCLT, Mumbai under Section 71(10) of the Companies Act, 2013 for payment of dues to the debenture holders. The said order is being challenged and is currently pending before NCLAT. In the case of IL&FS Transportation Networks Ltd. the Government of India has superseded the Board of Directors and the matter is sub-judice before NCLAT.

32. From the above submission of the Noticee, I note that, as per the said Circulars the Noticee is required to update the database within 7 days. However, in the above mentioned instances the Noticee had updated the database beyond the time period specified in the said Circular and the delay observed was substantial in nature hence the reason for the said delay, i.e. technical glitch and login related issue may not be accepted. In view of the above, it is established that the Noticee has violated Clause C of Annexure-I of SEBI Circular of October 2013 and Clause 10 of Annexure-III of SEBI Circular of June 2021.

33. Lastly, the Noticee submitted that they have substantially complied with the requirements of said circular and hence it should not be treated as violation. For this the Noticee relied upon the judgment of Hon'ble Supreme Court in *CCE, New Delhi vs. Hari Chand Shri Gopal & Ors.* [2010(182) ECR 0143 (SC)] whereby the doctrine of substantial compliance was defined by the Court and it was held:

"The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements."

"Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed."

34. In addition to the above judgment the Noticee has submitted the observation of Hon'ble Securities and Appellant Tribunal in the case of *Piramal Enterprises Ltd. vs. SEBI*, Appeal No. 466 of 2016, that *"Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures."*

35. After considering the submissions and the judgments/orders quoted by the Noticee, the fact cannot be denied that multiple infractions in compliance with the SEBI circulars and regulations were observed during the inspection undertaken by SEBI. Out of many such infractions, adjudication was initiated for 4 violations which are dealt above. For other violations warning letter/deficiency letter was already issued to the Noticee.

36. For the said 4 violations the Noticee has failed to brought forth any document or submission to prove that the observations made during the inspection were incorrect and had only mentioned the cause of said violations and the subsequent corrective measures that it undertook. For the violations under SEBI Circular of November 2020 it was also submitted that the said circular has been superseded by the SEBI Circular of May 19, 2022. However, I note that during the period of Inspection the SEBI Circular of November 2020 was in force and the subsequent suppression of the said circular cannot be taken as a ground to justify the violation occurred prior to the suppression.

37. Being a Debenture trustee in securities market the Noticee had duty that required utmost due diligence and care and was responsible to ensure that the interest of debenture holders is not hampered in any way. In order to fulfill the responsibility of a trustee, it is a reasonable expectation that the trustee will comply with all the rules and

regulations and that too in a time bound manner. Considering the sensitivity of the role played by such debenture trustees, even a minor flaw may lead to huge loss to the debenture holders.

38. SEBI being a regulator has to ensure that the interest of the investors in securities market are protected. For the said purpose, various intermediaries are placed in the market which are governed by the rules, regulations and various circulars issued from time to time. Through these intermediaries SEBI thrive to fulfill its duties and responsibilities and hence it becomes critical for the regulator to ensure timely and proper compliance with the issued circulars by the intermediaries.

39. There is a requirement to strictly comply with the rules and regulations made by SEBI. The proposition made by the Noticee that it had substantially complied with the applicable provisions may not be helpful to the Noticee in the present case as the object for which the said circulars were issued will not be fulfilled if they are not complied strictly. Hence, I note that, such a defense cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statue has not been met.

40. Further in the case of *Chairman, SEBI vs. Shriram Mutual Funds* (MANU/SC/8185/2006) the Supreme Court observed that:

"20. …penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act (SEBI Act, 1992) and the Regulation is established…".

Further, since these are violations in civil nature, the intention and motive need not be considered, however, any subsequent corrective measure undertaken by the Noticee can only be considered while determining the quantum of penalty.

II. If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

41. As it has been established that the Noticee has violated the provisions of Clause 2.1 and 3 of the SEBI Circular of November 2020, Clause C of Annexure-I of SEBI Circular of October 2013, Clause 10 of Annexure-III of SEBI Circular of June 2021 and clause 3 and clause 4 of Code of Conduct mentioned in the schedule III of DT Regulations 1993, I am of the view that the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, which are reproduced hereunder:

SEBI Act, 1992:

***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 104[liable to a* *penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

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

42. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:

SEBI Act, 1992

15J. *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.

43. 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 losses, if any, suffered by the investors due to such violations on the part of the Noticee. From the document available on record, it is

not assessable whether the acts of the Noticee are repetitive in nature. However, it is pertinent to note that the role of DT is crucial as it is primarily responsible to ensure that the interest of the debenture holders is not hampered by the issuer companies. Much power is given to trustees as they stand as a protector for the investors and they are supposed to play a fiduciary role to ensure proper security and timely payment of interest and principal as decided under the terms of the issue. I find it pertinent to mention here that registration is with the objective of protecting the interests of the investors, as it casts accountability and responsibility upon the registered DT to comply with all regulatory requirements applicable to the conduct of its business activity, so as to promote the best interests of investors and the integrity of the market. The violations of the Noticee, as brought out in the preceding paragraphs, clearly show that it has failed in its fiduciary duties owed to the debenture holders and has violated multiple provisions.

ORDER

44. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under Section 15HB of the SEBI Act, 1992 on the Noticee for Clause 2.1 and 3 of the SEBI Circular of November 2020, Clause C of Annexure-I of SEBI Circular of October 2013, Clause 10 of Annexure-III of SEBI Circular of June 2021 and clause 3 and clause 4

of Code of Conduct mentioned in the schedule III of DT Regulations 1993.

Name of Noticee	Penal provisions	Penalty
IDBI Trusteeship Services Limited **(PAN: AAACI8912J)**	**Section 15HB of the SEBI Act, 1992**	**Rs. 3,00,000/- (Rupees Three Lakhs only)**

45. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT →Orders →Orders of AO →PAY NOW

46. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan 2, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	

6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

47. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Date: December 23, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**