

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/NS/2022-23/16158)**

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

In respect of

Vistra ITCL (India) Ltd.,

In the matter of Vaishno Devi Dairy Products Ltd.,

(Presently known as Sahindra Vaishno Devi Dairy Products Ltd.)

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an examination with regard to issuance and defaults of Non-convertible Debentures (NCDs) issued by Sahindra Vaishno Devi Dairy Products Ltd, (hereinafter referred to as “SVDDPL” / “Company”), for possible violation, if any of the provisions of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as the “**DT Regulation, 1993**”).
2. Based on information received from Ministry of Corporate Affairs (MCA) financial year 2013-14 has been selected as examination period. It was observed that SVDDPL had issued NCDs in the financial year 2013-14.

Year	Date of allotment	Type	Nos. of Allottee	Amount (in ₹Crores)
2013-14	February 04, 2014 to March 31, 2014.	Non-Convertible Debentures (NCDs)	185	25

It is observed that IL&FS Trust Company Ltd., ('ITCL'/ 'DT) was appointed as Debenture Trustee & Escrow Agent. Subsequently, ITCL was taken over by Vistra ITCL (India) Ltd (hereinafter referred to as **Noticee/ Vistra ITCL/ ITCL/ DT**). On the basis of the said examination, it is alleged that Noticee had violated the provisions of Regulation 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 [prior to the amendment to SEBI (DT Regulations, 1993 in 2017)] and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993 while dealing with issuance of NCDs by SVDDPL . In view of the above, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the SEBI Act, 1992, for the alleged violation of the provisions of Regulation 15(1)(i) (prior to amendment in the year 2017) and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned, *vide* order date April 23, 2021 was appointed as the Adjudicating Officer under section 15-I of the SEBI Act, 1992 r/w rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under the provision of section 15HB of the SEBI Act, 1992, the alleged violation of the provisions of Regulation 15(1)(i) (prior to amendment in the year 2017) and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI DT Regulations, 1993.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. Show Cause Notice dated June 22, 2021(hereinafter referred to as **SCN**) was issued to the Noticee under rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be initiated against the Noticee and why penalty, if any, should not be imposed on the Noticee under section 15HB of the

SEBI Act, 1992, for the alleged violations of the provisions of regulations 15(1)(i) (prior to amendment in the year 2017) and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI DT Regulations, 1993. The allegations against the Noticee are as follows:

- a) In respect of the aforesaid issue, it is observed that Noticee was appointed as Debenture Trustee & Escrow Agent., Further, it is observed that Karvy Capital Ltd.(KCL), was appointed as Debenture Holders Representative and was also appointed to act as Sole Book Runner and Lead Arranger.
- b) A Debenture Trustee Agreement dated January 13, 2014 (“DTA” or “Agreement”) was executed between the company, ITCL, KCL and promoters of the company on January 13, 2014 for the proposed debt program of the company through issuance and allotment of debentures. Further, as per the available records, the agreement was subsequently amended vide amendments dated January 30, 2014 and an Addendum dated March 24, 2014 was added to the Agreement. Importantly, the DTA inter-alia provided the following:
 - i. the first series of debentures were to be issued on private placement basis in terms of the Information Memorandum (IM) and pricing Supplement dated on or about the date of DTA.*
 - ii. Debentures to have a face value of ₹1,00,000/-*
 - iii. Application to be made for a minimum of 10 debentures.*
 - iv. Debentures not to be listed on any stock exchange.*
 - v. Company to solicit subscription as per the terms of the Information Memorandum.*
 - vi. Company to provide a certified true copy of the duly executed Information Memorandum to the Trustee as one of the conditions precedent to the issue*
- c) Subsequently, an Information Memorandum (IM) dated January 13, 2014 for issuance of debentures on private placement basis was brought out by the Company, inter alia, containing the disclosures related to the debenture issuance of the company. In terms of the IM, KCL was specified to act as Sole

Book Runner and Lead Arranger and Karvy Computer share Private Limited (KCPL) as Registrar to the issue. The IM, inter-alia, provided the following:

- (a) *Page 39 of the IM provided the following disclaimer clause:
'The issue is being made strictly on a private placement basis and is not intended to be circulated to more than 49 persons nor intended to be listed on a stock exchange at any time.'*
 - (b) *The role of the Sole Arranger in the assignment is confined to marketing and placement of the NCDs on the basis of IM. The IM also provides for use of IM by the sole arranger for the purpose of soliciting subscription from qualified institutional investors in the NCDs.*
 - (c) *Minimum no. of NCDs to be applied for were to be 10 and in multiple of 1 NCD thereafter.*
- d) The term sheet of the issue provides for 51% share pledge of the company, personal guarantee of the promoter, hypothecation of brand "SHUBHI", second charge on fixed and current assets of an investment company, post-dated cheques for all outstanding principal and interest repayments, as security cover.
- e) Vide letter dated January 23, 2019, SVDDPL, inter-alia, submitted the following:
- i. *The total arrangement to be made by KCL was Rs.75 crore which was supposed to bridge funding and the company was planning to opt for a public issue for its fund requirements as well as redemption of its NCDs.*
 - ii. *KCL did not adhere to the clauses of the Information Memorandum as well as the Debenture Trustee Agreement and transferred and allotted debentures to more than 49 persons.*
 - iii. *KCL has made the alleged transfer without the knowledge of the company and ultra vires the authority conferred upon it.*
 - iv. *Debenture holders purchased the debentures of the company from KCL which was not communicated to the company by either parties.*
 - v. *Vistra ITCL has filed a winding up petition on behalf of the Debenture Holders against the company before the Bombay High Court in 2016 and also filed another application under the IBC Code, 2016 in 2018.*

- f) Vide email dated March 29, 2019, SVDDPL submitted that NCDs were allotted to KCL. With regard to the aforesaid submissions of SVDDPL, it is observed from the demat account statement of KCL that during the FY 2013-14, NCDs were allotted by SVDDPL to KCL from February 4 to March 19, 2014 on various dates which were further down sold to the investors by KCL from February 4, 2014 till March 31, 2014 on various dates, as per the details given in the table below:

Sl. No.	No. of NCDs allotted by KCL to investors	No. of investors	Date of Allotment by Company to KCL	Dates of down selling by KCL to investors
1	650	47	February 4, 2014	February 10 & 19, 2014
2	619	49	February 10, 2014	February 26, 2014
3	408	35	February 24, 2014	March 3, 10, 11 & 13, 2014
4	252	22	March 10, 2014	March 18 & 19, 2014
5	571	32	March 19, 2014	March 24 & 31, 2014
TOTAL	2500	185	-	-

- g) IM for the said issue is dated January 13, 2014 and as brought out in the above table, it is observed that KCL down sold the 2,500 NCDs to the public (185 nos.) well within six months from various dates of allotment by the Company to KCL. Hence, in terms of Section 25 of the Companies Act, 2013, the issue of NCDs by SVDDPL is *‘an issue of debentures, with a view of it being offered to the public’ and thus, is ‘deemed public issue’*.

- h) It is noted that SVDDPL had filed Form 20B (form for Annual Return) for the financial year ending March 31, 2014 with RoC which was digitally signed by its Managing Director i.e., Mr. Nandkishor Harikishan Attal. The aforesaid form enclosed a list of 185 debenture holders who were allotted NCDs of the

company during the year which, inter alia, contain details of series, date of agreement with investors, total investments and DP ID of the investors.

- i) Vistra ITCL (erstwhile IL&FS Trust Company Limited) was one of the signatories to the Debenture Trust Agreement (DTA) dated January 13, 2014. As per the terms of the DTA, the Company was required to provide a certified true copy of the duly executed Information Memorandum to the Debenture Trustee as one of the conditions precedents to the issue.
- j) Vide email dated July 17, 2020, SEBI, inter alia, sought a copy of the aforesaid IM, copies of the BENPOS for FY 2013-14 from Vistra ITCL. Vistra ITCL, vide email dated July 20, 2020, furnished a copy of the IM along with certain pricing supplements related to the issue. It is observed from the Page 39 of the IM that a disclaimer clause was carried which reads as *"The issue is being made strictly on a private placement basis and is not intended to be circulated to more than 49 persons nor intended to be listed on a stock exchange at any time."*
- k) With regards to SEBI's request for copies of the communications related to the BENPOS for FY 2013-14, Vistra ITCL, initially, forwarded the BENPOS for FY 2014-15 instead of the requested information. In view of the same, vide another email dated July 24, 2020, Vistra ITCL was again specifically asked to furnish all correspondences pertaining to BENPOS for FY2013-14. In response to the same, Vistra ITCL, vide email dated July 28, 2020, inter alia, submitted the following:

'.... please note that 'Karvy Capital Limited' was the sole debenture holder/subscriber to an issue. In this regard we have already shared pricing supplements to support the same'.
- l) In view of the above, a third email dated July 31, 2020 was sent to Vistra ITCL, inter-alia, firmly seeking the communications pertaining to the BENPOS for FY 2013-14 from it and also reminding it of its obligations under Code 19 of the Code of Conduct under SEBI (Debenture Trustees) Regulations, 1993.

m) In response to the same, vide email dated August 04, 2020, Vistra ITCL forwarded a copy of the email dated April 1, 2014 received from the RTA attaching the BENPOS for FY 2013-14. A perusal of the said BENPOS indicates that there were 154 investors in NCDs issued by SVDDPL, as on March 24, 2014.

n) From the above, it is evident that Vistra ITCL was aware of the breach of the prescribed limit of 49 persons during FY2013-14 as it had received copies of the IM and the BENPOS for FY2013-14. Therefore, Vistra ITCL did not exercise necessary due diligence to ensure compliance by SVDDPL with the provisions of the Companies Act, Debenture Trustee Agreement and Information Memorandum. Accordingly, it is alleged that the Noticee i.e., Vistra ITCL (India) Ltd., had violated the provisions of Regulation 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 [*prior to the amendment to SEBI (Debenture Trustee)] Regulations, 1993 in 2017*) as applicable during the period of examination, which reads as under:

‘(i) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed’

o) As brought out in the para above, Vistra ITCL had attempted to mislead SEBI during the course of the examination by initially suppressing the information containing the BENPOS for FY 2013-14. Noticee instead submitted the correspondence containing the BENPOS for FY 2014-15. In response to subsequent reminder from SEBI, it falsely submitted that KCL was the sole debenture holder/ subscriber to the issue, despite having possession of the BENPOS for FY 2013-14 and having initiated insolvency proceedings against SVDDPL on behalf of the debenture holders under the Insolvency and Bankruptcy Code. In view of the above, it is alleged that the Noticee i.e., Vistra ITCL (India) Ltd., had violated the provisions of Regulation 16 read with Clause 19 of Code of Conduct of SEBI (Debenture Trustees) Regulations, 1993, which reads as under:

*Regulation 16 SEBI (Debenture Trustees) Regulations
'Code of Conduct.'*

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

Clause 19 of code of conduct reads as under:

'19. A Debenture Trustee shall not make untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board.'

- p) The aforesaid alleged violations, if established, makes the Noticee liable for monetary penalty under Sections 15HB of SEBI Act respectively, the provisions of which are reproduced hereunder:

Section 15HB of SEBI Act

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.

5. I note from the material available on record that the SCN was served to the Noticee through speed post acknowledgement due, reply was received from the Noticee vide letter dated July 19, 2021. Subsequently, in accordance with the principle of natural justice, opportunity of personal hearing was accorded to the Noticee on September 01, 2021 vide hearing notice dated August 23, 2021. On the scheduled date of hearing, the Authorized Representatives of the Noticee appeared before me through video conference and requested to take into account the submissions made by the Noticee vide its letter dated October July 19, 2021, as his oral submissions. Noticee vide letter dated September 09, 2021 submitted additional reply to the SCN. The submissions of the Noticee are as follows:

- (a) *In December 2015, VDDPL breached terms of the DTA and Escrow Agreement and defaulted in payment of interest. As per the DTA, Karvy*

Capital Limited was appointed as the Debenture Holder Representative ('Karvy' or "Debenture Holder Representative (DHR)") and as per the instructions of DHR, Debenture Trustee took following actions:

- a. Appointment of the legal counsel and issue of event of Default Notice to the Company.*
 - b. Vistra issued notice under Section 138 of Negotiable Instrument Act dated 10.04.2016 and thereafter filed seven Complaints before the Metropolitan Magistrate Court in lieu of the cheques issued by the VDDPL.*
 - c. Vistra filed a Company Petition for winding-up of the Company and redemption of dues in the Bombay High Court against the Company on 27-07-2016 however the matter was transferred to NCLT, Mumbai vide order dated 10.09.2018.*
 - d. Invocation of the pledged shares.*
- (b) It is understood from the said Notice that, pursuant to receipt of a complaint with regard to issuance and default by the Company, SEBI carried out an examination to ascertain whether there were any violations of public issues requirements for issuance of NCDs by the Company. It was observed by SEBI that the company had issued NCDs to higher number of persons in the FY 2013-14 and we as the Debenture Trustee had not brought this to the notice of SEBI, as against the normal stipulation of less than 50 subscribers in the case of a private placement under the Companies Act, 1956.*
- (c) It is submitted that the term "issue" has been defined under SEBI (Debenture Trustees) Regulations, 1993 as under:*
- "issue" means an offer of debentures by a body corporate, to the public, or the holders of securities of such body corporate and includes a private placement of debentures made by a body corporate, which seeks to list its debt securities on a recognized stock exchange.***
- The understanding pursuant to this definition is that the SEBI (Debenture Trustees) Regulations, 1993, is applicable only to listed (public or private) placement of debentures. It may be noted that the present issue in question*

is an unlisted issuance. However, from time to time, Vistra as a prudent Trustee has been submitting findings and information related to unlisted issuances also for information to SEBI and for seeking guidance for further action..

(d) Section 67(3) the Companies Act, 1956, states that -

“No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances – (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation ; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation :

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more.

We observe that the Company has not made offer or invitation to more than fifty people in any of the NCD tranches issued. However, NCDs allotted by the Company to Karvy were further down sold by Karvy to other persons during the period February 04, 2014 to March 19, 2014. We agree that prior to April 01, 2014, offers of securities, whether shares or debentures, by companies to more than 49 persons were deemed to be public offers. However, there are no specific SEBI guidelines/circular with regard to the restriction on down selling of NCDs by the debenture holders and therefore it is necessary for SEBI to provide clarity on this subject.

(e) With regard to para 19 to para 21 of the Notice, it is submitted that Vistra had received SEBI’s email dated July 17, 2020 (Friday) asking us to submit the requisite information/documents in the matter by July 20, 2020. As per SEBI email one of the requirements was relating to BENPOS for the NCDs issued in FY 2013-14. We submit that being a pandemic time and due to Covid 19 protocol and lockdown, our entire staff was working from home.

During this period retrieval of old data was taking longer time than usual. You would appreciate the fact that we vide our email dated July 20, 2020 (Monday) on the very next business day had replied to SEBI's email and provided FY 2014-15

BENPOS as an interim reply with the information that was readily available with our respective team, while at the backend our respective team was in search for the old archived emails for the FY 2013-14 BENPOS and immediately upon retrieval the same was submitted to SEBI vide our email dated August 04, 2020.

- (f) *With regard to para 22 of the Notice, it's been alleged in the Notice that Vistra had violated the provisions of Regulation 15(1) (i) of SEBI (Debenture Trustees) Regulations, 1993, as applicable during the period of examination, which reads as under:*

'(i) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed'

The main allegation against Vistra as a debenture trustee stems from the fact that even though admittedly the debenture issue was on the private placement basis, it came to the Notice of SEBI based on a complaint received. Karvy being the sole book runner and lead arranger had transferred the debentures which was issued to them on private placements to various investors numbering to 154 in numbers and therefore, Vistra did not exercise due diligence in reporting the matter to SEBI. In this connection with all humbleness, we would like to submit that we were kept completely in the dark by Karvy with regard to the various allegations as contained in the Notice and directly or indirectly Vistra was never a party to any of the dealings. It is also to be noted that SEBI has also no such case that the allegations against Karvy were done at the behest of Vistra or that Vistra was the part of the said irregularities.

- (g) *Vistra as a Debenture trustee is in existence since the beginning of the introduction of debenture trustee concept and it is run by a foreign conglomerate having exceptional international standards of the corporate*

governance, we never for a moment thought unwarrantedly we will be dragged on to such allege illegalities committed by Karvy. We have an impeccable record of complying with the regulations not only on letter but also in spirit. Therefore, it is our humble request and prayer that it was beyond our control to fathom the mens rea behind Karvy down selling it to the various investors

- (h) We submit that we exercise reasonable and expected due diligence with regard to the primary issue which was the private placement and for which there is no complaint at all. In the event the learned adjudicating authority is of the opinion that if there is any shortcoming on the part of Vistra, it may be found that it was not intentional and Vistra did not gain anything from the alleged transaction of down selling by the Karvy. We state that our debenture trustee fee remains the same and our actions were always in good faith. We submit that the entire allegation against Vistra may be completely looked into in a different angle than that of Karvy*
- (i) It is submitted that Vistra as a Debenture Trustee is required to act in accordance with SEBI (Debenture Trustees) Regulations, 1993, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. ("Regulations"), however while carrying out our duties as trustees, certain practical difficulties are encountered while adhering to the Regulations which we have highlighted and submitted to SEBI for consideration and guidance from time to time. As a responsible Debenture Trustee and member of trustee industry, Vistra vide its letters dated May 10, 2011, July 21, 2011, August 07, 2014, November 26, 2014, January 29, 2015, January 25, 2016 and March 08, 2017 had submitted written representations to SEBI highlighting the practical difficulties, interpretation issues encountered while adhering to regulations including SEBI (Debenture Trustees) Regulations, 1993. These representations, inter alia, covers suggestions that SEBI to act as the regulatory body for private placement of unlisted debentures also and introduction of limits for secondary sale of unlisted debentures as well*

highlighted limited powers available to the Trustee in case of defaults. Copy of the representations filed with SEBI is annexed hereto as Annexure 1.

- (j) We further submit that despite the said issuance being an unlisted issue, Vistra ensured following all applicable SEBI regulations as is applicable to listed issues and ensured that debenture holders' interest are duly protected. It may be noted that in all our debenture issues, clauses with respect to Regulation 14, content of trust deed as is detailed in Schedule IV of the Debenture Trustee Regulations is also ensured into the constituent documents. As part of operating process, we follow the same strict process for as is applicable for listed issuance wherever possible*
- (k) To facilitate orderly development of Debt Market, Vistra gives great importance to Compliance. Vistra conducts all its activities in compliance with the applicable laws, regulations, and rules in force and in line with Board approved internal policies and procedures. We like to submit that Vistra have so far received Regulator's appreciation by way of clean inspection reports with regards to its Debenture Trustee operations and enforcement processes.*
- (l) As per para 23 of the said Notice, it is also alleged that Vistra has violated Clause 19 of Schedule III to SEBI (Debenture Trustee) Regulations, 1993, namely the Code of Conduct, which states that:*

“19. A Debenture Trustee shall not make untrue statement or suppress any material fact in and documents, reports, papers or information furnished to the Board.”

With all humbleness we would like to submit that the above assumption is due to incorrect appreciation of facts and circumstances of this case. We would therefore be permitted to answer the same in detail. We submit that since last two decades as Debenture Trustee, Vistra has been protecting the interest of investors and lenders in commercial transactions by demonstrating integrity and transparency. We have laid down best in class processes and procedures set up through years of experience and adopting global best practices. Vistra has SOPs and policies in place to ensure that we only accept debenture issue assignments

that meet with the criteria defined in SOP and in compliance with applicable Regulations, Acts and Rules and Code of Conduct specified by SEBI.

- (m) We submit that in the present case, Vistra had no intention to mislead SEBI in the process of examination and we never tried to suppress any facts or information relating to the issuance from SEBI. We have always tried our level best to provide available information on timely basis to SEBI. However, this time due to pandemic and work from home, retrieval of BENPOS for FY 2013-14 took longer time but same was provided within weeks' time to SEBI and provided information that we could lay our hands on immediately. Had our intentions been, otherwise, our Compliance Officer would have not called SEBI officer for clarity on queries, provided BENPOS for FY 2013-14 and other information asked by SEBI.*
- (n) We are a Trustee Company having international standards of corporate governance in all respects and have introduced such practices in India. Therefore, our integrity, dignity, fairness, ethics are of the highest order and professional standards are of the highest global standards. We have more than 50% Non- Executive Directors on our Board and we follow best governance practices. If SEBI is to scan the records it is sure to come across the disclosures and explanations sought by us in a similar case of Green Infra and Lyka Labs Limited wherein based on our information SEBI has taken action on certain issues i.e. SEBI banned promoters of Green Infra to act in capital market solely based on our information. Had our intentions been, otherwise, we would have acted in a different manner in this case also.*
- (o) It is submitted that if some Issuers or its promoters are up to some mischief and if they are flouting the law, action should be taken against them and not against a responsible intermediary like us who have at all times acted in good faith to protect the interest of the subscribers and reported every matter to SEBI without fail. We as an institution always welcome strong and practical regulatory guidelines and act as eyes and ears of regulator for the development of Indian debt market. We firmly believe that a dynamic regulation is fundamental to the growth of business. To punish the erring or*

rouge companies both the Regulator and all the Intermediaries ought to work more closely.

- (p) Under these circumstances we humbly request the Adjudicating Officer to reconsider the allegation made on Vistra and looking at facts, Vistra ITCL is not in violation or non-compliance of Regulation 15 (1) (i) and Regulation 16, read with clause 19 of Code of Conduct of SEBI (Debenture Trustees) Regulations, 1993 and no penalty should be imposed on us or any action be taken.*
- (q) It is submitted that under the said Notice the main point which is raised against Vistra is that, Vistra despite having received the BENPOS has not taken any pro-active action in the matter. In this connection it is humbly submitted that the Information Memorandum specifically mentioned that the said issue is a privately placed issue. We agree to the fact that the initial allotment was made only on private placement basis and the issuance was primarily made to only one debenture holder as per the initial allotment letter/resolution of the company.*
- (r) We submit that under the Debenture Trustee Regulations, which is governing the debenture issue, the debenture trustee has no powers except to insist issuers on submitting the BENPOS to Debenture Trustee on a quarterly basis through Quarterly Compliance Report/ Periodical Reports and as when requested for. In the event if the issuer fails to do so, the debenture trustee has no authority to take any action or impose a penalty except reminding the issuer. In the instant case, after a long time of almost 90 days the issuer had submitted the BENPOS to Debenture Trustee which showed that the Issuer/primary debenture holder has down-sold the debentures subsequent to the primary issue, which is limited to 49 debenture-holders through its agent, namely, Karvy Capital Limited (Karvy). We understand that Companies Act and applicable SEBI regulations does not stipulate any rules which prohibit such down-selling of debentures. In the present case the Debenture Trustee was informed accordingly by the issuer and Karvy and therefore believing the same to be true and correct the Debenture Trustee did not take any further action.*

- (s) We submit that on June 27, 2021 Vistra received first Quarterly Compliance Report from the Company with list of Debenture holders enclosed for Series I to Series IV. As per provided list we observe that there was no breach in number of Debenture holders, as under all series debenture holders were less than 50. Copy of company email along with list of debenture holders is enclosed as Annexure 1.
- (t) It is further submitted that as per said Notice it was alleged that the Debenture Trustee suppressed the furnishing of certain documents sought by SEBI, especially when SEBI sought 2013-2014 BENPOS the Debenture Trustee provided 2014-2015 BENPOS and the correct documents were submitted subsequently. The above observation by the Adjudication Authority is far from truth, because if the intention of the Debenture Trustee was to suppress the facts it would not have submitted the documents at all. It is not a case where the documents were not produced, but a case where it was submitted slightly belated.
- (u) The word "suppressed" has a wrongful connotation and either Adjudication authority can come to such conclusion only in a case where the person from whom the details is sought fails to produce the same fully knowing the fact that it is available and later such documents were unearthed by the authority on its own. This is not the case here, it is only a case where documents pertaining to one year were asked at the first instance but the documents pertaining to the subsequent year was submitted, and later when this was pointed out, the Debenture Trustee rectified the same and submitted the relevant documents voluntarily. It is further submitted that during the period when the details was called by SEBI, the entire staff was working from home and the documents were required to be procured through third person with the help of IT team and hence the mix-up happened and was rectified immediately upon coming to the knowledge of the Debenture Trustee. This action was an inadvertent error on the part of the Debenture Trustee, which was rectified immediately, and never an intentional act done with ulterior motives.

- (v) *It is humbly submitted that the Adjudication authority has no case against Debenture Trustee as there was no collusion between the Debenture Trustee and the issuer or its agent Karvy. The Debenture Trustee never at any point of time compromised their position to save, protect or even take side with the issuer or its agent Karvy. Under these circumstances, it is submitted that the Debenture Trustee has not violated any provisions as stated in the said Notice*

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have taken into consideration the facts and circumstances of the case, reply of the Noticee and the material available on record, the issues that arise for consideration in the present case are:
- (a) **Whether the Noticee violated the provisions of regulations 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 {(prior to the amendment to SEBI (Debenture Trustee)] Regulations, 1993 in 2017} and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993?**
 - (b) **Does the violations, if any, on the part of the Noticee would attract monetary penalty under section 15HB of the SEBI Act, 1992?**
 - (c) **If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?**
7. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (Debenture Trustees) Regulations, 1993. which read as under:

SEBI (Debenture Trustees) Regulations, 1993

Regulation 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 (prior to the amendment to SEBI (Debenture Trustee) Regulations, 1993 in 2017)

‘(i) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed’

Regulation 16 SEBI (Debenture Trustees) Regulations

'Code of Conduct.

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

Clause 19 of code of conduct reads as under:

'19. A Debenture Trustee shall not make untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board.'

Issue (a): Whether the Noticee violated the provisions of regulations 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 {(prior to the amendment to SEBI (Debenture Trustee)] Regulations, 1993 in 2017)} and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993??

8. I have perused the allegations made in the SCN and considered the submissions made by the Noticee in its reply. Before proceeding with the consideration of issues, there is need to address the preliminary issue raised by the Noticee regarding definition of **'issue' as per (Debenture Trustees) Regulations, 1993**. Noticee also contended no public issue is made and placed reliance upon Section 67(3) of the companies Act. In this regard, I note that the definition of issue is as follows *““issue” means an offer of sale of securities by any body corporate or by any other person or group of persons on its or their behalf, as the case may be, to the public, or the holders of securities of such body corporate or person or group of persons and includes a private placement of debentures made by a listed company, which are proposed to be listed;”*. I note that the first part of the definition clearly stipulate that issue is the..... *“sale of securities by any body corporate or by any other person or group of persons on its or their behalf, as the case may be, to the public, or the holders of securities of such body corporate or person or group of persons”*..... Herein it includes all issues irrespective of whether the issue is listed or not. Accordingly, I find no merit in the contention of the Noticee that the definition of issue is applicable only to listed placement of debentures. Further I note that in FY 2013-14 the limit for private placement was

49. The same was also mentioned in Information Memorandum signed by Noticee and the Company. In the present matter the NCD's allotment was made to 185 allottees which is over and above the maximum allottee requirement for an issue to be private placement. It is pertinent to note that.. **The Hon'ble Supreme Court in the matter of Sahara India Real Estate Corporation Ltd. & Ors. vs. SEBI & Anr. (2013) 1 SCC 1, inter alia, held as under: '93:** *Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts...***94:** *Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons. In view of the clear statutory mandate, the contention raised, based on Rule 19 of the SCR Rules framed under the SCR Act, has no basis. Legal obligation flows the moment the company issues the prospectus expressing the intention to offer shares or debentures to the public, that is to make an application to the recognized stock exchange, so that it can deal with the securities. A company cannot be heard to contend that it has no such intention or idea to make an application to the stock exchange. Company's option, choice, election, interest or design does not matter, it is the conduct and action that matters and that is what the law demands...***96:** *Saharas' acts and omissions have clearly violated the provisions of Section 73, their failure to list the securities offer to the public was, therefore, intentional and the plea that they did not want their securities listed, is not an answer, since they were legally bound to do so. The duty of listing flows from the act of issuing securities to the public, provided such offer is made to fifty or more than fifty persons.*

9. Further I note from the demat statement of KCL that during the FY 2013-14, NCDs allotted by SVDDPL to KCL from February 4 to March 19, 2014 on various

dates which were further down sold to the investors by KCL from February 4, 2014 till March 31, 2014 on various dates, as per the details given in the table below:

Sl. No.	No. of NCDs allotted by KCL to investors	No. of investors	Date of Allotment by Company to KCL	Dates of down selling by KCL to investors
1	650	47	February 4, 2014	February 10 & 19, 2014
2	619	49	February 10, 2014	February 26, 2014
3	408	35	February 24, 2014	March 3, 10, 11 & 13, 2014
4	252	22	March 10, 2014	March 18 & 19, 2014
5	571	32	March 19, 2014	March 24 & 31, 2014
TOTAL	2500	185	-	-

10. On perusal of the above table, it may be noted that the said NCDs were issued by the company to KCL during the period from February 4, 2014 till March 31, 2014 on various dates. It is important to note that KCL has on allotment further down sold the said NCDs to various investors. I note that KCL was just acted as a medium between the investors and the company. It was predetermined by the KCL and company to sell NCDs to large public.

11. I also note that the provisions of Section 25 of the 2013 Act became effective from September 12, 2013. Since the issuance of NCDs by the Company pertains to the period after the aforesaid date, Section 25 is applicable to the said issuance. The provision reads as:

Section “25”. Document containing offer of shares or debentures for also to be deemed prospectus.

(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered

for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply with the modifications specified in sub- sections (3), (4) and (5), and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown-

*(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been received by it.”*

12. On perusal of the above provision I note that one of the conditions to be fulfilled to prove that the securities were allotted with a view to offer them to the public, is whether the offer of NCDs was made within six months from the date of allotment to the public. In the instant case, it can be seen from the table at para 9, that the Noticee had offered the shares to the public well within six months from date of allotment by the Company to Noticee. Hence, in terms of Section 25 of the 2013 Act, the issue of NCDs by the Company here can be termed as an ‘issue of debentures, with a view of it being offered to the public’ and thus, may be treated as ‘deemed public issue’. Further, the Information Memorandum for the said issue is dated January 13, 2014 and hence, the allotment of NCDs took place within a period of 6 months.

13. I note that, “Sometimes companies adopt different modus operandi and allot shares to large no. of persons in the garb of private placement. The intention of the company can be inferred from the conduct/ deeds of it and there is no need to express/ depict the same in clear words”. **The Hon’ble Supreme Court in the matter of Sahara India Real Estate Corporation Ltd. & Ors. vs. SEBI & Anr. (2013) 1 SCC 1, inter alia, held as under: ‘95. The maxim ‘acta exterior indicant interior secreta’ (external action reveals inner secrets) applies with all force in the case of Saharas, which I have already demonstrated in facts as well as on law. Conduct and actions of Saharas indicate their intention, we have to judge their so called intention from their subsequent conduct. Subsequent illegality shows that Saharas contemplated illegality....**Placing reliance upon said judgment and the facts mentioned in above para’s I am of the view that the limit of 49 allottees cannot be breached or bypassed by making multiple allotments which individually may fall within the limit but cumulatively exceed 49 in number”. Therefore it can be concluded that the NCDs issued by the Company, which are not listed on any of the exchanges, should have been listed on a recognized stock exchange and the Company ought to have followed the regulatory norms for public issue. Hence the contention of the Noticee that the issue of debentures was not an offer to public at large doesn’t hold any merit.
14. Noticee in its reply contended that...*they couldn’t provide the requisite information/documents in the matter by July 20, 2020 relevant as it was a pandemic time and due to Covid 19 protocol and lockdown, our entire staff was working from home. During this period retrieval of old data was taking longer time than usual. Noticee also submit they exercise reasonable and expected due diligence with regard to the primary issue which was the private placement and for which there is no complaint at all.* I note that Vide email dated July 17, 2020, SEBI, inter alia, sought a copy of the IM, copies of the BENPOS for FY 2013-14 from Noticee. Noticee, vide email dated July 20, 2020, furnished a copy of the IM along with certain pricing supplements related to the issue. With regards to

SEBI's request for copies of the communications related to the BENPOS for FY 2013-14, Noticee, initially, forwarded the BENPOS for FY 2014-15 instead of the requested information. In view of the same, vide another email dated July 24, 2020, Noticee was again specifically asked to furnish all correspondences pertaining to BENPOS for FY2013-14. In response to the same, Noticee, vide email dated July 28, 2020, inter alia, submitted the following:

'.... please note that 'Karvy Capital Limited' was the sole debenture holder/subscriber to an issue. In this regard we have already shared pricing supplements to support the same'.

15. From the above I note that SEBI requested BENPOS of FY2013-14, However Noticee in its reply dated July 28, 2020 stated that they have already shared data related to the issue. Hence it is clearly evident that Noticee had no intention to provide BENPOS related to FY 2013-14 as it has actual number of allottees for the period FY2013-14. If Noticee had any intention to provide the requested data Noticee could have reiterated the inability to find the data due to Covid-19 restrictions and guidelines. However, Noticee replied *'.... please note that 'Karvy Capital Limited' was the sole debenture holder/subscriber to an issue. In this regard we have already shared pricing supplements to support the same'.* Further, I note that when a third email dated July 31, 2020 was sent to Noticee, inter-alia, firmly seeking the communications pertaining to the BENPOS for FY 2013-14 from it and also reminding it of its obligations under Code 19 of the Code of Conduct under SEBI (Debenture Trustees) Regulations, 1993. The Noticee, vide email dated August 04, 2020, forwarded a copy of the email dated April 1, 2014 received from the RTA attaching the BENPOS for FY 2013-14. A perusal of the said BENPOS indicates that there were 154 investors in NCDs issued by SVDDPL, as on March 24, 2014. In view of the above I note that Noticee was aware of the breach of the prescribed limit of 49 persons during FY2013-14 as it had received copies of the IM and the BENPOS for FY2013-14. Therefore the above contentions of Noticee doesn't hold any merit.

16. In view of the above facts, I note that Noticee was one of the signatory to the Debenture Trust Agreement (DTA) dated January 13, 2014. Vide email dated July 17, 2020, SEBI, inter alia, sought a copy of the aforesaid IM, copies of the BENPOS for FY 2013-14 from Noticee. Noticee, vide email dated July 20, 2020, furnished a copy of the IM along with certain pricing supplements related to the issue. It was noted that para 5 (iii) (a), Page 39 of the IM carried the following disclaimer clause: **“The issue is being made strictly on a private placement basis and is not intended to be circulated to more than 49 persons nor intended to be listed on a stock exchange at any time”**. Noticee vide email dated August 04, 2020, forwarded a copy of the email dated April 1, 2014 received from the RTA attaching the BENPOS for FY 2013-14. I note that the said BENPOS indicates that there were 154 investors in NCDs issued by SVDDPL, as on March 24, 2014. In view of the above, it is evident that Noticee was aware of the breach of the prescribed limit of 49 persons during FY2013-14 as it had received copies of the IM and the BENPOS for FY2013-14. Therefore, Noticee did not exercise necessary due diligence to ensure compliance by SVDDPL with the provisions of the Companies Act, Debenture Trust Agreement and Information Memorandum. It may be noted that by not exercising proper due diligence Noticee had violated the Regulation 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 [(prior to the amendment to SEBI (Debenture Trustee)] Regulations, 1993 in 2017) which states that:

'(i) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed'

17. Further as brought out in the para 14 &15, Noticee had attempted to mislead SEBI during the course of the examination by initially suppressing the information containing the BENPOS for FY 2013-14 and instead submitting the correspondence containing the BENPOS for FY 2014-15. In response to subsequent reminder from SEBI, it falsely submitted that KCL was the sole debenture holder/ subscriber to the issue, despite having possession of the BENPOS for FY 2013-14 and having initiated insolvency proceedings against

SVDDPL on behalf of the debenture holders under the Insolvency and Bankruptcy Code. In view of the same Noticee had violated the Regulation 16 read with Point 19 of Code of Conduct of SEBI (Debenture Trustees) Regulations, 1993 which provides that:

***Regulation 16 SEBI (Debenture Trustees) Regulations
Code of Conduct.***

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

Clause 19 of code of conduct reads as under:

***'19. A Debenture Trustee shall not make untrue
statement or suppress any material fact in any
documents, reports, papers or information furnished to
the Board.'***

18. Therefore, I am of the view that Noticee had failed to exercise proper due diligence and by initially suppressing the information containing the BENPOS for FY 2013-14 had violated the provisions of regulations 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 (prior to the amendment to SEBI (Debenture Trustee) Regulations, 1993 in 2017) and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993.

Issue (b): Does the violations, if any, on the part of the Noticee would attract monetary penalty under section 15HB of the SEBI Act, 1992?

19. It has been established in the foregoing paragraphs that Noticee has violated the provisions of Regulation 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 [prior to the amendment to SEBI (Debenture Trustee) Regulations, 1993 in 2017] and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993.

20. In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361 } – wherein 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.....”*

21. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provision of section 15HB of the SEBI Act, 1992, which reads as under during the relevant period:

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

Issue (c): If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

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

Factors to be taken into account by the adjudicating officer.

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.*

23. In the present matter, the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and also the loss suffered by the investors as a result of these Noticee' default. The consequences resulting from violations committed by the said Noticee are of grave nature where Noticee had failed to exercise proper due diligence and initially suppressed the information containing the BENPOS for FY 2013-14. If violations of this nature and magnitude are not dealt with a firm hand then investors will lose faith in the Indian Securities Market.

ORDER

24. After taking into consideration the facts and circumstances of the case, material/facts on record, case laws submitted by the Noticee and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1995, hereby impose the following penalty on the Noticee under section 15HB of the SEBI Act, 1992, for the failure on their part to comply with the provisions of regulations 15(1)(i) of SEBI (Debenture Trustees) Regulations, 1993 (prior to the amendment to SEBI (Debenture Trustee) Regulations, 1993 in 2017) and Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993:

Name of the Noticee	Violation Section	Penalty Section	Penalty Amount (Rs.)
Vistra ITCL (India) Ltd.	Regulation 15(1) (i) of SEBI (Debenture Trustees) Regulations, 1993 [prior to the amendment to SEBI (Debenture Trustee) Regulations, 1993 in 2017] & Regulation 16 read with Clause 19 of Code of Conduct prescribed under SEBI (Debenture Trustees) Regulations, 1993	Section 15HB of the SEBI Act, 1992	10,00,000/-

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

25. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.
26. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Division Chief, Enforcement Department-I, DRA-IV, SEBI. The Noticee shall provide the following details while forwarding DD/payment information:
 - a) Name and PAN of the entity (Noticee)

- b) Name of the case / matter
- c) Purpose of Payment –Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

27. In terms of the provision of rule 6 of the Adjudication Rules, 1995, a copies of this order are being sent to the Noticee and also to SEBI.

Place: Mumbai

Date: April 27, 2022

PRASANTA MAHAPATRA

ADJUDICATING OFFICER