BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: ORDER/SS/RK/2023-24/29243)

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

Name of the Entity	Registration Number	PAN
Catalyst Trusteeship Limited	**IND000000034**	**AACCG4147R**

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), had conducted inspection of documents and other records of Catalyst Trusteeship Limited, (hereinafter referred to as "**Noticee/Catalyst Trusteeship Limited/CTL**"), registered with SEBI as a Debenture Trustee ("**DT"**) having Registration No. IND000000034, to verify the possible violation(s) of the provisions of the Securities and Exchange Board of India Act, 1992 **("SEBI Act")**, Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993 **("**hereinafter referred to as the **"DT Regulations")** and provisions of SEBI circulars by the Noticee. A copy of the findings of the Inspection Report (IR) has been shared with the Noticee.

2. Consequent upon the analysis of the finding of the inspection vis-a-vis the reply of the Noticee, it was allegedly observed the following:

a) Conflict of interest in carrying out independent due diligence of the issuer.
b) Non-maintenance of Asset cover/Security Cover and failure to exercise Independence in carrying out due diligence.

3. The aforesaid alleged conduct of the Noticee were in violation of the followings:
   a) Regulation 15(6) of SEBI DT Regulations.
   b) Regulation 15(1)(s), 1(t) and Regulation 16 and Clause 4 of Schedule III of DT Regulations
   c) SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 3, 2020.

4. In view of the above, Adjudication proceedings was initiated under Section 15HB of the SEBI Act against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

5. In this regard, the undersigned was appointed as the Adjudicating Officer **("AO")** by SEBI, vide order dated July 11, 2023, communicated vide communique dated July 12, 2023 under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) to inquire into and adjudge under Section 15HB of the SEBI Act for the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Accordingly, a Show Cause Notice No. SEBI/HO/EAD/EAD/P/OW/2023/29706/1 dated July 25, 2023 (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 Section 15HB of the SEBI Act for the aforesaid alleged violations.

7. The said SCN was duly served on the Noticee via SPAD and vide email dated July 26, 2023. The proof of service is on record. Further, in the interest of natural justice

and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, vide email dated August 21, 2023 which was delivered, hearing opportunity was granted to appear in person on August 29, 2023. In response to the said hearing Notice, the Noticee vide email dated August 25, 2023 sought an adjournment of the aforesaid hearing. Accordingly, vide email dated August 28, 2023 which was also duly delivered, the Noticee was granted another opportunity of hearing on September 07, 2023. The said hearing was attended to by the Assistant Vice Presidents (Legal) and Authorized Representative (AR) of the Noticee wherein they reiterated the submissions made earlier by the Noticee vide its letter dated August 11, 2023. The Noticee also made an additional submission in the matter vide its letter dated September 07, 2023. The submissions made by the Noticee are summarized hereunder:

a) *Noticee submitted that it had a very limited client-base in and around Aurangabad, unlike in metros and that there was no conflict of interest between the issuer company i.e. VEL and the CA firm namely Unicus Risk Advisors LLP since it did not engage the said CA firm suggested by VEL rather M/s Tolwani & Associates (Tolwani) was engaged for after following due process for the issuance of asset cover certificate.*

b) *It further submitted that it had not suggested or recommended the name of Tolwani except the fact that Mr Shashank Tolwani was one of the 6 common partners of the said CA firm and Tolwani.*

c) *Noticee also added that is totally incorrect to draw a conclusion that mere suggesting name by issuer company, amounts to conflict of interest and/ or only because one of the 6 partners in a firm suggested and firm finally engaged is common*.

d) *It also placed reliance on para 5, 6 and 7 of Section B of SEBI Circular dated November 3, 2020 wherein para 6 allows DT to carryout due diligence through the experts in the relevant fields, engaged by DT and that it had engaged the services of M/s Tolwani & Associates after carrying out due process.*

e) *With respect to the security cover in September 2021 and December 2021 quarters no specific action was taken since the value of the security as certified by the CA was more than the required percentage and that it was only in the March 2022 sharp decline in the asset cover percentage was noticed which was however more than the required percentage of asset cover.*

f) *With regard to the above, Noticee had sought clarification from Tolwani wherein it was informed to it that in earlier two quarters, all the assets of the company were considered for the purpose of asset cover of debentures instead of specified security and that this mistake was rectified in March 2022*.

g) *Noticee also submitted that the requirement of empanelment of various agencies, including CAs started from April, 2021 and that the mistake was on the part of CA which was not affecting the interest of debenture holders adversely.*

h) *The Asset Cover Certificate (ACC) as on March 31, 2022 was submitted by Tolwani on June 24, 2022 while the Statutory Auditors certificate is dated July 28, 2022. Since the dates of valuation by both the Tolwani and Statutory Auditor are different as also the dates of certificates issued by them and that the Noticee did not have the certificates available for comparison for taking further action*.

i) *At last Noticee submitted that upon getting the information about inadequacy of security cover from company as well as Statutory Auditor on August 03, 2022 all necessary steps were taken, including informing the debenture holders and the asset cover certificate was also obtained from another CA firm namely Omprakash Kedia & Co (OKC) confirming adequacy of security cover.*

8. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been duly followed in the matter by granting the Noticee, an opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of the facts/material available on record and replies submitted by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS: -

9. 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:

Issue No. I: Whether Noticee has violated the aforesaid provisions of DT Regulations and SEBI Circular as mentioned at para 3 above?

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, as applicable?

Issue No. 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?

10. Before proceeding further, I would like to refer to the relevant provisions of law as under:

Relevant provisions of SEBI (Debenture Trustee) Regulations, 1993

Duties of the Debenture Trustees

Regulation 15

[(1)] *It shall be the duty of every debenture trustee to-*

(s) *exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement), Regulations, 2015, the listing agreement of the stock exchange or the trust deed or any other regulations issued by the Board pertaining to debt issue;*

(t) *In case where listed debt securities are secured, it shall, -*

(i) *on a Quarterly basis-*

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

(ii)*on a Half-Yearly basis-*

(a) *obtain a certificate from the statutory auditor of the issuer regarding security cover including compliance with the covenants of the Offer Document/Information Memorandum in the manner as may be specified by the Board from time to time.*

[(6) Before creating a charge on the security for the debentures, the debenture trustee shall exercise independent due diligence to ensure that such security is free from any encumbrance or that it has obtained the necessary consent from other charge-holders if the security has an existing charge, in the manner as may be specified by the Board from time to time.

Code of Conduct.

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

[SCHEDULE III

Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993

[Regulation 16]

CODE OF CONDUCT

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

Provisions of SEBI Cicular SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020

Provisions are specified under the below mentioned link:

https://www.sebi.gov.in/legal/circulars/nov-2020/creation-of-security-in-issuance-of-listed-debt-securities-and-due-diligence-by-debenture-trustee-s-_48074.htmll

Issue No. I: Whether Noticee has violated the aforesaid provisions of DT Regulations and SEBI Circular as mentioned at para 3 above?

Alleged violation 1: Conflict of interest in carrying out independent due diligence of the issuer

11. With respect to the captioned allegation, I note from the IR that email communications took place between the Noticee and Varroc Engineering Limited (VEL) (*which was one of the companies selected by the inspecting team out of the sample of 46 issues of listed Non-Convertible Debentures of 40 companies handled by the Noticee during the inspection period)* vide email dated August 27, 2021, August 28, 2021 and August 30, 2021.

12. The aforementioned email communications were in addition to an email communication between the Noticee and a Chartered Accountancy (CA) firm namely Unicus Risk Advisors LLP vide email dated August 30, 2021 which are mentioned as below:

Email dated August 27, 2021 from VEL to the Noticee read as mentioned below:

"…..
Also we have the Chartered Accountant in Aurangabad/Pune who can provide requisite support for the proposed NCD transaction. Please check and let us know ..".

13. I further note from IR that the email dated August, 28, 2021, from VEL to the Noticee had an enclosure containing the CA firm profile namely which had profiles of the following partners of the said CA firm:

CA Aaditya Dastane
CA Tejas Dharwadkar
CA Anushkumar Shivaraman
CA Shashank Tolwani
CA Rajesh Phadke
CA Berinder Sahni

14. Further, I note from IR that an email dated August 30, 2021 from the Noticee to VEL inter alia stated the following:

"*We have shared the mail to the CA provided at your end for Due Diligence process".*

15. Again an email dated August 30, 2021 from the Noticee to CA firm read as mentioned below:

"Dear Sir,
Please refer our discussion.
Please let us know if M/s Varroc Engineering Limited is in prior interest to your firm in order to avoid any discrepancy/conflict of interest.
Post your confirmation, we shall share the signed NDA cum Engagement Letter with you.
Further, attached is the SEBI circular dated November 03, 2020 and November 12, 2020 for your easy reference.
In case of any clarification, please feel free to revert."

16. In this regard, I note from IR that a Non-Disclosure Agreement (NDA) cum Engagement letter dated August 31, 2021 was executed between the Noticee and M/s Tolwani & Associates (Tolwani) for the purpose of preparing the asset cover certificate(ACC) as part of Initial Due Diligence for VEL. The signatory to this agreement was Mr. Shashank Tolwani, who was a common partner between Tolwani & Associates and aforesaid CA firm.

17. With regard to above, I also note from IR that the NDA cum Engagement letter executed between the Noticee and Tolwani was executed on August 31, 2021 i.e 3 days after VEL recommending CA firm and 2 days after the Noticee informing VEL about sharing of email to the CA firm for the purpose of due diligence, as is also evident from the email communications mentioned hereinabove and that the ACC of VEL was provided by Tolwani to the Noticee.

18. With regard to the aforesaid, the Noticee made a submission that it had a very limited client-base in and around Aurangabad, unlike in metros and that there was

no conflict of interest between the issuer company i.e. VEL and the said CA firm since it did not engage the said CA firm suggested by VEL rather Tolwani was engaged for after following due process for the issuance of ACC.

19. Noticee further added that VEL had not suggested or recommended the name of Tolwani except the fact that Mr Shashank Tolwani was one of the 6 common partners of the said CA firm and Tolwani. Accordingly, it's totally incorrect to draw a conclusion that mere suggesting name by issuer company, amounts to conflict of interest and/ or only because one of the 6 partners in a firm suggested and firm finally engaged is common.

20. It also placed reliance on para 5, 6 and 7 of Section B of SEBI Circular dated November 3, 2020 wherein para 6 allows DT to carryout due diligence through the experts in the relevant fields, engaged by DT and that it had engaged the services of Tolwani after carrying out due process.

21. With regard to the Noticee's aforesaid submission, I note that merely suggesting name of a CA firm which was not even engaged by the Noticee does not amount to conflict of interest as alleged in the SCN. Further, existence of the common CA between the said firms cannot be construed as a conflict of interest wherein the Noticee had duly obtained confirmation from Tolwani w.r.t conflict of interest with VEL vide its email dated August 30, 2021 wherein Tolwani had confirmed of not having any conflict of interest.

22. I further note from the reply of the Noticee submitted to the inspecting team that while examining the profile of the said CA firm, it had observed that the said CA firm was a consulting firm and not ICAI registered and subsequently, Tolwani, which was ICAI registered, was appointed for the preparation of ACC. The aforesaid shows that the Noticee had exercised due diligence which can be expected from a prudent DT.

23. Accordingly, I find that the material available on record is not sufficient to establish violation regarding its failure to exercise independence in carrying out due diligence

in the case of VEL by appointing Tolwani for the preparation of ACC and therefore Noticeee is not in violation of the provisions of Regulation 15(6) of DT Regulations and SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

Alleged violation 2: Non-maintenance of Asset cover/Security Cover and failure to exercise Independence in carrying out due diligence

24. I further note from IR that during the course of inspection in the case of VEL, the minimum security cover to be maintained on continuous basis as per Debenture Trust Deed (DTD) and placement memorandum was 110%. However, as per the ACC provided to the Noticee by its empaneled firm Tolwani, following was the asset covers maintained by VEL, which is as shown in table 1 below:

Table 1:

Quarter ended	Asset cover (times)
September 2021	6.22
December 2021	6.56
March 2022	1.93

25. Further, I note from IR that the same certificates were relied upon by the Noticee for preparation of ACC for submitting to Stock Exchange which mentioned that the asset cover is in accordance with the terms of issue/ DTD for Quarters ending September 2021, December 2021 and March 2022.

26. I also note from IR that the Statutory Auditor Report of VEL for the year ended on March 2022 stated that the requisite Security cover of 110% is not maintained as per terms of Placement Memorandum and Trust Deed for the year ended March 2022.

27. With regard to the aforesaid, Noticee submitted that w.r.t to the security cover in September 2021 and December 2021 quarters, no specific action was taken since the value of the security as certified by the CA was more than the required

percentage and that it was only in the March 2022 sharp decline in the asset cover percentage was noticed which was however more than the required percentage of asset cover.

28. Noticee further submitted that with regard to the aforesaid, it had sought clarification from Tolwani wherein it was informed to it that in earlier two quarters, all the assets of the company were considered for the purpose of asset cover of debentures instead of specified security and that this mistake was rectified in March 2022. It further submitted that the mistake was on the part of CA which was not affecting the interest of debenture holders adversely.

29. Noticee additionally also submitted that the ACC as on March 31, 2022 was submitted by Tolwani on June 24, 2022 while the Statutory Auditors certificate is dated July 28, 2022. Since the dates of valuation by both the Tolwani and Statutory Auditor were different and that the Noticee did not have the certificates available for comparison for taking further action. It further added that upon getting the information about inadequacy of security cover from company as well as Statutory Auditor on August 03, 2022 all necessary steps were taken, including informing the debenture holders and obtaining ACC from another CA firm namely Omprakash Kedia & Co (OKC) which had confirmed the adequacy of security cover.

30. From the above submission of the Noticee, I note that the Noticee relied upon the reports submitted by CAs and that it would be grossly wrong to assume that the certificate issued by Tolwani was wrong and Statutory Auditor's was correct since both are practicing CAs and that Noticee had taken sufficient steps to protect the interest of Debenture holders which is evident from the course of action including getting report from another CA firm i.e. OKC which confirmed the adequacy of security coverage. The relevant extract from the OKC report reads as mentioned below:

"The company had issued the NCD. The security cover as per the valuation report shared is enough and the sufficient cover as required is maintained. The same is

as per the borrowing data's and that Valuation report shared with us. We assume that this Assets for which Valuation report is shared belongs to company."

31. In this regard, I note that the aforesaid certificate was issued on the basis of information / documents / financial results / asset cover certificate as provided by the issuer company i.e. VEL which shows that there was adequate security cover.

32. With regard to the aforesaid, it is further pertinent to mention Clause 6 and 7 of the SEBI circular dated November 3, 2020 which prescribes the procedure for carrying out due diligence which is extracted as under:

> ***"6**. Debenture trustee(s) by itself or through its advisers or experts shall independently carry out due diligence. The terms and conditions with respect to exercising due diligence shall also be included in the debenture trustee agreement. The due diligence to be exercised by debenture trustee(s) with respect to creation of security shall inter-alia include the following:*
>
> *6.1 Debenture trustee shall verify that the assets provided by issuer for creation of security are free from any encumbrances or necessary permissions or consents has been obtained from existing charge holders by carrying out the following checks:*
>
> *(a) Verify from Registrar of Companies, Sub-registrar, CERSAI, IU or other sources where charge is registered / disclosed as per terms.*
>
> *(b) In case of conditional consent/ permission received as per para 4.3(b) above:*
>
> *I. Verify whether such conditional consent / permission given to issuer by existing charge holders is valid as per terms of transaction documents;*
>
> *II. Intimate to existing charge holders via e-mail about the proposal to create further charge on assets by issuer seeking their comments / objections, if any, to be communicated to debenture trustees within next 5 working days.*
>
> ***6.2** In case of personal guarantee, corporate guarantee and any other guarantees / form of security, the debenture trustee shall verify the relevant filings made on websites of Ministry of Corporate*

Affairs, Stock Exchange(s), CIBIL, IU etc. and obtain appraisal report, necessary financial certificates viz. from statutory auditor in case of corporate guarantee, certificate from Chartered Accountant in case of personal guarantee, as applicable, of the guarantor / issuer.

7. *Debenture trustee, by itself or through its appointed agencies viz. chartered accountant firm, registered valuer, legal counsel etc., shall prepare one or more reports viz. valuation report, ROC search report, title search report/appraisal report, asset cover certificate, any other report/certificate as applicable etc. and shall independently assess that the assets for creation of security are adequate for the proposal issue of debt securities."*

33. I note from the aforesaid Clauses 6 and 7 of the circular dated November 3, 2020 that the debenture trustees by itself or through its advisers or experts shall carry out due diligence and Clause 7 of the circular further clarifies that the debenture trustees may by itself or through a chartered accountant firm prepare an asset cover certificate. Thus, a debenture trustee can carry out due diligence and submit reports through a Chartered Accountant. Accordingly, in view of the above, in the instant case, the Noticee followed the same and accordingly, I am inclined to accept the submission advanced by the Noticee.

34. I also note the the Hon'ble SAT in the matter **IDBI Trusteeship Services Limited Vs SEBI (Appeal No. 186 of 2023)** held that **"***We may also point out that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings .The purpose of inspection is to advise the entity to cure the lapse that have been found. If any serious lapse is discovered, then penalty action can be taken".*

35. In view of the above and in line with the aforesaid order of Hon'ble SAT, I find that the Noticee had exercised proper due diligence in monitoring of security cover by the issuer in the matter of VEL with respect to the appointment of Tolwani for carrying out due diligence at the time of security creation which was not a conflict of interest. Accordingly, I find that the Noticee is not in violation of the provisions of

Regulation 15(1)(s), Regulation 15(1)(t) and Regulation 16 and Clause 4 of Schedule III of SEBI (DT) Regulations.

36. Since, violations are not established, ISSUE- II and III do not require any consideration.

ORDER

37. Accordingly, the Adjudication proceedings initiated against the Noticee vide the SCN dated July 25, 2023 stand disposed of without any penalty.

38. 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: September 14, 2023 **SANTOSH KUMAR SHARMA**

Place: Mumbai **ADJUDICATING OFFICER**