BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AE/2022-23/18394]

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:

IDBI Trusteeship Services Limited

In the matter of Fortis Health Care Holdings Private Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) had carried out an examination in the matter of Fortis Health Care Holdings Private Limited (herein after referred to as "**FHHPL/Company/Issuer Company**") based on reference received from IDBI Trusteeship Service Limited (herein after referred to as "**ITSL/Noticee/ Debenture Trustee/DT"**) in the context of debt securities issued by FHHPL. Based on the examination, SEBI alleged non-compliance of the following provisions of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations"**) by Noticee: -

i. Regulation 15(1) (d) and Clause 17 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations

ii. Regulation 15(1)(e) of Debenture Trustees Regulations

iii. Regulation 15(1)(f) and Clause 4 of Schedule III of Code of Conduct of Debenture Trustees Regulations

iv. Regulation 15(1)(j) of Debenture Trustees Regulations

v. Regulation15 (1) (l) of Debenture Trustees Regulations

vi. Regulation 15(1)(n), Regulation15(1)(p) and Clause 1 of Schedule III of Code of Conduct of Debenture Trustees Regulations

vii. Regulation 15(1)(r) and Clause 19 of Schedule III of Code of Conduct of Debenture Trustees Regulations

viii. Regulation 15(2)(5) of Debenture Trustees Regulations

ix. Clause 3 of Schedule- III of Code of Conduct of Debenture Trustees Regulations

2. Accordingly, SEBI initiated the present adjudication proceedings against the Noticee under Section 15HB of the SEBI Act, 1992 for the alleged violations of the aforesaid provisions.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer **(AO)** by SEBI vide Order dated April 20, 2021 to inquire into and adjudge under Section 15HB of the SEBI Act, 1992, the violations of aforesaid provisions of Debenture Trustee Regulations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated August 12, 2021 (*hereinafter referred to as* '***SCN***') was issued to the Noticees in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "***Adjudication Rules***") for the violations as specified in the SCN.

5. The main allegations against the Noticee as per the SCN is as follows –

    i. Noticee is a SEBI-registered Debenture Trustee having SEBI registration number as IND00000460.

    ii. During the course of examination, it was observed that the Board of Directors of FHHPL passed a resolution to modify the terms and conditions the terms and conditions of 2 ISINs (INE277L07101 and INE277L07119) on February 23, 2018. Thereafter, as required under Section 59 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, investors and ITSL gave the consent for the same on February 27, 2018 and February 28, 2018 respectively. Pursuant to the same, BSE Ltd.("**BSE**") issued notices on March 27, 2018 to the market about the suspension of trading for both the ISINs due to restructuring and on April 05, 2018, BSE issued another notice informing the market regarding issuance of 2 new ISINs (INE277L07127 and INE277L07135) which was available for trading under revised terms.

    iii. The non-compliances observed and details of the violations alleged to have been committed by Noticee are given as under: -

        a. During the examination, it was observed that the DT was not tracking the correct ISINs and so, the communication sent to the debenture holders regarding non- payment of interest was not found to be accurate. Thus, it was observed that Noticee has not taken enough efforts to avoid misrepresentation and provided accurate information to the debenture holders.

In view of the foregoing, it is alleged that Noticee violated Regulation 15(1) (d) and Clause 17 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations.

b. It was observed that by stating non-cooperation by the issuer company, DT has not appointed a nominee director on the Board of the defaulting company.

   In view of the foregoing, it is alleged that Noticee has violated Regulation 15(1)(e) of Debenture Trustees Regulations.

c. It was observed that DT did not ensure the modifications in terms and conditions were as per the consent provided and thus, it could not have ensured that FHHPL did not commit any breach of the terms of issuer of debentures or covenants of the trust deed and therefore was not in position to take any steps towards remedy of the same as well. It was further observed that, by trying to push the blame on FHHPL for not informing DT, Noticee had not carried out independent professional judgment nor ensured proper care.

   In view of the foregoing, it is alleged that Noticee has violated Regulation 15(1)(f) and Clause 4 of Schedule III of Code of Conduct of Debenture Trustees Regulations.

d. During the examination it was observed that DT did not track the ISINs actively and so, it was not in a position to know when the security shall become enforceable and act accordingly.

In view of the foregoing, it is alleged that Noticee has violated Regulation 15(1)(j) of Debenture Trustees Regulations.

e. It was observed that FHHPL were having only 2 debenture holders. Despite this, Noticee took almost more than 7 months to conduct the first meeting. In view of the same, it is alleged that Noticee has violated Regulation15 (1) (l) of Debenture Trustees Regulations.

f. It was observed that the recall notices, which were sent to the HDFC Bank, mentioned the wrong ISINs. The notices sent to the issuer company also mentioned the same. It was observed that this lackadaisical approach of Noticee had delayed the process of enforcement and jeopardized the interest of the debenture holders. In view of the same, it is alleged that Noticee has violated Regulation 15(1)(n),Regulation15(1)(p) and Clause 1 of Schedule III of Code of Conduct of Debenture Trustees Regulations.

g. It was observed that Noticee had informed SEBI about default in the non-tradable, defunct ISINs instead of the actively traded ones. Hence, it was observed the information provided was a mere conjecture of the DT and not the actual and reliable information. Thus, Noticee did not provide a true statement to SEBI. In view of the same, it is alleged that Noticee has violated Regulation 15(1)(r) and Clause 19 of Schedule III of Code of Conduct of Debenture Trustees Regulations.

h. It was observed that DT had not taken any action towards inspection of books of account of FHHPL. In view of the same, it is alleged that

Noticee has violated Regulation 15(2)(5) of Debenture Trustees Regulations.

i. As per Clause 3 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations, DT has to fulfill its obligations in a prompt, ethical and professional manner. It was observed that DT failed to fulfill all the above enlisted duties towards the debenture holders.

In view of the same, it is alleged that Noticee has violated Clause 3 of Schedule- III of Code of Conduct of Debenture Trustees Regulations.

6. The SCN was duly served on the Noticee. Vide letter dated August 24, 2021, Noticee submitted its reply to the SCN. The main contentions made therein are summarized as follows –

i. Allegation 1:- Violation of Regulation 15 (1) (d) of DT Regulation and Clause 17 of Schedule Ill of Code of Conduct.

Response:-

We respectfully and humbly submit that it is evident and admitted fact that we had been consistently and unfailingly tracking original ISINs but for the Company's' utter non-cooperation we could not mention the revised ISINs. When we were tracking the original ISINs regularly, it was just a change of numbers that could have been made, had the FHHPL responded to our request.

It is submitted that the interest payment for the ISIN INE277L07101 was due on 1st March 2018. We have sent reminder emails to FHHPL on T-7 and on payment date. FHHPL has responded us by sending the intimation under Reg. 57 (1) of the SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015 on 1 st march, 2018 (attached as Annexure — A). The same was forwarded to Credit Rating

Agencies ("CRA") by us on same day (attached as Annexure — B). It is pertinent to mention that we have tracked the payment status on due date and the same was also informed to CRA within T+1.

The next payment due date for INE277L07101 & INE277L07119 was 30th May, 2018. we have again taken up the follow ups with FHHPL by sending emails on T-7, T and subsequent emails (attached as Annexure — C). However, there was no response from the FHHPL and accordingly we intimated to the CRA & SEB} (letter sent to SEBI attached as Annexure — D). It is to be mentioned that after change in both the ISINs, FHHPL has not communicated to us about ISIN change. However, based on due dates, we continued to take follow ups with the FHHPL and when no information received from the FHHPL, we informed the same to respective agencies. Here, we would like to place on record that as a DT, we have made efforts to obtain the payment confirmations from FHHPL but FHHPL remained non-cooperative.

We have been religiously and continuously following up with the FHHPL for payment of interest and redemption of principal to the debenture holders on the due dates as also for compliance of terms and conditions of the debenture issue including the change in the terms and conditions of the issue. However, FHHPL never responded after March 2018 i.e., after the FHHPL has provided the payment confirmation which was due on March 1st, 2018.

In any case, this has not caused to any loss to any debenture holders.

Thus there is no violation of Regulation 15 (1) (d) of DT Regulation and Clause 17 of Schedule Ill of Code of Conduct.

ii. Allegation 2:- Violation of Regulation 15 (1) (e) of DT Regulation.

Response:-

We respectfully and humbly again submit that there was absolute non-cooperation from the FHHPL. Under section 164 of the Companies Act, 2013, there is provision of disqualification of Directors in a Company who has failed to repay the deposits accepted by it or payment interest thereon or to redeem any debentures on the due *dates or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continuous. In view of the said provisions, it was not possible to appoint any person as a Nominee Director on the Board of the FHHPL. Further, there were already talks with the debenture holders to initiate the appropriate legal action against the FHHPL and as such the appointment of Nominee Director could not have yield any results. Appointment of Nominee Director would have delayed the process of legal action and ultimately had to withdraw the Nominee Director to avoid waiver of legal action against the FHHPL.*

Thus there is no violation of Regulation 15 (1) (e) of DT Regulation as alleged.

iii. *Allegation 3:- Violation of Regulation 15 (1) (f) and clause 4 of Schedule Ill of Code of Conduct of Debenture Trustee Regulation.*

Response:-

We respectfully and humbly submit that we have been constantly and continuously following up for acceptance of modification in terms and conditions of debenture issue as mentioned below:-

Particulars	Existing	Proposed
ROI	7.00% per annum payable quarterly i.e., on 5th March 2018 and 4th June 2018	1.00% per annum payable quarterly i.e., on 5th March 2018 and 4th June 2018.
Redemption Premium	Rs. 72,500 per NCDs of Rs. 10,00,000/- on maturity (7.25% p.a. or respective put/call date).	Rs. 1,32,500/-per NCDs of Rs. 10,00,000/- on maturity (13.25% p.a. or respective put/ call date.
Other terms and conditions remained unchanged.		

However, FHHPL did not honor its commitment as agreed between debenture holders and FHHPL for modification in terms and conditions which has ultimately led to decision for initiation of filling of Original Application (OA) before DRT, Delhi against the FHHPL.

As a result, OA was filed before DRT Delhi which is an ultimate action against the FHHPL and the matter is now sub-judice.

Thus there is no violation of Regulation 15 (1) (f) of DT Regulation and clause 4 of Schedule Ill of Code of Conduct of Debenture Trustee Regulation, as alleged.

iv. *Allegation 4:- Violation of Regulation 15(1) (j) of Debenture Trustee Regulation.*

Response: -

We respectfully and humbly submit that we were very much conscious and aware of enforceability of the security of the debenture issue and ultimately done the same by filling the Original Application before DRT, Delhi. We were tracking the ISINs on regular basis by sending the emails to FHHPL on T-7 basis and further follow ups to obtain the payment confirmations. It is evident from the payment confirmations obtained from the FHHPL for the due date 1 st Dec, 2017 (INE277L07101), 4th Dec, 2017 (INE277L07119), 1st March, 2018, 30th May, 2018 and 3 rd Sept, 2018. A copy each of the email issued by us to FHHPL in enclosed as Annexure E, as also we have intimated the status of payment to the CRA and SEBI. We had followed up payment confirmation on 30th May 2018, however, FHHPL did not respond at all. Therefore, in consultation with debenture holders, the legal action against the FHHPL was initiated in DRT,

Thus there is no violation of Regulation 15 (1) (J) of DT Regulations as alleged.

v. *Allegation 5:- Violation of Regulation 15(1) (l) of Debenture Trustee Regulation.*

Response: -

We respectfully and humbly submit that Debenture Holders were considering various ways and means to resolve the matter amicably with the FHHPL. We were in dialogues with the debenture holders for consensus in approach. Ultimately in meeting of debenture holders held on 17 th Jan, 2019 it was decided to file OA before DRT Delhi. This took little time for debenture holders to reach the consensus. Lastly, we are required to act on the instructions of the debenture *holders only. As decided, JM Financial MF through its custodian HDFC Bank Ltd., has issued the Recall Notice to FHHPL 5th April, 2019 thereby recalling the entire outstanding amount due as on 25 th March, 2019. However, FHHPL failed and neglected to make the payment of the same.*

It is submitted that there is no violation of Regulation 15 (1) (l) of DT Regulations as alleged.

vi. *Allegation 5:- Violation of Regulation 15(1)(n), Regulation 15(1)(p) and Clause 1 of Schedule Ill of code of Debenture Trustees Regulations.*

Response:-

We respectfully and humbly submit that we have not issued the Recall Notice to HDFC Bank and FHHPL. In fact, Recall Notices have been issued by SREI and JM Financial MF, the debenture holders, as per the claims of respective debenture holders as per their books of account, as decided in the meeting of debenture holders. Further, we have to state that the ISINs as referred in the said Recall Notices of HDFC Bank are correctly mentioned i.e., INE 2771.07127 & INE 27710735.

It is submitted that there is no violation of reg. 15 (1) (n), Reg. 15 (1) (p) and clause 1 of the Schedule Ill of the Code of Conduct of Debenture Trustee Regulation.

vii. *Allegation 5:- Violation of Regulation 15 (1) (r) and clause 19 of schedule Ill of code of conduct of Debenture Trustees Regulations.*

Response:-

We respectfully and humbly submit that we have correctly informed the amount of default. However, the ISINs were old or original ISINs as FHHPL never disclosed / informed us about the revised ISINs obtained by it in place of original ISINs. However, it is important to mention that, we had continuously tracked the payment status on each due dates and have informed the status of the same to CRA & SEBI. Subsequently, we have also filed the Original Application (OA) before DRT, Delhi.

Thus it is submitted that there is no violation of Regulation 15 (1) (r) and clause 19 of schedule Ill of code of conduct of Debenture Trustees Regulations.

viii. *Allegation 5: - Violation of Regulation 15 (2) (5) and clause 19 of schedule Ill of code of conduct of Debenture Trustees Regulations.*

Response: -

We respectfully and humbly submit that it was decided with the debenture holders to initiate legal action only as the FHHPL is not at all cooperating and no purpose will be served as it would tantamount to waiver of our rights to initiate legal action against FHHPL.

Thus, it is submitted that there is no violation of Regulation 15(2) (5) of the Debenture Trustee Regulations.

ix. *Allegation 5:- Violation of Clause 3 of Schedule- Ill of Code of Conduct of Debenture Trustees Regulations.*

Response:

We respectfully and humbly submit that we have always been mindful of our duties and professionally and ethically performing all our duties. We have been in constant touch with the debenture holders and FHHPL for plan of action in the matter:-

a. Have been tracking the payment of interest and redemption of principal on each due date by sending emails on T-7 basis till the status is provided to CRA;
b. Provided payment status to CRA and SEBI;
c. Coordination with the debenture holders; and
d. Follow-ups with the FHHPL.

and ultimately decided to initiate legal action which was done by filling OA before DRT Delhi when all efforts have gone waste and did not yield any results. Further, we would like to draw your kind attention to some of our emails dated 14.06.20218, 18.06.20218 & 25.06.2018 requesting the FHHPL to provide us the following information and details:-

1. Latest Loan Receivables of the Company (Fortis Healthcare holdings P Limited) with the details of Name of the Party (to whom loan given), Amount of Loan, Nature of Security, Rate and Terms of the loan etc;

2. Balance Sheet of the issuer Company i.e. Fortis Healthcare Holdings Private Limited for FY 16-17 & FY 17-18;

3. Current list of Debenture Holders for NCD 300cr (Rs. 150cr each series);

4. List of receivable, along with amount, charged against this issue of NCDs;

5. List of other lenders having exposure against this receivable, along with amount; and

6. Any half yearly communication sent to Debenture Trustee by issuer, Fortis Healthcare Holdings P Limited.

However, the FHHPL has failed and neglected to provide the any of the above information to us.

A copy of each of the email issued to the FHHPL is attached hereto as Annexure Hence the allegation is denied.

Thus, there is no violation of clause 3 of Schedule Ill of Code of Conduct of Debenture Trustees Regulations as alleged.

We also submit that after March 2018, the FHHPL has been completely non-cooperative and all our emails / calls to FHHPL remained unanswered. In this connection we invite your kind attention to one of the submission made by SREI, the debenture holder, in its Original Application (OA) filed by them before the DRT, Delhi (attached as Annexure — F):

Quote:-

It is submitted that the Defendant No. 1 from the very inception of issuance of the said Debentures had its mala fide intentions to defraud the debenture holders such as the Applicant and the same is writ large from the fact that apart from various representations and warranties made by the Defendant No. 1 in the disclosure documents / Information Memorandum, Debenture Trust Deed and other Transaction Documents, they had represented and made ....

Unquote.

To sum up, ITSL has not violated any of the provisions of law including regulations of SEBI.

In view of the forgoing and considering:-

a) the intention, conduct, and bonafide actions of the noticee;
b) that no loss has been caused to any of the investors;
c) that the Noticee is a Public Sector Institution promoted by IDBI, LIC, and GIC
d) That the noticee believes in complying with all the regulatory requirements and has never been found guilty of violating any of the SEBI regulations.
e) FHHPL has always been non-cooperative.

It is humbly requested that you may kindly accept the explanations given above and not conduct inquiry in terms of Rule 4 of Adjudication Rules under the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995. We shall be ever grateful to you for this act of kindness.

7. A personal hearing was held in respect of the Noticee on July 27, 2022, wherein the following authorized representatives (ARs) viz. Mr. Satyan S Israni, Mr. Naresh Sachwani, Ms. Dipali Dorugade, Mr. Gaurav Rane, Ms. Sneha Jadhav and Mr. Shivalji Gunware, appeared on behalf of the Noticee and reiterated the earlier submissions made by the Noticee vide letter dated August 24, 2021. Further, vide letter dated July 27, 2022, the Noticee made post hearing submissions. The main contentions made therein are summarized as follows –

   1. *IDBI Trusteeship Services Limited (the Noticee) is promoted by government organisations being IDBI Bank Ltd., Life Insurance Corporation of India and General Insurance Corporation of India. The Noticee is a law abiding company and has not committed any violations under the SEBI Regulations.*
   2. *In the instant case, the Noticee is a debenture trustee managing only two private institutional debenture holders of Fortis Healthcare Holdings Private Limited (FHHPL) namely SREI Infrastructure and JM Financial. There was no public interest involved nor was there any individual debenture holder.*

3. *It is important to note that the Noticee had given its Conditional consent to FHHPL for modification of the terms & conditions of NCDs. However, till date FHHPL has never informed the Noticee of either changes of ISINs nor of modification of the terms & conditions of NCDs in spite of the condition stipulated in the conditional consent that the FHHPL would update about the receipt of requisite approvals from Stock Exchanges/SEBI/Credit Rating Agencies. Consequently, the Noticee has mentioned the ISIN details that it had in its record in each of its communication with all the agencies and authorities. The Noticee had been repeatedly communicating with FHHPL as soon as it gave its Conditional consent as can be borne out by the list of emails it wrote. However, they were not getting any response to their mails and when FHHPL defaulted in payment, the Noticee immediately also informed SEBI. The Noticee also informed the debenture holders of the state of affairs of the FHHPL. There was total non-cooperation from FHHPL. The details of the communication and its frequency has been annexed as a chart as Annexure A. The information provided by the Noticee has been actual and reliable information and not mere conjecture as alleged.* ***Thus, there has been no misrepresentation or untrue statement on the part of the Noticee and there is no violation of Regulations 15(1)(d) and 15(1)(j) and 15(1)(r) read with Clauses 17 and 19 of Schedule III of Code of Conduct as specified in the Debenture Trustee Regulations****. It is pertinent to point out that FHHPL even in its letter dated the 1st March, 2018 mentioned the earlier ISINs in its correspondence with stock exchanges.*
4. *The Noticee learnt that FHHPL was a defaulting company under the Companies Act, 2013. FHHPL failed to file any of its statutory returns and conduct its statutory AGM after 30th September, 2016 as per the MCA Master Data available on the MCA Portal. As a consequence, it was violating the statutory compliances for two financial years, its Directors were liable for disqualification under the provisions of the Companies Act, 2013. It is pertinent to note that FHHPL has been violating since 2016 with respect of its statutory filings with the Ministry of Corporate Affairs. A printout of the latest MCA Master Data is annexed hereto as* ***Annexure B****. FHHPL was non-compliant and defaulting since 2016 and there was no one in that company who was available to respond to or address any of the queries of the Noticee. This reflects that FHHPL was non responsive and non-compliant to most of the authorities much before happening of this event.*
5. *The two Directors of FHHPL have also been jailed for siphoning of funds and fraud amongst other things – Shivender Mohan Singh and Malvinder Mohan Singh – Religare, etc. There are several articles available evidencing the same, some of them being:*

https://economictimes.indiatimes.com/news/india/siphoning-of-rfl-funds-scdismisses-interim-bail-plea-of-shivinder-mohansingh/articleshow/90271472.cms?from=mdr

https://www.financialexpress.com/market/sat-directs-malvinder-mohan-singhmalav-holdings-to-deposit-50-pc-of-sebi-penalty-amount/2553045/

6. *Further, the Noticee did its best to follow up with FHHPL with the repeated emails sent to FHHPL. However, as has been demonstrated, FHHPL was not responding and a defaulting company with its Directors involved in fraud as evidenced from various newspaper articles available in the public domain and also various court proceedings and also proceedings before the Hon'ble Securities Appellate Tribunal. Thus, the emails and follow ups by the Noticee were ignored and neglected and FHHPL did not act upon them. The Noticee has made all efforts from its end to ensure compliance. There was no possibility of any inspection of any records as FHHPL was non responsive and non-cooperative. In the circumstances, it is submitted that there has been no violation of Regulations 15(1)(f) 15(5) read with Clause 4 of Schedule III of Code of Conduct as specified in the Debenture Trustee Regulations.*
7. *The debenture holders took the view that they could not appoint any Nominee Directors in FHHPL in such a violating company as it would serve no real purpose since the company was violating as well and as a consequence, their Nominee Directors would incur immediate disqualification under the provisions of the Companies Act, 2013. It is pertinent to note here that recently in May 2022, SEBI has written to the Ministry of Corporate Affairs seeking an exemption for nominee directors from getting disqualified due to statutory violations of companies. This is also evidenced from a newspaper article*

   https://economictimes.indiatimes.com/markets/stocks/news/sebi-nudges-mca-forexemption- to-nominees-ofdebenturetrustees/articleshow/91877916.cms?from=mdr

   Moreover, as per the SEBI (Debenture Trustees) Regulations, for appointment of nominee director there should be at least two defaults in the payment of interest. In the case of FHHPL the first default was on 15th May, 2018 and the second default was on 11th July, 2018. Immediately on happening of 2nd default on 11th July, 2018, very next day on 12th July, 2018 the NCDs were recalled and appointment of nominee director became infructuous. Thus, there has been no violation of Regulation 15(1)(e) of the Debenture Trustee Regulations.

8. *One debenture holder is based in Kolkata while one is based in Mumbai and FHHPL is located in Delhi. As a consequence, coordination between the two of them took some time to arrive at a consensus of date, time and venue for holding the first meeting of debenture holders. The Noticee did its best to convene the first meeting as soon as it could, however, it could do so only with the consent of both the debenture holders at a date, time and place of their choice. Hence, the delay which was not in its control.* ***Thus, there has been no violation on the part of the Noticee of Regulation 15(1)(l) of the Debenture Trustee Regulations.***
9. *Further, the debenture holders decided to pursue independent recovery proceedings before DRT against FHHPL and each one has independently filed proceedings before the DRT II in Delhi. SREI was the first one to move the DRT II in Delhi on 18th September, 2019 by way of OA 159/2020. Once proceedings were initiated and notice was issued by the DRT II in Delhi, the entire matter became sub-judice. Similar proceedings have also been initiated by JM Financial before DRT II in Delhi vide OA no. 520/2021 on 28th September,2021. Copies of the case status of both the matters and the orders dated 16.12.2019 and 29.12.2021 of DRT II, Delhi are annexed hereto and collectively marked as* ***Annexure C****.*
10. *It is important to note that both the debenture holders themselves have issued the recall notices and as a result, the Noticee was not required to issue any recall notice. There has been no lackadaisical approach by the Noticee nor has the Noticee delayed the process of enforcement nor has the Noticee jeopardised the interests of the debenture holders. As already mentioned above, the debenture holders decided to pursue legal recourse available to them under DRT Act.* ***Thus, there has been no violation of Regulation 15(1)(n) and 15(1)(p) read with Clause 1 of Schedule III of Code of Conduct as specified in the Debenture Trustee Regulations.***
11. *With reference to the allegation that the Noticee did not fulfil its obligations in a prompt, ethical or professional manner towards the two debenture holders. The attention is invited to the facts and submissions made hereinabove which indicates that the Noticee has acted promptly, ethically and efficiently as well as professionally to protect the interests of the debenture holders. In fact, it was the Noticee itself who informed SEBI of the violations in payment by FHHPL and also followed up with the debenture holders for way forward in the matter.* ***Thus, there has been no violation of Clause 3 of Schedule III of Code of Conduct as specified in the Debenture Trustee Regulations.***
12. *The Noticee has been doing very regular and systematic follow-up in the matter.*
13. *In light of the above submissions, it is respectfully submitted that the Noticee should not be penalised for the wrongdoings of FHHPL and its Directors.*
14. *The Noticee is a law abiding company and has acted with utmost good faith and has never committed any violations under the SEBI Regulations.*
15. *There was no harm or injury caused to any public interest in the matter and there was no prejudice caused to the debenture holders.*

16. *The Debenture Holder has not made any complaint or raised any grievance against the Noticee anytime.*
17. *It is very pertinent to mention that one of the Debenture Holder in it's Original Application filed before DRT II, Delhi has made the following submission:-*
    "It is submitted the Defendant No.1 i.e. the FHHPL from the very inception of issuance of the said debentures had malafide intentions to defraud the debenture holders such as the Applicant and the same is writ large from the fact that apart from various representations and warranties made by the Defendant No.1 in the disclosure documents/information memorandum, Debenture Trust Deed and other transaction documents, they had represented and made the Applicant believe that the FHHPL has capacity to repay the redemption premium along with interest and despite the same and having sufficient resources, FHHPL is wilfully avoiding to pay the dues of the Applicant."
18. *We humbly submit that the Noticee has substantially complied with the requirements of the said Regulations and rely upon the Doctrine of Substantial Compliance as laid down by the Hon'ble Supreme Court in CCE, New Delhi vs. Hari Chand Shri Gopal & Ors. [2010 (182) ECR 0143 (SC)] which inter-alia, states that:*
    "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."
    *A copy of the said judgment is annexed as **Annexure D**.*
19. *In the above facts and circumstances, the Noticee humbly submits that it has not committed any violations under Regulation 15 read with the Code of Conduct of Debenture Trustee Regulations as alleged or otherwise and humbly prays for withdrawal of the said show cause notice and adjudication proceedings in the interest of justice, equity & good conscience.*

<u>CONSIDERATION OF ISSUES AND FINDINGS:</u>

8. I have carefully examined the material available on record and the submissions made by the Noticee. The issues that arise for consideration in the present case are :

I. Whether the Noticee has violated the following provisions –

   i. Regulation 15(1) (d) and Clause 17 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations

   ii. Regulation 15(1)(e) of Debenture Trustees Regulations

   iii. Regulation 15(1)(f) and Clause 4 of Schedule III of Code of Conduct of Debenture Trustees Regulations

   iv. Regulation 15(1)(j) of Debenture Trustees Regulations

   v. Regulation15 (1) (l) of Debenture Trustees Regulations

   vi. Regulation 15(1)(n), Regulation15(1)(p) and Clause 1 of Schedule III of Code of Conduct of Debenture Trustees Regulations

   vii. Regulation 15(1)(r) and Clause 19 of Schedule III of Code of Conduct of Debenture Trustees Regulations

   viii. Regulation 15(2)(5) of Debenture Trustees Regulations

   ix. Clause 3 of Schedule- III of Code of Conduct of Debenture Trustees Regulations

II. Does the violation(s) in sl. no. I, if established, attract monetary penalty under Sections 15HB of SEBI Act, 1992?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

FINDINGS

9. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same are reproduced below:

Debenture Trustee Regulations

> ***Regulation 15(1)****: It shall be the duty of every debenture trustee to:*
>
> d. *communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;*
>
> e. *appoint a nominee director on the Board of the company in the event of:*
>
> *(i) two consecutive defaults in payment of interest to the debenture holders; or*
> *(ii) default in creation of security for debentures; or*
> *(iii) default in redemption of debentures*
>
> f. *ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach*
>
> j. *do such acts as are necessary in the event the security becomes enforceable*
>
> l. *take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held*
>
> n. *perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders*
>
> p. *to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice*
>
> r. *inform the Board immediately of any breach of trust deed or provision of any law, which comes to the knowledge of the trustee.*

Explanation: The communication to the debenture holders by the debenture trustee as mentioned in these regulations may be made by electronic media, press-release and placing notice on its website;

Regulation 15(2)(5)*: A debenture trustee may inspect books of account, records, registers of the body corporate and the trust property to the extent necessary for discharging its obligations.*

SCHEDULE-III

Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993
[Regulation 16]

CODE OF CONDUCT

1. A Debenture Trustee shall make all efforts to protect the interest of debenture holders.

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

17. A Debenture Trustee shall make reasonable efforts to avoid misrepresentation and ensure that the information provided to the debenture holders is not misleading.

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.

Allegation 1

10. I note that in the SCN, it has been alleged as follows –

a. *During the examination, it was observed that the DT was not tracking the correct ISINs and so, the communication sent to the debenture holders regarding non-payment of interest was not found to be accurate. Thus, it was observed that Noticee has not taken enough efforts to avoid misrepresentation and communicated promptly about defaulters in interest payments and provided accurate information to the debenture holders.*

   In view of the foregoing, it is alleged that Noticee violated Regulation 15(1) (d) and Clause 17 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations.

b. *During the examination it was observed that DT did not track the ISINs actively and so, it was not in a position to know when the security shall become enforceable and act accordingly.*

   In view of the foregoing, it is alleged that Noticee has violated Regulation 15(1)(j) of Debenture Trustees Regulations.

c. *It was observed that Noticee had informed SEBI about default in the non-tradable, defunct ISINs instead of the actively traded ones. Hence, it was observed the information provided was a mere conjecture of the DT and not the actual and reliable information. Thus, Noticee did not provide a true statement to SEBI. In view of the same, it is alleged that Noticee has violated Regulation 15(1)(r) and Clause 19 of Schedule III of Code of Conduct of Debenture Trustees Regulations.*

11. I observe from available records that the Board of Directors of FHHPL passed a resolution to modify the terms and conditions the terms and conditions of 2 ISINs (INE277L07101 and INE277L07119) on February 23, 2018. Thereafter, as required under Section 59 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, investors and ITSL gave the consent for the same on February 27, 2018 and February 28, 2018 respectively. Pursuant to the same, BSE Ltd.("**BSE**") issued notices on March 27, 2018 to the market about the suspension of trading for both the ISINs due to restructuring and on April 05, 2018, BSE issued another notice informing the market regarding issuance of 2 new ISINs (INE277L07127 and INE277L07135) which was available for trading under revised terms.

12. With regard to the aforesaid allegation, Noticee has submitted that it had been tracking the original ISINs without fail and it was due to FHHPL's non-co-operation that it did not have the revised ISIN with it. Noticee has contended that since they were tracking the original ISINs regularly, there was no reason for it not to change the revised ISINs in the communications, had FHHPL responded to its requests. It has been submitted that in case of ISIN INE277L07101, the interest payment was due on March 01, 2018 and they had sent reminder emails to FHHPL on T-7 day and also on the payment date. FHHPL had duly sent the payment details as required under Regulation 57(1) of the SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015 to Noticee on March 01, 2018. Thereafter, the next date payment due date for INE277L07101 & INE277L07119 was on May 30, 2018. I note from evidence placed by Noticee that the Noticee had once again followed up with FHHPL by sending reminder emails on T-7 day, T day and also T+1 day i.e. May 23, 2018, May 30, 2018 and May 31, 2018 respectively for the aforesaid payments. However, there are no documents placed on record to show that FHHPL responded to Noticees emails. I also note from available records that FHHPL defaulted in payment of interest.

13. At this juncture, I note that after change of ISINs, FHHPL has not communicated the ISIN change to the Noticee. Noticee has stated that, based on due dates, it has continued to follow-up with FHHPL for the interest payments and when no confirmation was received from FHHPL, Noticee has informed about the default to the concerned agencies, including the credit rating agencies and SEBI. From the above chain of events, I note that FHHPL has remained non-cooperative with the DT and had stopped responding to the Noticee post March 01, 2018. Noticee has also contended that even otherwise, it was very much conscious and aware of enforceability of the debenture issues, and as a consequence of the defaults of interest and principal by FHHPL, and in consultation with debenture holders, legal action was initiated by Noticee against FHHPL by filing of Original Application before the Debt Recovery Tribunal, Delhi. From Noticee's submissions, I note that even though terms and conditions of 2 ISINs had been modified, the due dates of payment of the modified ISINs remained unchanged. From the aforesaid records, I note that Noticee was duly following up with FHHPL for the interest payments on their due dates, even though FHHPL never communicated to the Noticee about the revised ISINs and had also became totally non-communicative. I note that as per the records, Noticee had informed the debenture holders about the default, however the ISIN mentioned therein were the un-revised ISINs. So, I am of the view that since Noticee was following up and tracking about the old ISINs and had also taken action subsequently, I find that a lenient view can be taken respect to violation of Regulation 15(1)(d) of Debenture Trustee Regulations. Accordingly, I hold that the alleged violations of the provisions of Regulation 15(1) (d), 15(1) (j) and Clause 17 of Schedule III of Code of Conduct as specified in Debenture Trustee Regulations do not stand established against the Noticee.

14. With regard to the allegation of informing SEBI about default in old ISINs instead of the modified ISINs, I note that Noticee has contended that it had correctly informed the amount of default. Noticee has further contended that the Issuer (FHHPL) had never informed it about the revised ISINs, accordingly they had mentioned the original ISINs

to SEBI. I accept the aforesaid contentions of the Noticee. Noticee has also stated that as per the conditional consent granted by it to FHHPL for modification of the terms and conditions of the debt securities, FHHPL had to update Noticee about the receipt of requisite approvals from Stock exchanges/SEBI/Credit Rating Agencies, however, FHHPL has never informed the Noticee of either the changes in the ISINs nor of the modifications to the terms and conditions to the debt securities. From the above, I note that there has been failure on the part of FHHPL. I also note that Noticee has immediately informed SEBI about the default by FHHPL with regard to the interest payments in its debt securities in accordance with Regulation 15(1)(r) of Debenture Trustee Regulations. Further, I note that the recipient of the information can easily ascertain that the original ISINs are not active and that they have been revised. Also the original ISINs can be correlated to the revised ISINs. Further, I note that it does not appear that there was any deliberate reporting of incorrect information by Noticee to SEBI. Considering the above, I note that the alleged violations of Regulation 15(1)(r) and Clause 19 of Schedule III of Code of Conduct of Debenture Trustee Regulations by Noticee does not stand established.

Allegation 2

15. In the SCN, it has been alleged as follows –

a. *It was observed that DT did not ensure the modifications in terms and conditions were as per the consent provided and thus, it could not have ensured that FHHPL did not commit any breach of the terms of issuer of debentures or covenants of the trust deed and therefore was not in position to take any steps towards remedy of the same as well. It was further observed that, by trying to push the blame on FHHPL for not informing DT, Noticee had not carried out independent professional judgment nor ensured proper care. In view of the foregoing, it is alleged that Noticee has violated Regulation 15(1)(f) and Clause 4 of Schedule III of Code of Conduct of Debenture Trustees Regulations.*

16. With regard to the above allegation, Noticee has contended that it had continuously followed up with FHHPL for acceptance of modification in terms and conditions of debenture issue as mentioned below:

Particulars	*Existing*	*Proposed*
ROI	*7.00% per annum payable quarterly i.e., on 5 th March 2018 and 4th June 2018*	*1.00% per annum payable quarterly i.e., on 5 th March 2018 and 4th June 2018.*
Redemption Premium	*Rs. 72,500 per NCDs of Rs. 10,00,000/- on maturity (7.25% p.a. or respective put/call date).*	*Rs. 1,32,500/-per NCDs of Rs. 10,00,000/- on maturity (13.25% p.a. or respective put/ call date.*
Other terms and conditions remained unchanged.		

17. It has further been contended that regarding the modification in terms and conditions, FHHPL did not honor its commitment as agreed between it and the debenture holders and the same led to filing of Original Application (OA) before Debt Recovery Tribunal, Delhi against the FHHPL which is an ultimate action against FHHPL and the matter is now sub-judice. Noticee has claimed that it did not receive any response from FHHPL to its email communications. Further, Noticee has stated that two directors of FHHPL viz. Shivender Mohan Singh and Malvinder Mohan Singh have been jailed for siphoning of funds and fraud amongst other things.

18. From perusal of available records and evidence furnished by Noticee, I note that Noticee had repeatedly followed up with the issuer Company i.e. FHHPL which did not provide any heed to the communications from the Noticee. Further, there is no evidence on record that FHHPL had directly updated the Noticee about the changed ISINs or of the modification of terms and conditions of Non-Convertible Debentures

(hereinafter referred to as “**NCDs”**) in-spite of the condition stipulated in the conditional consent granted by the Noticee that FHHPL would update Noticee about the receipt of the requisite approvals from Stock Exchanges / SEBI / Credit Rating Agencies. Under such circumstances, I note that the failure on the part of FHHPL cannot be fastened on the Noticee. Accordingly, I hold that the allegation of the violations of Regulation 15(1)(f) and Clause 4 of Schedule III of Code of Conduct of Debenture Trustees Regulations against Noticee does not stand established.

<u>Allegation 3</u>

19. In the SCN it has been alleged as follows –

   a. *It was observed that DT had not taken any action towards inspection of books of account of FHHPL. In view of the same, it is alleged that Noticee has violated Regulation 15(2)(5) of Debenture Trustees Regulations*

20. With regards to the above allegation, the Noticee has submitted that there was no possibility of any inspection of any records as FHHPL was totally non-responsive and non-cooperative. In this regard, I note that Regulation 15(2)(5) of the Debenture Trustees Regulations stipulate that a debenture trustee may inspect books of account, records, registers of the body corporate and the trust property to the extent necessary for discharging its obligations. However, I note that the Noticee has made a case that due to non-cooperative behavior of FHHPL, the inspection of accounts / books of FHHPL by the Noticee would not have been allowed by FHHPL. I note that Noticee has admittedly neither carried any inspection of books of accounts or records of FHHPL nor demonstrated any efforts made by them to that end. Even though Noticee has cited non-cooperation from FHHPL, I find that there has been no effort or initiative taken from Noticee’s side for conducting inspection of accounts or records of FHHPL which in my view especially should have been deemed necessary in the backdrop of default by FHHPL. Accordingly, I find that by failing to conduct inspection of the books of

account, records, registers of FHHPL, Noticee has violated Regulation 15(2)(5) of the Debenture Trustees Regulations.

21. In the SCN it has also been alleged as follows –

> *As per Clause 3 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations, DT has to fulfill its obligations in a prompt, ethical and professional manner. It was observed that Debenture Trustee failed to fulfill all the above enlisted duties towards the debenture holders.*

22. With regard to the above allegation, Noticee has contended that it has always been mindful of its duties and professionally and ethically performing all its duties. The Noticee has contended that it had been diligently doing the following – a) Have been tracking the payment of interest and redemption of principal on each due date by sending emails on T-7 basis till the status is provided to CRA; b) Provided payment status to CRA and SEBI; c) Coordination with the debenture holders; and d) Follow-ups with the FHHPL. I also note that Noticee vide its emails dated 14.06.20218, 18.06.20218 & 25.06.2018 had followed up with FHHPL and requested the Company to provide the following details to it: -

   a. Latest Loan Receivables of the Company (Fortis Healthcare Holdings P Limited) with the details of Name of the Party (to whom loan given), Amount of Loan, Nature of Security, Rate and Terms of the loan etc;
   b. Balance Sheet of the issuer Company i.e. Fortis Healthcare Holdings Private Limited for FY 16-17 & FY 17-18;
   c. Current list of Debenture Holders for NCD 300cr (Rs. 150cr each series);
   d. List of receivable, along with amount, charged against this issue of NCDs;
   e. List of other lenders having exposure against this receivable, along with amount; and

f. Any half yearly communication sent to Debenture Trustee by issuer, Fortis Healthcare Holdings P Limited.

23. However, I note that the Noticee has made a case that due to non-cooperative behavior of FHHPL, the inspection of accounts / books of FHHPL by the Noticee would not have been allowed by FHHPL. I note that, Noticee has admittedly not carried any inspection of books of accounts or records of FHHPL. Even though Noticee has cited non-cooperation from FHHPL, I find that there has been no effort or initiative taken from Noticee's side for conducting inspection of accounts or records of FHHPL which in my view should have been done in the backdrop of default from FHHPL. Thus, I note that Noticee had not taken reasonable and necessary steps to fulfill its obligations, and hence can be made liable for the neglect and failure of FHHPL. Thus, it can be said that Noticee failed to fulfill its obligations in a prompt, ethical and professional manner. In view of the above, I find that the allegation of violations of Clause 3 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations against the Noticee stands established.

Allegation 4

24. In the SCN it has been alleged as follows –

It was observed that by stating non-cooperation by the issuer company, DT has not appointed a nominee director on the Board of the defaulting company.

In view of the foregoing, it is alleged that Noticee has violated Regulation 15(1)(e) of Debenture Trustees Regulations.

25. With regard to the above allegations, Noticee has contended FHHPL was a defaulting company under the Companies Act, 2013, and as per Section 164 of the Companies Act, 2013, the Nominee directors would have been liable to be disqualified. It has been submitted by Noticee, that FHHPL had failed to file any of its statutory returns and

conduct its statutory AGM after 30th September, 2016 and as a consequence, it was violating the statutory compliances of Companies Act, 2013 for two financial years. It has also been submitted that there was a provision of disqualification of Directors in a Company who has failed to repay the deposits accepted by it or payment interest thereon or to redeem any debentures on the due dates or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continuous. It has thus been contended that appointing any Nominee Directors in FHHPL which was a violating company, would serve no real purpose as the non-compliances by FHHPL would result in their Nominee Directors incurring immediate disqualification under the provisions of the Companies Act, 2013. I find merit in the above contentions of the Noticee, as indeed under the provisions of Section 164(2) of the Companies Act, 2013, if a company has not filed financial statements or annual returns for any continuous period of three financial years; or has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, then the directors of the said company shall be disqualified for a period of 5 years. Further, I note that in order to buttress its contentions, Noticee has also referred to a news article dated May 30, 2022 published in the website of The Economic Times, wherein it was discussed that SEBI had written to the Ministry of Corporate Affairs (MCA) seeking a special exemption for nominee directors appointed by debenture trustees on the board of companies. Thus, I note that the Noticee was facing certain practical and legal constraints in appointing a nominee director. Further, Noticee has also contended that as per the Debenture Trustee Regulations, for appointment of Nominee Director there should be atleast two defaults in the payment of interest, and in the present case the first default by FHHPL was on May 15, 2018 and the second default was on July 11, 2018, and immediately on the next day i.e. July 12, 2018, the NCDs were recalled and appointment of nominee director became infructuous. The aforesaid sequence of events shows that NCDs were recalled immediately after the second default which also left no room for Noticee to appoint a Nominee Director in terms of the aforesaid provision of Debenture Trustee Regulation. From the above, I also note that the Nominee director, if appointed by Noticee faced a real risk of being disqualified under the provisions of Companies Act, 2013. Taking into consideration of the above, I conclude that the allegation of Noticee violating Regulation 15(1)(e) of Debenture Trustee Regulations as a result of not appointing a nominee director in the defaulting company does not stand established.

Allegation 5

26. In the SCN it has been alleged as follows –

It was observed that FHHPL were having only 2 debenture holders. Despite this, Noticee took almost more than 7 months to conduct the first meeting. In view of the same, it is alleged that Noticee has violated Regulation15 (1) (l) of Debenture Trustees Regulations

27. With regard to the above allegation, Noticee has contended that the Debenture Holders were considering various ways and means to resolve the matter amicably with the FHHPL and Noticee was also in dialogue with them for consensus in approach. Noticee has also contended that one of the debenture holders was based in Kolkata and the other debenture holder was based in Mumbai, while the issuer viz. FHHPL was located in Delhi. The Noticee has contended that as a consequence, the coordination between the debenture holders took some time to arrive at a consensus of date, time and venue for holding the meeting of the debenture holders. Further, the Noticee has also contended that it did its best to convene the first meeting as soon as it could, however, it could do so only with the consent of both the debenture holders at a date, time and place of their choice, and hence, the delay was not in its control. I have taken note of the contentions of the Noticee. I note that Regulation 15(1)(l) of the Debenture Trustee Regulations stipulate that the it shall be the duty of the DT take steps to convene a

meeting of the holders of debentures as and when such meeting is required to be held. In the present case, I note that a meeting of the debenture holders was convened on January 17, 2019, post the default by FHHPL. In this regard, I note that the Debenture Trustee Regulations have not mandated any time frame within which the meeting has to be convened, but have specified that DT shall take steps to convene such meeting as and when they are required to be held. Taking into consideration the above submissions of the Noticee and the fact that Noticee took steps so that the meeting of debenture holders was convened between the debenture holders, I conclude that the alleged violation of Regulation 15(1)(l) of Debenture Trustee Regulations by Noticee does not stand established.

Allegation 6

28. In the SCN it has been alleged as follows –

> *It was observed that the recall notices, which were sent to the HDFC Bank, mentioned the wrong ISINs. The notices sent to the issuer company also mentioned the same. It was observed that this lackadaisical approach of Noticee had delayed the process of enforcement and jeopardized the interest of the debenture holders. In view of the same, it is alleged that Noticee has violated Regulation 15(1)(n), Regulation15(1)(p) and Clause 1 of Schedule III of Code of Conduct of Debenture Trustees Regulations.*

29. With regard to the above allegation, Noticee has contended that the recall notices to HDFC Bank and FHHPL had not been issued by it but were issued by the respective debenture holders i.e. SREI Infrastructure and JM Financial Mutual Fund, as per the claims in their books of account, and as decided in the meeting of debenture holders. Further, Noticee has also contended that ISINs, as referred in the Recall Notices and sent to HDFC Bank, are correctly mentioned. In this regard, I note that the copy of the recall notices in question or their contents are not part of the available records. I note

that Regulation 15(1)(n) and (p) of the Debenture Trustee Regulations state that it shall be the duty of the Debenture Trustee to perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders. Similarly, Clause 1 of Schedule III of Code of Conduct of Debenture Trustee Regulations states that the Debenture Trustee shall make all efforts to protect the interest of debenture holders. In the present case, I note that the recall notices have been issued by the debenture holders and not by Noticee and it is not the case that the incorrect ISINs mentioned in the recall notices have been so mentioned by the Noticee. Accordingly, I find that the alleged violations of Regulation 15(1)(n), Regulation15(1)(p) and Clause 1 of Schedule III of Code of Conduct of Debenture Trustee Regulations do not stand established against Noticee.

Issue II: Does the violation(s) in sl. no. I, if established, attract monetary penalty under Sections 15HB of SEBI Act, 1992?

30. In this regard, I note that the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

31. In view of the foregoing and placing reliance on the aforesaid judgement, I note that the violation of Regulation 15(2)(5) and Clause 3 of Schedule III of Code of Conduct as specified in Debenture Trustees Regulations by the Noticee make them liable for penalty under Section 15HB of SEBI Act, 1992 which at the relevant time of commission of violations, read as under –

SEBI Act, 1992

Section 15HB of SEBI Act, 1992: -*Penalty for contravention where no separate penalty has been provided: 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 III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

32. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, require that while adjudging the quantum of penalty, 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.

33. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it is not possible to ascertain the exact monetary loss to the investors/ clients on account of default by Noticee. As regards the repetitive nature of the default, I do not find from available records that any regulatory action has been taken by SEBI in past against Noticee for same violations as those observed in the instant matter. I also observe that there are no investor complaints on

record, arising out of failure on the part of Noticee. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, 1992, Rules and Regulations and Circulars/directions issued thereunder etc. which it failed to do. Such disregard for the provisions of law governing the functioning of intermediaries calls for an appropriate penalty which should act as a deterrent for Noticee.

ORDER

34. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 15J of SEBI Act, 1992 as enumerated above, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose the following penalty on Noticee, viz. IDBI Trusteeship Services Limited –

Sr. No.	**Penalty**	**Under the provisions of**
1	Rs. 1,00,000/-(Rupees One Lakh only)	Section 15HB of SEBI Act, 1992
Total	Rs. 1,00,000/-(Rupees One Lakh only)	

I am of the view that the said penalty is commensurate with the violations committed by Noticee.

35. 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

36. Noticee shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in table below which should be sent to "The Division Chief, EFD – DRA - II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id: - tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
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 and legal charges along with order details)	

37. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

38. In terms of the provisions of Rule 6 of Adjudication Rules, copy of this order is being sent to Noticee viz. IDBI Trusteeship Services Limited and also to SEBI.

Date: August 22, 2022 **Soma Majumder**

Place: Mumbai **Adjudicating Officer**