BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AN/PR/2024-25/30389]

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

In respect of:

Paranjape Schemes (Construction) Limited

PAN: AACCP1941Q

In the matter of Paranjape Schemes (Construction) Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as **'SEBI'**) had carried out an examination in respect of Paranjape Schemes (Construction) Limited (hereinafter also referred to as 'Noticee'/ 'Company'/ 'PSCL'). The examination of compliance of relevant regulations for PSCL was carried out for the period from March 01, 2018 to April 30, 2023 ('Examination Period').The scope of examination inter alia covered verification of compliance status of PSCL with SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (hereinafter also referred as 'LODR Regulations') with respect to the issuance of listed Non-Convertible Debentures ('NCDs').

2. Pursuant to the examination, SEBI inter alia observed and alleged non-compliance of the following provisions:

    1.1. Regulation 51 (1) of LODR Regulations and Regulation 51(2) read with clause A (11) of Part B of Schedule-III of LODR Regulations;
    1.2. Regulation 51 (3) of LODR Regulations;
    1.3. Regulation 55 of LODR Regulations;

1.4. Regulation 59 of LODR Regulations;

1.5. SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020;

1.6. Non-compliance with provisions related to continuous disclosures viz., Regulation 52(1), Regulation 54(2),Regulation 52(4), Regulation 13(3), Regulation 50(1), Regulation 57(1), Regulation 6(1), Regulation 7(1), Regulation 50(2), Regulation 53(2), Regulation 57(4), Regulation 57(5) of LODR Regulation;

1.7. Regulation 52 of LODR Regulations and SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020.

3. In view thereof, SEBI had initiated Adjudication Proceedings in respect of PSCL under Section 15 I of the Securities and Exchange Board of India Act, 1992 ('SEBI Act, 1992', in short), for the alleged violation of aforesaid provisions.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 15 I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('Adjudication Rules', in short) read with Section 19 of the SEBI Act, 1992, the Competent Authority appointed the undersigned as Adjudicating Officer ("***AO***") vide order dated June 27, 2023 to inquire into and adjudicate under Section 15HB of the SEBI Act, 1992 the alleged violations of the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated June 27, 2023.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice bearing reference No. SEBI/EAD5/P/OW/2023/31767/1-2 dated August 08, 2023 (hereinafter also referred to as **"SCN"**) was duly served upon the Noticee in terms of Rule 4(1) of SEBI Adjudication Rules to show cause as to why inquiry should not be held and penalty be not imposed under Section 15HB of the SEBI Act, for the alleged violations.

6. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

"…

4. Analysis by SEBI of Compliance status:

4.1. Failure by PSCL to inform Exchange about:

- ***Details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra***
- ***Default in redemption amount on the final redemption date.***

In this regard, following is inter alia observed and/or alleged by SEBI:

4.1.1. Relevant Regulation:

Regulation 51 (1) of LODR Regulations

"…

The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend or redemption of non-convertible securities.

…"

Regulation 51(2) read with clause A (11) of Part B of Schedule-III of LODR Regulations

"…

Without prejudice to the generality of sub-regulation(1), the listed entity who has [listed non-convertible securities] shall make disclosures as specified in Part B of Schedule III.

…"

Clause A (11) of Part B of Schedule-III

"…

The listed entity shall promptly inform the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend [or redemption payment] of non-convertible securities including:

…

(11) any instance(s) of default/delay in timely repayment of interests or principal obligations or both in respect of the debt securities including, any proposal for re-scheduling or postponement of the repayment programmes of the dues/debts of the listed entity with any investor(s)/lender(s).

…"

4.1.2. Comments from Vistra/BSE:

Vistra, vide email dated April 21, 2023 submitted that final redemption as per agreed terms was initially due on October 31, 2019. However, post the same due to circumstances of non-payment, the said date was amended to as under:

1) *Vide 4th amendment to trust deed dated 14th November 2019 the date of redemption was extended to 3 dates:*
   - *20% Redemption on 31-10-2020*
   - *30% Redemption on 31-01-2021*
   - *50% Redemption on 30-04-2021*

2) *Vide 5th amendment to trust deed dated 22nd October 2020 the date of redemption was extended to 30th April 2021.*
3) *Vide 6th amendment to trust deed dated 24th November 2020 the date of redemption was further extended to 31st March 2022.*

However, the final redemption was yet to be done (status as on May 31, 2023) and debenture holders have verbally instructed not to take any action as they are in direct discussion with the Issuer on the same.

BSE, vide its email dated April 18, 2023 has submitted that no intimation of default was submitted to stock exchange under Regulation 51(1)/ 51(2) of LODR Regulations. BSE has further submitted that there are no disclosures on Exchange website under these regulations. Further, in the absence of information about any specific event which would otherwise require disclosures under Reg.51 (1), 51(2) & 51(3), we are unable to comment further on compliance with these regulations.

4.1.3. Analysis and Compliance Status:

Based on the information provided by Vistra and BSE, it is observed that PSCL has not informed BSE about:

- *Details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra*
- *Default in redemption amount on the final redemption date.*

This is not in compliance with

-Regulation 51 (1) of LODR Regulations

-Regulation 51(2) read with clause A (11) of Part B of Schedule-III of LODR Regulations

In view thereof, it is alleged that Noticee violated provisions of Regulation 51 (1) of LODR Regulations and Regulation 51(2) read with clause A (11) of Part B of Schedule-III of LODR Regulations.

4.2. Failure by PSCL to disclose following information on its website:

- ***Details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra***
- ***Default in redemption amount on the final redemption date.***

In this regard, following is inter alia observed and/or alleged by SEBI:

4.2.1. Relevant Regulation:

Regulation 51 (3) of LODR Regulations

"…

The listed entity shall disclose on its website, all such events or information which have been disclosed to the stock exchange(s) under this regulation and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.
…"

(Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information)

4.2.2. Comments from Vistra/BSE:

Vistra, vide its email dated April 21, 2023 has submitted that due date of NCDs falling on October 31, 2019, October 31, 2020 , January 01, 2021 and April 30, 2021 has been rescheduled three times. Further, the final redemption is yet to be done and debenture holders have verbally instructed not to take any action as they are in direct discussion with the Issuer on the same.
BSE, vide email dated April 18, 2023 has informed about the non-compliance of PSCL with the said Regulation. BSE has further stated there are no disclosures on Exchange website under these regulations. Further, in the absence of information about any specific event which would otherwise require disclosures under Reg.51 (1), 51(2) & 51(3), we are unable to comment further on compliance with these regulations.

4.2.3. Analysis and Compliance Status:

*Based on the information provided by Vistra, BSE and on perusal of website disclosures of PSCL (Copy of Website disclosure placed as **Annexure 8**) it is observed that PSCL has not disclosed on its website*

- *Details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra.*
- *Default in redemption amount on the final redemption date.*

This is not in compliance with Regulation 51 (3) of LODR Regulations
In view thereof, it is alleged that Noticee violated provisions of Regulation 51 (3) of LODR Regulations.

4.3. Failure by PSCL with respect to mandatory review of Credit Rating at-least once a year:

In this regard, following is inter alia observed and/or alleged by SEBI:

4.3.1. Relevant Regulation:

Regulation 55 of LODR Regulations

"…
Each rating obtained by the listed entity with respect to non-convertible securities shall be reviewed at least once a year by a credit rating agency registered by the Board.
…"

4.3.2. Comments from BSE:

BSE vide its email dated April 18, 2023 has stated that PSCL has submitted the Credit rating review on May 22, 2020.

4.3.3. Analysis and Compliance Status:

Based on the submission by BSE, it is observed that PSCL has disclosed the credit rating review only once in the examination period on May 22, 2020. Hence, it appears that credit rating review has not been initiated by PSCL for every year during the examination period. This is not in compliance with Regulation 55 of LODR Regulations.
In view thereof, it is alleged that Noticee violated provisions of Regulation 55 of LODR Regulations.

4.4. Failure by PSCL to take Stock Exchange approval before making material modification to structure of NCDs (Extension of redemption date by executing three amendment to Trust deeds):

In this regard, following is inter alia observed and/or alleged by SEBI:

4.4.1. Relevant Regulation:

Regulation 59 of LODR Regulations

"…
59.(1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non-convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :
(a) the structure of the [non-convertible debt securities] debenture in terms of coupon, redemption, or otherwise.
(b) the structure of the non-convertible redeemable preference shares in terms of dividend, redemption, or otherwise.
(2) The approval of the stock exchange referred to in sub-regulation (1) shall be made only after:
(a) Approval of the board of directors and the debenture trustee and
(b) [obtaining consent in writing of the holders of not less than three-fourths, by value of holders of that class of securities: Provided that the listed entity shall provide the facility of remote e-voting to facilitate such consent.]
…"

4.4.2. Comments from Vistra/BSE:

Vistra, vide its email dated April 21, 2023 has submitted that due date of NCDs falling on October 31, 2019, October 31, 2020 ,January 01, 2021 and April 30, 2021 has been rescheduled three times.
BSE, vide its email dated April 18, 2023 has submitted that no application has been received by the BSE for approval of change in structure of NCDs.

4.4.3. Analysis and Compliance Status:

Based on the submission of Vistra and BSE, it is observed that PSCL has modified the structure of its NCDs by extending redemption date by executing three amendment deeds with Vistra. However, PSCL has not taken stock exchange approval before making such material modification to the structure of the NCDs. This is not in compliance with Regulation 59 of LODR Regulations.
In view thereof, it is alleged that Noticee violated provisions of Regulation 59 of LODR Regulations.

4.5. Failure to create and maintain Recovery Expense Fund (REF) with effect from April 01, 2021:

In this regard, following is inter alia observed and/or alleged by SEBI:

4.5.1. Relevant Circular:

SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020:

Contribution by Issuers of listed or proposed to be listed debt securities towards creation of "Recovery Expense Fund"
The provisions of this circular came into force with effect from January 01, 2021. The existing issuers whose debt securities are already listed on Stock Exchange(s) were given additional time period of 90 days to comply with the circular for creation of REF.

4.5.2. Comments from Vistra/BSE:

BSE, vide its email dated April 18, 2023 submitted that PSCL has not deposited Recovery Expense Fund till date.

Vistra, vide email dated April 21, 2023 submitted that final redemption as per agreed terms was initially due on October 31, 2019 which was extended to 3 dates vide 4th amendment to trust deed dated 14th November 2019. The redemption date was subsequently extended to 30th April 2021 Vide 5th amendment to trust deed dated 22nd October 2020. Further vide 6th amendment to trust deed dated 24th November 2020 the date of redemption was further extended to 31st March 2022. Further, Vistra vide its email dated April 21, 2023 submitted that as on that date REF has not been created by the issuer.

4.5.3. Analysis and Compliance Status:

The applicability of circular dated October 22, 2020 with respect to REF creation was applicable from April 01, 2021 for existing issuers with listed debt securities.

Based on Vistra's email, it is observed that PSCL has executed amendment to trust deeds with Vistra to extend the date of redemption to April 31, 2021 (vide 5th amendment to trust deed dated October 22, 2020) and subsequently to March 31, 2022 (vide 6th amendment to trust deed dated November 24, 2020). Hence, the requirement to maintain the REF was applicable for PSCL from April 01, 2021. However, based on reply by BSE and Vistra, it is observed that PSCL has not created the REF. This is not in compliance with SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020.

In view thereof, it is alleged that Noticee violated provisions of SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020.

4.6. Non-compliance with provisions related to continuous disclosures:

In this regard, following is inter alia observed and/or alleged by SEBI:

4.6.1. *Non-**compliance** with provisions related to continuous disclosures (details in **Annexure 3** and **Annexure 9**) are as detailed below:*

Applicable LODR	Quarter/FY	Submission Status	Delay in days
52(1)	Mar-21	Delayed submission	237
54(2)	Mar-21	Non submission	596
52(1)	Sep-21	Non submission	458
54(2)	Sep-21	Non submission	458
52(4)	Sep-21	Non submission	458
52(1)	Dec-21	Non submission	367
54(2)	Dec-21	Non submission	367
52(4)	Dec-21	Non submission	367
13(3)	Dec-21	Non submission	391
52(1)	Mar-22	Non submission	262
54(2)	Mar-22	Non submission	262
52(4)	Mar-22	Non submission	262
13(3)	Mar-22	Non submission	301
52(1)	Jun-22	Non submission	210
54(2)	Jun-22	Non submission	184
52(4)	Jun-22	Non submission	184
13(3)	Jun-22	Non submission	184
52(1)	Sep-22	Non submission	94
54(2)	Sep-22	Non submission	94
52(4)	Sep-22	Non submission	94
13(3)	Sep-22	Non submission	118
57(1)	Apr-21	Non submission	684
57(1)	Apr-21	Non submission	684
57(1)	Apr-21	Non submission	684
57(1)	Apr-21	Non submission	684
57(1)	Apr-22	Non submission	683
57(1)	Apr-22	Non submission	683
57(1)	Apr-22	Non submission	683
57(1)	Apr-22	Non submission	683
6(1)	Dec-2020 to	Non submission	546
7(1)	Dec-2020 to	Non submission	546
6(1)	Sep-22	Non submission	92
7(1)	Sep-22	Non submission	92
53(2)	FY 2021-22	Non submission	53

Relevant provision of LODR Regulations	Quarter/FY	Submission Status	Due Date	Submission Date by PSCL	Date upto which fine is calculated/Review date	Delay in days
50(1)	Apr-21	Non submission	15/03/2021	-	28/09/2022	530
50(2)	FY 2021-22	Non submission	Refer the note below	-	31/10/2022	-
57(4)	Mar-22	Delayed submis sion	31/03/2022	27/03/2023	-	361
57(5)	Jun-22	Non submission	11/07/2022	-	27/09/2022	78

Note: *As per regulation 50(2) of SEBI (LODR) Regulation, 2015, The listed entity shall also intimate the stock exchange not later than the date of commencement of dispatch of notices, in case of*

(a) any annual general meeting or extraordinary general meeting that is proposed to be held for obtaining shareholder approval for the proposals at clauses (c) and (d) under sub-regulation (1) of this regulation;

In the instant matter, the due date for submission under Regulation 50(2) has not been included since the company has not informed the Exchange about the date on which the notices were dispatched by the company.

4.6.2. *On the **basis** of above analysis, it is observed that PSCL has not complied with the following provisions of LODR Regulations:*

I. *Regulation 52(1) of LODR Regulations*
II. *Regulation 54(2) of LODR Regulations*
III. *Regulation 52(4) of LODR Regulations*
IV. *Regulation 13(3) of LODR Regulations*
V. *Regulation 50(1) of LODR Regulations*
VI. *Regulation 57(1) of LODR Regulations*
VII. *Regulation 6(1) of LODR Regulations*
VIII. *Regulation 7(1) of LODR Regulations*
IX. *Regulation 50(2) of LODR Regulations*

X. Regulation 53(2) of LODR Regulations
XI. Regulation 57(4) of LODR Regulations
XII. Regulation 57(5) of LODR Regulations

In view thereof, it is alleged that Noticee violated provisions of Regulation 52(1), Regulation 54(2), Regulation 52(4), Regulation 13(3), Regulation 50(1), Regulation 57(1), Regulation 6(1), Regulation 7(1), Regulation 50(2), Regulation 53(2), Regulation 57(4), Regulation 57(5) of LODR Regulation.

4.7. Delayed submission of financial results:
In this regard, following is inter alia observed and/or alleged by SEBI:
BSE vide emails dated February 16, 2023 and March 21, 2023 has informed that PSCL was not in compliance with the following LODR Regulations.

S.N.	*Relevant LODR Regulation*	*Quarter/FY*	*Submission Status*	*No of days delay*
a)	*Regulation 52*	*Mar-18*	*Delayed Submission*	*1*
b)	*Regulation 52*	*Sep-19*	*Delayed Submission*	*1*
c)	*Regulation 52*	*Mar-20**	*Delayed Submission*	*182*
d)	*Regulation 52*	*Sep-20*	*Delayed Submission*	*199*

*Note: *The due date of filing Financial Results under Regulation 52 of SEBI (LODR) Regulations, 2015 was extended to July 31, 2020 pursuant to SEBI circular dated SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020*
In view thereof, it is alleged that Noticee violated provisions of Regulation 52 of LODR Regulations and SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020.

(Note: Relevant Regulations/ Relevant Circulars mentioned in the foregoing refers to relevant provisions of the LODR Regulations and cited Circulars. For detailed/ complete text of the provisions, relevant Regulations/Circulars etc., may please be referred.)

…"

7. Vide email dated August 11, 2023, Noticee acknowledged the receipt of SCN, and *inter* alia requested additional time to submit its reply to the SCN. Vide mail dated August 11, 2023, Noticee was advised to submit its reply latest by August 31, 2023. Vide email dated August 31, 2023, Noticee inter alia submitted that, they have appointed Joby Mathew & Associates, Advocates (**'ARs'**) for filing reply to the SCN and application for settlement in the matter and inter alia sought further time to file reply to the SCN. Vide email dated September 04, 2023, the Noticee was inter alia allowed further time till September 08, 2023 to reply to the SCN.

8. Vide letter dated September 01, 2023, the ARs inter alia requested for an opportunity for inspection of documents and also requested 4 weeks' time after they are provided inspection of originals, to submit their reply to the SCN. Vide email dated September 12, 2023, the ARs inter alia informed that, the Noticee has filed settlement application on September 11, 2023 and requested to keep the proceedings on hold until the Settlement Application filed by them was disposed. Vide email dated September 14, 2023, the Noticee was inter alia allowed inspection of the relied upon documents viz., annexures to the SCN and relevant Examination Report in the matter and the Noticee was informed that in terms of Regulation 8(1) of the SEBI (Settlement Proceedings Regulations),

2018, the filing of an application for settlement shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the settlement application was disposed of. The ARs of the Noticee availed the opportunity of Inspection of relied upon documents on September 22, 2023 and sought copies of certain other documents as remarks to the proceedings of inspection of the documents. In this regard, vide email dated October 19, 2023, Noticee was inter alia provided with the documents, as sought by them during the inspection of documents.

9. Vide email dated October 10, 2023, the ARs of the Noticee inter alia again requested for further time to file reply to the SCN. Vide email dated October 11, 2023, inter alia the Noticee was allowed time till October 16, 2023 to submit reply to the SCN. Vide email and letter dated October 16, 2023, Noticee submitted its reply to the SCN.

10. Vide Hearing Notice dated October 11, 2023, in the interest of principles of natural justice, an opportunity of hearing was afforded to the Noticee on October 17, 2023. The ARs of the Noticee i.e., Mr. Joby Mathew and Mr. Aditya Joby (Advocates) availed the opportunity for hearing on the scheduled dated i.e. on October 17, 2023. During the hearing, the ARs relied upon and reiterated the submissions dated October 16, 2023. The ARs also sought time till October 25, 2023 to make further additional submissions, accordingly the same was allowed. The ARs vide email and letter dated October 25, 2023 submitted the additional submissions of the Noticee to the SCN.

11. As regards the settlement application filed by the Noticee, vide email dated October 30, 2023, the Noticee informed that the settlement application was returned by SEBI in terms of Regulation 3(2) of Settlement Regulation to re-file the application in terms of Regulation 3(6) of the Settlement Regulation. Thereafter, vide email dated November 11, 2023, concerned department of SEBI informed about the rejection of settlement application in the matter in terms of Regulation 6(1)(a) of the Settlement Regulations. In view thereof, the adjudication proceedings in the matter were proceeded with.

12. The key submissions made by Noticee vide email and letter dated October 16, 2023 and October 25, 2023 as reply /additional submissions to the SCN, are as under:

Submissions dated October 16, 2023:

"…

1. …
2. …
3. *Our client is a Public Limited Company incorporated on September 18, 1987 and having its Registered Office at 1, Somnath Cts No. 988, Ram Mandir Road, Vile Parle East, Mumbai, Maharashtra - 400057. It is involved in real estate activities with own or leased properties. The equity shares of our client are not listed on any stock exchange.*
4. *Our client submits that during the period September 2015 to December 2021, it issued and allotted Debentures in 10 instances. Of these, 4 Non-Convertible Debentures ("**NCDs**") were listed on the Wholesale Debt Segment ("**WDS**") of the BSE Limited ("**BSE**"); details of the same are as follows: -*

ISIN	Type of Instrument	Date of Allotment	Redemption date	Issue Size (Cr.)	Subscriber
INE694107061	Secured Redeemable Non-Convertible Debentures	Sep 02, 2016	Oct 31, 2019	35.1	9.40 Cr - HDFC Ventures Trustee Company Limited 25.70 Cr - Superior Investments PTE Limited
INE694107046	Secured Redeemable Non-Convertible Debentures	Oct 20, 2015	Oct 31, 2019	27.70	7.40 Cr - HDFC Ventures Trustee Company Limited 20.30 Cr. - Superior Investments PTE Limited
INE694107012	Secured Redeemable Non-Convertible Debentures	Nov 21, 2014	Oct 31, 2019	72.4	19.30 Cr. - HDFC Ventures Trustee Company Limited 53.10 Cr. - Superior Investments PTE Limited
INE694I07038	Secured Redeemable Non-Convertible Debentures	July 28, 2015	Oct 31, 2019	39.80	10.60 Cr. - HDFC Ventures Trustee Company Limited 29.20 Cr. - Superior Investments PTE Limited

*The Debenture Trustee for the aforementioned debentures was Vistra ITCL (India) Limited ("**Vistra**").*

5. *Due to adverse circumstances, our client was unable to redeem the aforesaid NCDs on the due dates; however, our client entered into negotiations with the Debenture Holders regarding the redemption amount and the date of redemption has been extended by both parties through amendments to the Debenture Trust Deed from time to time. As confirmed by the Debenture Trustee, Vistra, the Debenture Holders have not declared an event of default (Please see Annexure 7 to SCN r/w email dated April 21, 2023 from Vistra. Furthermore, the investor/debenture holder has also requested Vistra to not take any adverse action, since the same would impact the value of the security and/or the ability of the investor/debenture holder to repay the amount.*
6. *It may be noted that:-*

(a) *The structure of the WDS does not permit or encourage participation by Retail investors; therefore, no prejudice is caused to such investors merely on account of delayed disclosures.*

(b) *Admittedly, there are only two investors in each of the NCD issues, which are listed on the WDS of BSE and they are party to the negotiations in respect of redemption of the NCDs and are therefore, not prejudiced by any alleged non-disclosures/delayed disclosures.*

7. *Our client received Advisory letters dated June 30, 2022 and October 10, 2022 from the BSE informing them of non-compliance with the requirements of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 ("**LODR Regulations**"), for the period prior to December 31, 2020.*
8. *Thereafter, in and around August 8, 2023, our client received the SCN. It is alleged in the SCN that our client allegedly violated Regulation 51(1) & (2) of the LODR Regulations, read with Clause A (11) of Part B of Schedule – III, Regulation 51(3), 55 and 59 of the LODR Regulations, continuously did not comply with Regulations 6(1), 7(1), 13(3), 50(1), 50(2), 52, 52(1), 52(4), 53(2), 54(2), 57(1), 57(4) and 57(5) of the LODR Regulations, and an allegedly violated SEBI Circulars: SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020 and SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020.*
9. *At the outset and without prejudice to anything stated hereinafter, our client submits that they are not a listed company and therefore, they are not subject to the regulatory jurisdiction of SEBI. In this regard, our client submits as follows:*

(c) *Our client submits that except for the NCDs whose details are set out in table 4 above, none of the securities issued by it are listed on any stock exchange in India. In this regard, it is pertinent to refer to Section 2(52) of the Companies Act, 2013 ("**Companies Act**"), which defines a listed company as follows:-*

"Definitions

2. In this Act, unless the context otherwise requires –

…..

(52) "listed company" means a company which has any of its securities listed on any recognized stock exchange:

***Provided** that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.;"*

(d) *Furthermore, as per Rule 2A(b) of the Companies (Specification of Definition details) Rules, 2014, which states that "2A. Companies not to be considered as listed companies.- For the purposes of the proviso to clause (52) of section 2 of the Act, the following classes of companies shall not be considered as listed companies, namely:-*

(a) *Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –*

(i) *non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or*

(ii) *non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or*

(iii) *both categories of (i) and (ii) above."*

(e) *In this regard, Regulation 2(1)(p) of the LODR Regulations defines a listed entity as, "an entity which has listed on a recognized stock exchange(s), the designated securities issued by it or the designated securities issued under schemes managed by it, in accordance with the Listing Agreement entered into between the entity and the recognized stock exchange (s)". The term designated securities have been defined in Regulation 2(1)(h) of the LODR Regulations as meaning, "specified securities, non-convertible debt securities …. and any other securities as may be specified by the Board."*

(f) *It is trite law that when there is a conflict between the provisions of an Act and a Regulation, the former will prevail. It is pertinent to note that the Securities and Exchange Board of India Act, 1992 ("SEBI Act") does not define the term "listed company". Therefore, the definition of a listed company has to necessary exclude public companies which have not listed their equity shares on a recognized stock exchange but have listed their non-convertible debt securities on a private placement basis in terms of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.*

(g) *As mentioned above, the equity shares of our company are not listed on any recognized stock exchange and only the NCDs issued on a private placement basis in terms of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 are listed on the WDS of the BSE. Therefore, our client is not a listed company and hence, SEBI lacks jurisdiction to initiate the present proceedings against our client.*

(h) *In view of the above, our client prays that the present proceedings may be terminated, and an order may be passed accordingly.*

Incomplete and inadequate inspection of documents

10. *On and around September 1, 2023, our client/we as their Advocates requested for inspection of the documents relied upon for the investigation. Our client was thereafter granted an opportunity to inspect the said documents on September 22, 2023. On that day, our client was provided certain documents. As per the Minutes of the Inspection, we had the following remarks and observations regarding the same:-*

Sr No.	Document	Remarks/Observation
1.	Examination Report	Paragraph 2 was shown to us, but a copy of the same was not provided. Paragraph 3 was not shown to us and not provided. Emails dated February 9, 2023, February 17, 2023, February 24, 2023, March 17 2023 and March 20, 2023 were not shown, nor provided. Pages 11 to 13 (half) were shown and have not been provided. Pages 14 to 17 have not been shown and have not been provided. Only Annexure 1 to the Examination Report was shown and provided.
2.	Advisory Letters	Letters dated June 30, 2022 and October 10, 2022, mentioned in paragraph 13.2 of the Examination Report have not been shown and have not been provided.
3.	Credit Rating Review	The document dated May 22, 2020, mentioned in paragraph 14 of the Examination Report has not been shown nor provided.

*A copy of the Minutes of the Inspection is annexed and hereto marked as **Annexure "A".***

11. *It is pertinent to note that adequate documents as relied upon by SEBI have not been provided to our client and no reasons have been provided for the same either. In T.Takano v/s Securities and Exchange Board of India & Anr. (Civil Appeal Nos. 487-488 of 2022) the Hon'ble Supreme Court has held that all information that is relevant to the proceedings must be disclosed to the Noticee. Therefore, SEBI is duty bound to provide all the material relevant to the proceedings to the Noticee to ensure fair and transparent proceedings. It is further submitted that the ratio in the said judgement has been reiterated by the Hon'ble Supreme Court. In Reliance Industries Limited vs SEBI, Criminal Appeal No. 1167 of 2022 as decided on August 5, 2022, the ratio in T. Takano has been reiterated. Copies of the said judgements are annexed hereto and marked as **Annexure "B"** and **Annexure "C"** respectively.*
12. *Our client requests that they may be provided with copies of the remaining relevant documents and be allowed further time of 4 weeks thereafter to file further submissions based on the same.*

No prejudice to retail investors

13. *Our client repeats, reiterates and submits that:*

(i) *Due to adverse circumstances, they were unable to redeem the aforesaid NCDs on the due dates; however, they entered into negotiations with the Debenture Holders regarding the redemption amount and the date of redemption has been extended by both parties through amendments to the Debenture Trust Deed from time to time. As confirmed by the Debenture Trustee, Vistra, the Debenture Holders have not declared an event of default (Please see Annexure 7 to SCN r/w email dated April 21, 2023 from Vistra. Furthermore, the investor/debenture holder has also requested Vistra to not take any adverse action, since the same would impact the value of the security and/or the ability of the investor/debenture holder to repay the amount.*
(j) *The structure of the WDS does not permit or encourage participation by Retail investors; therefore, no prejudice is caused to such investors merely on account of delayed disclosures.*
(k) *Admittedly, there is/are only two investors in each of the NCD issues, which are listed on the WDS and they are party to the negotiations in respect of redemption of the NCDs and are therefore, not prejudiced by any alleged non-disclosures/delayed disclosures.*
(l) *Admittedly, there are no complaints by investors on the SCORES platform of SEBI or elsewhere against our client in respect of the NCDs or otherwise.*

Immediate Measures taken to rectify non-disclosure and non-compliance.

14. *Without prejudice to the above and without admitting to the jurisdiction of SEBI to proceed against them and without admitting to any of the violations alleged to have been committed by them, immediately on receiving the SCN, our client took steps to make necessary disclosures. Annexed hereto and marked as **Annexure "D"** are details of the disclosures made by our client. respectively. It is evident from the abovementioned Annexure, that our client had taken immediate action to rectify non-disclosures, continuing or otherwise, upon being informed of the same by SEBI through the SCN. Thus, the non-compliance with the LODR Regulations was completely unintentional and was rectified as soon as our client was made aware of it.*

Incompetent Compliance Team

15. *It was only on receipt of Advisory letters dated June 30, 2022 and October 10, 2022 from BSE that our client's senior management became aware of the fact that certain disclosures may not have been made in time or in a proper manner. An enquiry into the matter revealed that this delayed or improper disclosure was the result of incompetence on the part of the compliance/secretarial team. Therefore, our client changed its entire compliance and secretarial team and appointed the present compliance/secretarial team. A copy of the DIR-12 Form reflecting our client's compliance/secretarial team's resignation is annexed and hereto marked as **Annexure "E"**.*

Paragraph wise submissions

16. *With reference to paragraphs 1 & 2 of the SCN, our client submits that the appointment of the Adjudicating Officer is a matter of record; however, our client's submissions were not sought and were not on record before the Competent Authority while he/she decided that there were sufficient grounds to initiate the present proceedings. Our client repeats, reiterates and submits that considering the definition of the term "listed company", as set out in Section 2(52) of the Companies Act read with Rule 2A(b) of the Companies (Specification of Definition details) Rules, 2014, SEBI lacks the regulatory jurisdiction over them and therefore, these proceedings being ultra vires the Companies Act, are liable to be terminated.*

17. *With reference to paragraphs 3.1 to 3.3 of the SCN, our client submits that the contents of the same are a matter of record; it is pertinent to note that:-*

(a) *The equity shares of our client are not listed on any stock exchange;*
(b) *Only 4 of the debt securities i.e. NCDs issued by our client are listed on the WDS of the BSE;*
(c) *There is only 1 subscriber for each of the aforesaid 4 NCDs;*
(d) *No details or particulars were sought from our client by SEBI prior to issuing the SCN.*

18. *With reference to paragraphs 4.1 to 4.7 of the SCN, without prejudice to their submission that they are not a listed company, and that therefore, SEBI lacks jurisdiction to carry on the present proceedings, our client submits as follows: -*

Paragraph No.	LODR Regulation/Circular alleged to have been violated	Our client's submissions
4.1, 4.1.1, 4.1.2, 4.1.3	Regulation 51 (1) of the LODR Regulations Regulation 51(2) read with clause A (11) of Part B of Schedule-III of the LODR Regulations.	The debenture holders and our client had agreed upon and entered into amendments to the trust deeds whereby the date of redemption of the NCDs listed in paragraph 4 was extended. As mentioned above, the delay in informing the BSE regarding the aforesaid extensions was due to the incompetence of the compliance/secretarial team which has now been replaced. Furthermore, no prejudice has been caused to retail investors on account of this delayed disclosure and the sole subscriber to the NCDs are themselves involved in the extension of date of redemption and therefore no prejudiced. It is also pertinent to note that the debenture holders have not declared an event of default on the part of our client.
4.2, 4.2.1, 4.2.2, 4.2.3	Regulation 51(3) of the LODR Regulations	The debenture holders and our client had agreed upon and entered into amendments to the trust deeds whereby the date of redemption of the NCDs listed in paragraph 4 was extended. The delay in disclosing this information on the website of our client was due to the incompetence of the compliance/secretarial team which has now been replaced. Furthermore, no prejudice has been caused to retail investors on account of this delayed disclosure and the sole subscriber to the NCDs are themselves involved in the extension of date of redemption and therefore no prejudiced. It is also pertinent to note that the debenture holders have not declared an event of default on the part of our client.

4.3, 4.3.1, 4.3.2, 4.3.3	*Regulation 55 of the LODR Regulations*	*The delay in informing the BSE about the updated Credit Rating Review was due to the incompetence of the compliance/secretarial team which has now been replaced.*
4.4, 4.4.1, 4.4.2, 4.4.3,	*Regulation 59 of the LODR Regulations.*	*Our client submits that there is no change in the structure of the NCD in terms of coupon, redemption, etc. The debenture holder and the issuer have merely agreed to extend the date of redemption and therefore, there was no material modification to the NCDs and hence, no prior approval of the BSE was required. In this regard, it may be noted that since there is only one debenture holder and they were involved in the extension of the date of redemption, the requirement of obtaining the consent of three-fourth by value of holders is otiose.*
4.5, 4.5.1, 4.5.2, 4.5.3	*SEBI/HO/MIRSD/ CRADT/CIR/P/2020/207 dated October, 22, 2020*	*The delay in the creation of the Recovery Expense Fund ("**REF**") was due to the incompetence of the compliance/secretarial team which had instructed our client that an REF would not have to be created as there was no profit generated by the NCDs. This compliance team has now been replaced.*
4.6, 4.6.1, 4.6.2	*Regulation 52(1) and 54(2) of the LODR Regulations.*	*For the quarter ended in March 2021, our client states that there was a delay in the audit of the financial statements. However, our client took immediate measures to comply with the non-disclosure through submission on February 21, 2022. Thus, our client complied with Regulation 52(1) and 54(2) of the LODR Regulations.* *For the quarters ended in September, December 2021 and March 2022, our client states that there was a delay in the audit, and therefore there was a delay in the disclosure. However, after the appointment of a new compliance team, the disclosures were submitted via email dated February 21, 2022 and were also submitted via the online portal on April 11, 2023. Thus, our client complied with Regulation 52(1) and 54(2) of the LODR Regulations at the earliest.* *For the quarter ended in June 2022, our client states that there was a delay in the audit, and therefore there was a delay in the disclosure. However, after the appointment of a new compliance team, the disclosures were submitted as soon as possible. Thus, our client complied with 52(1) and 54(2) of the LODR Regulations as soon as was possible.* *The delay was due to the incompetence of the compliance/secretarial team which has now been replaced.*
	Regulation 52(4) of the LODR Regulations	*Our client states that there for the quarters ended in September 2021, December 2021, March 2022, June 2022 and September 2022 there was a delay in the audit, and therefore there was a delay in the disclosure. However, after the appointment of a new compliance team, the disclosures were submitted via email dated February 21, 2022 and were also submitted via the online portal on April 11, 2023. Thus, our client complied with Regulation 52(4) of the LODR Regulations as soon as was possible.* *The delay was due to the incompetence of the compliance/secretarial team which has now been replaced.*
	Regulation 13(3) of the LODR Regulations	*Our client states that for the quarters dated March 2022 and September 2022, there was a technical glitch that did not allow submission of the Investor Grievance Redressal ("**IGR**") complaints on the BSE Portal, preventing them from uploading investor complaints.* *Despite there being no complaints, the IGR till date was uploaded as soon as possible. Thus, our client complied with Regulation 13(3) of the LODR Regulations as soon as possible.* *The delay was due to the incompetence of the compliance/secretarial team which has now been replaced.*
	Regulation 50(1), (2) of the LODR Regulations	*Our client states that there was no proposal considered under Regulation 50 of the LODR Regulations for the alteration of the nature of the existing non-convertible debentures, as there are active negotiations between our client and the debenture holders. Thus, our client has not been presented with a formalized proposal regarding that needs to be intimated to the exchange. Thus, our client cannot be penalized for non-compliance of Regulation 50(1), (2) of the LODR Regulations.*
	Regulation 57(1), 57(4) and 57(5) of the LODR Regulations	*Our client states a submission was made for the quarter of March 2022. However, due to ongoing negotiations with the debenture holders, there was no interest payment made.* *Our client has now submitted the required certificate regarding status of payment of interest or dividend or redemption to the BSE. Thus, our client complied with Regulation 57(1) and 57(5) of the LODR Regulations, as soon as possible.* *The delay was due to the incompetence of the compliance/secretarial team which has now been replaced.*
	Regulation 53(2) of the LODR Regulations	*Our client states that there was a delay in the preparation of the annual report, as there was a delay in the audit. Furthermore, our client states that it was unaware of the compliance requirements, as the compliance team had unprecedently left the organization. However, after our client finished preparing the Annual Report, the same was submitted. Thus, our client complied with Regulation 53(2) of the LODR Regulations as soon as possible.*
	Regulation 6(1) of the LODR Regulations	*Our client states that its compliance team at the time had interpreted that there was no requirement to update the status of the Company Secretary and Compliance Officer in every quarter. Hence, there was no submission. However, after our client was made aware of the requirement for submission, it complied with the disclosure requirement under Regulation 6(1) of the LODR Regulations as soon as possible.*
	Regulation 7(1) of the LODR Regulations	*Our client states that its compliance team at the time had interpreted that there was no requirement to update the status of the Share Transfer Agent in every quarter. Hence, there was no submission. However, after our client was made aware of the requirement for submission, it complied with the disclosure requirement under Regulation 7(1) of the LODR Regulations as soon as possible.*
4.7	*Regulation 52 of the LODR Regulations* *read with* *SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020.*	*Our client submits that the due dates for its submission dated March 2018 and September 2019 be discharged, as it was a delay of merely one day.* *The delay was due to the incompetence of the compliance/secretarial team which has now been replaced.*

19. *With reference to paragraphs 5 to 12 of the SCN, our client submits as follows:-*

(e) Our client repeats, reiterates and submits that they are not a listed entity and therefore, SEBI lacks jurisdiction to proceed against them and the present proceedings ought to be terminated forthwith.
(f) Our client repeats, reiterates and submits that no prejudice has been caused to any retail investor or to the sole subscriber to the NCD issue by our client on account of the delay in disclosures and other alleged violations set out in the SCN.
(g) Therefore, our client denies that they are liable for any penalty under Section 15HB of the SEBI Act, as falsely and erroneously alleged or otherwise.

20. *Our client has ensured that steps were taken to make the disclosures and other compliances were effected as soon as they received the Advisory Letters from the BSE. Our client repeats, reiterates and submits that the delay in disclosures/compliance was on account of the incompetence of the compliance/secretarial team which has now been replaced…..*

…"

Submissions dated October 25, 2023:

"…
1. *…*
2. *At the outset and without prejudice to anything stated hereinafter the Noticee above named repeats, reiterates, and denies all the allegations made against them in the SCN and repeats, reiterates, and confirms all that is stated in the Reply.*

3. The Noticee repeats, reiterates, and submits that during the period of September 2015 to December 2021, it issued and allotted Debentures in 10 instances. Of these, 4 Non-Convertible Debentures ("NCDs") were listed on the Wholesale Debt Segment ("WDS") of the BSE Limited ("BSE"). The Debenture Trustee for the aforementioned listed debentures was Vistra ITCL (India) Limited ("Vistra").

4. Due to adverse circumstances, the Noticee was unable to redeem the NCDs on the due dates; instead, it entered into negotiations with the Debenture Holders regarding the redemption amount and the date of redemption. However, at no point of time had the Debenture Holders/investors declared an event of default. Furthermore, the Debenture Holders/investors had requested Vistra to not take any adverse action, as the same would impact the value of the security and/or the ability of the Debenture Holder/investors to repay the amount. (Please see Annexure 7 to SCN r/w email dated April 21, 2023 from Vistra).

5. The Noticee submits that they are not a listed company, and therefore, they are not subject to the regulatory jurisdiction of SEBI. In this regard, the Noticee repeats and reiterates that apart from the listed NCDs, no other securities (including equity shares) issued by them are listed on any stock exchange in India. It may be noted that Section 2(52) of the Companies Act, 2013 ("Companies Act"), defines a listed company as follows:-

> *"2. In this Act, unless the context otherwise requires –*
>
> *…..*
> *(52) "listed company" means a company which has any of its securities listed on any recognized stock exchange:*
>
> *Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.;"*
> *Rule 2A(b) of the Companies (Specification of Definition details) Rules, 2014, states that public companies which have listed their NCDs on private placement basis, or non-convertible redeemable preference shares issued on a private placement basis will not be considered as Listed Companies. Thus, the Noticee ought not to be considered as a Listed Company.*

6. Regulation 2(1)(p) of the Listing Obligations and Disclosure Requirements ("LODR") Regulations, a listed entity is defined as, "an entity which has listed on a recognized stock exchange(s), the designated securities issued by it or the designated securities issued under schemes managed by it, in accordance with the Listing Agreement entered into between the entity and the recognized stock exchange (s)". The term designated securities have been defined in Regulation 2(1)(h) of the LODR Regulations and includes non-convertible debt securities i.e., NCDs. It is pertinent to note that the Securities and Exchange Board of India Act, 1992 ("SEBI Act") does not define the term "listed company".

7. Since there is a conflict between the provisions of the Companies Act and the LODR Regulations, the former will prevail. Therefore, the definition of a listed company has to necessary exclude public companies which have not listed their equity shares on a recognized stock exchange but have listed their non-convertible debt securities on a private placement basis in terms of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
8. In light of the above, the Noticee repeats, reiterates and submits that they are not a listed company and therefore, SEBI lacks jurisdiction to proceed against them and the present proceedings ought to be terminated forthwith.
9. Without prejudice to the above and without admitting to the jurisdiction of SEBI to proceed against them and without admitting to any of the violations alleged to have been committed by them, the Noticee repeats, reiterates, and submits the following regarding the non-disclosure and non-compliance by them:
a) It was only on receipt of Advisory letters dated June 30, 2022 and October 10, 2022 from BSE that our client's senior management became aware of the fact that certain disclosures may not have been made in time or in a proper manner. Through an internal enquiry, it was found that this improper disclosure was the result of the incompetence of the compliance/secretarial team; our client immediately took steps to replace the compliance/secretarial team. A copy of the Noticee's compliance/secretarial team's resignation is annexed and hereto marked as Annexure "A".
b)On receiving the SCN, the Noticee took steps to make necessary disclosures, as the non-disclosure with the LODR Regulations was completely unintentional, and due to the incompetence of the Noticee's compliance/secretarial team.
c) As mentioned in paragraph 4 of this Written Submission, the Noticee was engaged in negotiations with the Debenture Holder regarding the redemption of the NCDs. Thus, the NCDs were not declared as in default by the Debenture Holders.
d) The structure of the WDS does not permit or encourage participation by Retail investors; therefore, no prejudice is caused to such investors merely on account of delayed disclosures.
e) Admittedly, there are only two investors in each of the NCD issues, which are listed on the WDS, and they are party to the negotiations in respect of redemption of the NCDs and are therefore, not prejudiced by any alleged non-disclosures/delayed disclosures.
f) Admittedly, there are no complaints by investors on the SCORES platform of SEBI or elsewhere against the Noticee in respect of the NCDs or otherwise.

10.The Noticee submits that after repeated requests, they were finally given copies of the following documents by SEBI:

(a)Letter dated May 8, 2020 relating to the Credit Rating Review of the Noticee.
(b)Emails regarding the Noticee dated February 9, 2023, February 17, 2023, February 16, 2023, March 20, 2023, March 17, 2023.
(c)Advisory Letters to the Noticee dated June 30, 2022 and October 10, 2022.
However, copies of the following documents have not been provided to them:
(a)Paragraph 2 and 3 of the Examination Report.
(b)Pages 11 to 13 (half) of the Examination Report.
(c)Pages 14 to 17 of the Examination Report.
(d)Annexures other than Annexure 1 to the Examination Report.

Thus, the Noticee repeats, reiterates, and submits that as per the decision of the Hon'ble Supreme Court in in T.Takano v/s Securities and Exchange Board of India & Anr. (Civil Appeal Nos. 487-488 of 2022) and Reliance Industries Limited vs SEBI, Criminal Appeal No. 1167 of 2022 as decided on August 5, 2022, SEBI is duty bound to provide all the material relevant to the proceedings to the Noticee to ensure fair and transparent proceedings. Copies of the respective judgments are annexed hereto and marked as Annexure "B" and Annexure "C" respectively.
11.The Noticee submits that they have now submitted all the necessary documents and records required for the review of credit rating to Brickwork Ratings Pvt. Ltd vide their letter/email and are waiting to hear from the CRA. A copy of the said letter is annexed hereto and marked as Annexure D.
12.The Noticee also repeats and reiterates that no prejudice has been caused to any retail investor or the subscribers of the NCD issued by our client on account of the delay in disclosures and other alleged violations set out in the SCN.
13.In the light of the above submissions, the Noticee repeats, reiterates, and denies that they are liable for any penalty under Section 15HB of the SEBI Act, as falsely and erroneously alleged or otherwise and requests that they may be discharged from the present proceedings and orders may be passed accordingly.
…"

D. CONSIDERATION OF ISSUES AND FINDINGS

13. The issues that arise for consideration in the instant matter are:

Issue No. I:	**Whether the Noticee had violated the provisions of LODR Regulations, 2015 and SEBI circulars, as alleged?**
Issue No. II:	**If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?**
Issue No. III:	**If yes, what should be the monetary penalty that can be imposed upon the Noticee?**

14. Before going into the merits of the case, it would be pertinent to firstly deal with the technical contentions raised by the Noticee as part of its replies dated October 16, 2023 and October 25, 2023. It is noted that, broadly speaking, the technical contentions by the Noticee raised in both the replies are contextually similar save for being differently worded and accordingly, for brevity, are being dealt together , as hereunder:

14.1. The Noticee, as part of its submissions, inter alia, contended that *"…. they are not a listed company and therefore, they are not subject to the regulatory jurisdiction of SEBI…except for the NCDs whose details are set out in table 4 above, none of the securities issued by it are listed on any stock exchange in India….'*

Further, the Noticee contended that *'…Regulation 2(1)(p) of the LODR Regulations defines a listed entity as, "an entity which has listed on a recognized stock exchange(s), the designated securities issued by it or the designated securities issued under schemes managed by it, in accordance with the Listing Agreement entered into between the entity and the recognized stock exchange (s)". The term designated securities have been defined in Regulation 2(1)(h) of the LODR Regulations as meaning, "specified securities, non-convertible debt securities …. and any other securities as may be specified by the Board….It is trite law that when there is a conflict between the provisions of an Act and a Regulation, the former will prevail. It is pertinent to note that the Securities and Exchange Board of India Act, 1992 ("SEBI Act") does not define the term "listed company". Therefore, the definition of a listed company has to necessary exclude public companies which have not listed their equity shares on a recognized stock*

exchange but have listed their non-convertible debt securities on a private placement basis in terms of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008….Therefore, our client is not a listed company and hence, SEBI lacks jurisdiction to initiate the present proceedings against our client.
…'

In this regard, it is pertinent to refer to Regulation 3 of the LODR Regulation as regards applicability of LODR Regulations, which inter alia reads as follows:

> *'…*
> *Applicability of the regulations.*
> *3.[33][(1)] Unless otherwise provided, these regulations **shall apply to [34][a] listed entity [35][which] has listed** any of the following designated securities on recognised stock exchange(s):*
> *…*
> *(b)[37][**non-convertible securities;]***
>
> *…'*

(Emphasis supplied)

In this regard, I note that Regulation 2(1)(p) of the LODR Regulations defines a listed entity as follows:

> *'…*
> *(p)"listed entity" means an entity which has listed, on a recognised stock exchange(s), the **designated securities** issued **by it** or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s);*
> *…'*

(Emphasis supplied)

Further, I note that designated securities have been defined under Regulation 2(1)(h) of the LODR Regulations, which inter alia reads as follows:

> *'…*
> *(h)"designated securities" means specified securities, **non-convertible debt securities**, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitised debt instruments, [security receipts,]1units issued by mutual funds, 2[Zero Coupon Zero Principal Instruments]and any other securities as may be specified by the Board ;*
> *…'*

(Emphasis supplied)

On a conjoint reading of Regulation 2(1)(p), 2(1)(h) and Regulation 3 of the LODR Regulations, I note that LODR Regulations are applicable on a listed entity which has its designated securities listed on a recognised stock exchange and a listed entity is any entity which has listed its designated securities viz., non-convertible debt (NCDs) securities in the instant matter, on a recognised stock exchange. In this regard, I note that the Noticee itself had submitted that its NCDs were listed on stock exchange (BSE) and accordingly the Noticee would be a listed entity and therefore, I am of the view that LODR Regulations were applicable on the Noticee and SEBI has jurisdiction in respect of the Noticee.

In this regard, I also note that the submissions of the Noticee are conflicting in nature in so far as in one instance the Noticee had contended that SEBI lacks jurisdiction to initiate the present proceedings against the Noticee and that LODR is not applicable on the Noticee while on the other hand the Noticee itself had made disclosures to BSE as submitted by it in its reply to SCN wherein it had inter alia submitted that '…*our client had taken immediate action to rectify non-disclosures, continuing or otherwise, upon being informed of the same by SEBI…that the delay in disclosures/compliance was on account of the incompetence of the compliance/secretarial team…'.*

Further in this regard, I am of the view that the contention of the Noticee as regard not being a listed company is misplaced and out of context in so far as the allegation in the instant matter are with respect to listed entity and not about listed company. As brought out in the foregoing, Noticee is a listed entity and LODR Regulations are applicable on a listed entity. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

14.2. The Noticee, as part of its submissions, contended that *'..., no prejudice is caused to such investors merely on account of delayed disclosures….there are only two investors in each of the NCD issues,...and they are party to the negotiations in respect of redemption of the NCDs and are therefore, not prejudiced by any alleged non-disclosures/delayed disclosures….there are no complaints by investors on the SCORES platform of SEBI or elsewhere against our client in respect of the NCDs or otherwise…'*

In this regard, firstly I note that the replies of Noticee are conflicting in nature in so far at one instance the Noticee mentioned that *'…there are only two investors in each of the NCD issues…'* while on another instance, the

Notice had mentioned that *'…the sole subscriber to the NCDs are themselves involved in the extension of date of redemption and therefore no prejudiced…'* Further, I note that the Noticee, being listed entity, as brought out in the foregoing, was required to comply with the provisions of LODR Regulations, as applicable. In this regard, I also note that the Noticee has not demonstrated that any exemption was available to it on the basis of number of investors. I am of the view, that at best, the same could be considered as a mitigating factor. In view thereof, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

14.3. The Noticee, as part of its submissions, contended that *'…steps were taken to make the disclosures and other compliances were effected as soon as they received the Advisory Letters from the BSE. Our client repeats, reiterates and submits that the delay in disclosures/compliance was on account of the incompetence of the compliance/secretarial team which has now been replaced….our client had taken immediate action to rectify non-disclosures, continuing or otherwise, upon being informed of the same by SEBI through the SCN. Thus, the non-compliance with the LODR Regulations was completely unintentional and was rectified as soon as our client was made aware of it…'*

In this regard, I note that the submissions of the Noticee are in nature of admission in so far as the Noticee has submitted that *'…the delay in disclosures/compliance was on account of the incompetence of the compliance/secretarial team ...'* and that *'…our client had taken immediate action to rectify non-disclosures…upon being informed of the same by SEBI through the SCN….'.* In this regard, I am of the view that the compliance of provisions of applicable LODR Regulations, if any, post issuance of SCN may at best be considered as mitigating factor.

14.4. The Noticee, as part of its submissions, contended that complete examination report in the matter was not provided and also cited T.Takano v/s Securities and Exchange Board of India & Anr. (Civil Appeal Nos. 487-488 of 2022) and Reliance Industries Limited vs SEBI in this regard.

In this regard, I note that all the relevant documents as relied upon were provided to the Noticee as annexures to the SCN. During inspection of documents on held September 22, 2023, the Noticee inspected all the annexures to the SCN and relevant Examination Report in the matter and was also provided with the copies of the same. Thereafter, vide email dated October 19, 2023, the Noticee was also provided with certain other documents which they had sought during the inspection of documents. In view thereof, I am of the view that all the relied upon and relevant documents were provided to the Noticee and hence the contention of the Noticee in this regard are devoid of merit and not acceptable.

15. I now proceed to deal with the matter on merits as regards alleged violations in respect of the Noticee, as per the SCN.

Issue No. I: Whether the Noticee had violated the provisions of LODR Regulations, 2015 and SEBI circulars, as alleged?

16. **It was inter alia alleged that Noticee had failed to inform Exchange about the following:**

- Details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra and;
- Default in redemption amount on the final redemption date.

Accordingly, it was alleged that Noticee had violated Regulation 51 (1) of LODR Regulations and Regulation 51(2) read with clause A (11) of Part B of Schedule-III of LODR Regulations.

16.1. Here it would be, firstly, pertinent to draw reference to the text of the relevant provisions of the LODR Regulation alleged to have been violated , which inter alia reads as under :

'…

Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.

51. *(1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend [276][or redemption of non-convertible securities.*

Explanation -The expression 'promptly inform', shall imply that the stock exchange shall be informed as soon as reasonably possible but not later than twenty-four hours from the date of occurrence of the event or receipt of information. In case the disclosure is made after twenty-four hours of the date of occurrence of the event or receipt of information, the listed entity shall, along with such disclosures provide an explanation for the delay.

(2) Without prejudice to the generality of sub-regulation(1), the listed entity who has [279][listed non-convertible securities]shall make disclosures as specified in Part B of Schedule III.

….

SCHEDULE III

…

PART B: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: NON-CONVERTIBLE [440][***] SECURITIES [441][***]

[See Regulation 51(2)]

A. The listed entity shall promptly inform [442][***]the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend [443][or redemption payment] of non-convertible [444][***]securities [445][***]including :

…

(11) any instance(s) of default/delay in timely repayment of interests or principal obligations or both in respect of the debt securities including, any proposal for re-scheduling or postponement of the repayment programmes of the dues/debts of the listed entity with any investor(s)/lender(s).

…."

From the plain reading of the provisions in this regard, as brought out above, I note that the Noticee was inter alia required to promptly inform the stock exchange (BSE) of any action that shall affect payment of interest or dividend or redemption of non-convertible securities including any instance(s) of default/delay in timely repayment of interests or principal obligations or both in respect of the debt securities including, any proposal for re-scheduling or postponement of the repayment programmes of the dues/debts of the listed entity with any investor(s)/lender(s).

16.2. In this regard, I note from material available on record that Vistra ITCL (India) Limited ('Vistra', in short), vide email dated April 21, 2023 submitted that final redemption as per agreed terms was initially due on October 31,

2019. However, post the same due to circumstances of non-payment, the said date was amended i.e., Vide 4th amendment to trust deed dated 14th November 2019 the date of redemption was extended to 3 dates viz., 20% Redemption on 31-10-2020; 30% Redemption on 31-01-2021; and 50% Redemption on 30-04-2021. Thereafter, vide 5th amendment to trust deed dated 22nd October 2020 the date of redemption was further extended to 30th April 2021. Thereafter, vide 6th amendment to trust deed dated 24th November 2020 the date of redemption was further extended to 31st March 2022. However, I note that the final redemption was yet to be done (status as on May 31, 2023).

In this regard, I further note from material available on record that BSE, vide its email dated April 18, 2023 ha submitted to SEBI that no intimation of default was submitted to stock exchange under Regulation 51(1)/ 51(2) of LODR Regulations. BSE had further submitted that there were no disclosures on Exchange website under these regulations.

16.3. In this regard, the Noticee, as part of its submissions, contended that, *'…The debenture holders and our client had agreed upon and entered into amendments to the trust deeds whereby the date of redemption of the NCDs listed in paragraph 4 was extended.As mentioned above, the delay in informing the BSE regarding the aforesaid extensions was due to the incompetence of the compliance/secretarial team which has now been replaced…. It is also pertinent to note that the debenture holders have not declared an event of default on the part of our client….our client had taken immediate action to rectify non-disclosures, continuing or otherwise, upon being informed of the same by SEBI through the SCN. "*

In this regard, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee has submitted that '…*the delay in informing the BSE regarding the aforesaid extensions was due to the incompetence of the compliance/secretarial team…' and that '…our client had taken immediate action to rectify non-disclosures, continuing or otherwise, upon being informed of the same by SEBI through the SCN…'.*

Further, as regards the contention of the Noticee that *'…the debenture holders have not declared an event of default on the part of our client…'*, I note that the same is out of context in so far as the alleged violation in the instant matter is inter alia with regard to not having informed to the stock exchange inert alia about default in redemption amount on the final redemption date i.e. on March 31, 2022 and not about declaration of event of default on part of the clients per se. Further, I note that the Noticee has not demonstrated that there was no default in the redemption amount on the final redemption date. Therefore, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

16.4. In view thereof, in particular, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I find that the allegation that the Noticee had failed to inform Exchange about the details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra and details of default in redemption amount on the final redemption date, stands established. Therefore, I hold that Noticee had violated Regulation 51 (1) of LODR Regulations and Regulation 51(2) read with clause A (11) of Part B of Schedule-III of LODR Regulations.

17. **It was inter alia alleged that, Noticee failed to disclose following information on its website:**

- Details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra;
- Default in redemption amount on the final redemption date.

Accordingly, it was alleged that Noticee violated provisions of Regulation 51 (3) of LODR Regulations.

17.1. In this regard, I note from material available on record that Vistra, vide its email dated April 21, 2023, had submitted to SEBI that due date of NCDs falling on October 31, 2019, October 31, 2020, January 01, 2021 and April 30, 2021 had been rescheduled three times. Further, the final redemption was yet to be done. In this regard, I note that the Noticee was required to disclose these events on its website and host it on its website for a minimum period of five years.

17.2. The Noticee, as part of its submissions, contended that *'…The debenture holders and our client had agreed upon and entered into amendments to the trust deeds whereby the date of redemption of the NCDs listed in paragraph 4 was extended. The delay in disclosing this information on the website of our client was due to the incompetence of the compliance/secretarial team which has now been replaced….It is also pertinent to note that the debenture holders have not declared an event of default on the part of our client…'*

In this regard, I note that the submissions of the Noticee are in nature of admission in so far as the Noticee had submitted that '…*The delay in disclosing this information on the website of our client was due to the incompetence of the compliance/secretarial team…'.*

Further, I note that the submissions of the Noticee are misleading in so far as, firstly, the allegation is with regard to failure to disclose on its website and not about delay in disclosure on its website. Secondly, I note that the submission of Noticee that there was delay in disclosure implies that the disclosures were made at a later stage, however, the Noticee had not adduced any supporting evidence in this regard.

Further, as regards the contention of the Noticee that *'…the debenture holders have not declared an event of default on the part of our client…'*, I note that the same is out of context in so far as the alleged violation in the instant matter is inter alia with regard to not having disclosed on its website inter alia about default in redemption amount on the final redemption date i.e. on March 31, 2022 and not about declaration of event of default on part of the clients per se. Further, I note that the Noticee has not demonstrated that there was no default in the redemption amount on the final redemption date. Therefore, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

17.3. In view thereof, in particular, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I find that the allegation that the Noticee had failed to disclose information on its website viz., details of extension/Postponement of redemption date implemented vide three amendment deeds executed with Vistra and default in redemption amount on the final redemption date, stands established. Therefore, I hold that Noticee had violated Regulation 51(3) of the LODR Regulation.

18. **It was inter alia alleged that the Noticee failed with respect to mandatory review of Credit Rating at-least once a year. Accordingly, it was alleged that Noticee violated provisions of Regulation 55 of LODR Regulations.**

18.1. Here it would be, firstly, pertinent to draw reference to the text of the relevant provisions of the LODR Regulation alleged to have been violated , which inter alia reads as under :

> *'…*
> ***Credit Rating.***
> ***55.*** *Each rating obtained by the listed entity with respect to non-convertible securities shall be reviewed at least once a year by a credit rating agency registered by the Board.*
> *…'*

From the plain reading of the provisions in this regard, as brought out above, I note that the Noticee was inter alia required to review each rating obtained by it with respect to non-convertible securities, at least once a year by a credit rating agency registered by the Board.

18.2. In this regard, it is noted from material available on record that the Noticee had submitted the credit rating review only once i.e. on May 22, 2020 in the examination period viz., March 01, 2018 to April 30, 2023.

18.3. The Noticee, as part of its submissions, contended that '…*The delay in informing the BSE about the updated Credit Rating Review was due to the incompetence of the compliance/secretarial team which has now been replaced*…'.

In this regard, I note that the contention of the Noticee are out of context in so far as the Noticee has mentioned that there was delay in informing to BSE, however, in this regard, the Noticee has not demonstrated with relevant details and supporting evidence that any review of the credit rating was undertaken every year in terms of Regulation 55 of the LODR Regulation. Therefore, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

18.4. In view thereof, in particular, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I find that the allegation that the Noticee had failed with respect to mandatory review of Credit Rating at-least once a year, stands established. Therefore, I hold that Noticee had violated Regulation 55 of LODR Regulations.

19. **It was inter alia alleged that Noticee failed to take Stock Exchange approval before making material modification to structure of NCDs (Extension of redemption date by executing three amendment to Trust deeds). Accordingly, it was alleged that Noticee violated provisions of Regulation 59 of LODR Regulations.**

19.1. Here it would be, firstly, pertinent to draw reference to the text of the relevant provisions of the LODR Regulation alleged to have been violated , which inter alia reads as under:

> '…
> ***Structure of nonconvertible debt securities and non convertible redeemable preference shares.***
> ***59****.(1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :*
> *(a) the structure of the non-convertible debt securities debenture in terms of coupon,redemption, or otherwise. …'*

From the plain reading of the provisions in this regard, as brought out above, I note that the Noticee was inter alia required to not make material modification viz., with respect to the structure of the non-convertible debt securities debenture in terms of coupon, redemption, or otherwise, without prior approval of the stock exchange(s) where the non - convertible debt securities were listed.

19.2. In this regard, it is noted from material available on record that Vistra, vide its email dated April 21, 2023 had submitted to SEBI that due date of redemption of NCDs falling on October 31, 2019, October 31, 2020, January 31, 2021 and April 30, 2021 had been rescheduled three times vide 4th amendment agreement dated November 14, 2019; 5th amendment agreement dated October 22, 2020; and 6th amendment agreement dated November 24, 2021. In this regard, it is noted from material available on record that BSE had submitted to SEBI that no application had been received by them for approval of change in structure of NCDs.

19.3. The Noticee, as part of its submissions, contended that '… *there is no change in the structure of the NCD in terms of coupon,* redemption*, etc. The debenture holder and the issuer have merely agreed to extend the date of redemption and therefore, there was no material modification to the NCDs and hence, no prior approval of the BSE was required. In this regard, it may be noted that since there is only one debenture holder and they were involved in the extension of the date of redemption, the requirement of obtaining the consent of three-fourth by value of holders is otiose…'.*

In this regard, firstly I note that the contention of the Noticee that ' *since there is only one debenture holder and they were involved in the extension of the* *date of redemption, the requirement of obtaining the consent of three-fourth by value of holders is otiose…',* is out of context and misplaced in so far as the allegation pertains to not having obtained prior approval of stock exchange and not about obtaining consent of holders of the securities.

Further, as regards the contention of the Noticee that '… *there is no change in the structure of the NCD in terms of coupon,* redemption*, etc..',* I note from a plain reading of the Regulation 59(1) (a) of the LODR Regulation that it was categorically specified that listed entity should not make modification to the structure of non-convertible debt securities debenture inter alia in terms of its redemption without prior approval from the stock exchange where the NCDs were listed.

In this regard, I note that the Noticee had neither denied nor disputed that the interest and redemption dates were changed vide three amendment agreements dated November 14, 2019; October 22, 2020; and dated November 24, 2021. In this regard, I also note that the submission of the Noticee are in the nature of admission that there was modification in the structure of NCD vis a via its redemption in so far as the Noticee has submitted that '… *The debenture holder and the issuer have merely agreed to extend the date of redemption…'.* Since the change in NCDs with respect to its redemption is specifically mentioned under Regulation 59(1) of LODR Regulation, I note that the Noticee was required to comply with the requirements of Regulation 59(1) of LODR Regulation. In view thereof, I am of the view that the contention of the Noticee in this regard, in particular that, no prior approval of the BSE was required, is devoid of merit and hence not acceptable.

19.4. In view thereof, in particular, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I find that the allegation that the Noticee failed to take Stock Exchange approval before making material modification to structure of NCDs i.e. extension of redemption date by executing three amendment to

Trust deeds, stands established. Therefore, I hold that Noticee had violated Regulation 59 of the LODR Regulations.

20. **It was inter alia alleged that Noticee failed to create and maintain Recovery Expense Fund (REF) with effect from April 01, 2021. Accordingly, it was alleged that Noticee violated provisions of SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020.**

20.1. Here it would be, firstly, pertinent to draw reference to the relevant text of the SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020 ('circular' in short) alleged to have been violated , which inter alia reads as under:

> "...
> *A. Manner of creation and operation of REF*
> *2.The issuer proposing to list debt securities shall deposit an amount equal to 0.01% of the issue size subject to maximum of Rs.25 lakhs per issuer towards REF with the 'Designated Stock Exchange', as identified and disclosed in its Offer Document/ Information Memorandum.*
>
> *9. Applicability: The provisions of this circular shall come into force w.e.f. January 01, 2021 and all the applications for listing of debt securities made on or after January 01, 2021 shall comply with the condition of creation of REF. The existing issuers whose debt securities are already listed on Stock Exchange(s) shall be given additional time period of 90 days to comply with this circular for creation of REF.*
>
> *..."*

From the plain reading of the text of the circular in this regard, as brought out above, I note that the provisions of this circular came into force with effect from January 01, 2021. The existing issuers i.e. Noticee being existing issuer in the instant matter, whose debt securities were already listed on Stock Exchange were given additional time period of 90 days to comply with the circular for creation of REF i.e., by April 01, 2021.

20.2. In this regard, it is noted from material available on record that Noticee had issued debt securities with 10 ISINs, out of which 4 ISINs were listed at BSE (hereinafter also referred to as 'exchange' / stock exchange', unless the context specifies otherwise). The details of listed 4 NCDs issued by PSCL are as follows:

ISIN	Issue Price	Face Value	Date of Allotment	Redemption Date	Coupon Rate	Issue Size (INR Cr)
INE694I07061	1000000	1000000	Sep 02, 2016	Oct 31, 2019	14%	35.1
INE694I07046	1000000	1000000	Oct 20, 2015	Oct 31, 2019	14%	102.6
INE694I07012	1000000	1000000	Nov 21, 2014	Oct 31, 2019	14%	72.4
INE694I07038	1000000	1000000	July 28, 2015	Oct 31, 2019	14%	102.6

In this regard, I note that out of the four ISINs, in respect of two ISINs viz., INE694I07046 and INE694I07038, the Noticee, as part of its submissions, had stated that the issue size was Rs. 27.70 Crores and Rs. 39.80 Crores respectively, however, in this regard, I note from material available on record and also from NSDL website: https://www.indiabondinfo.nsdl.com/ that the issue size for INE694I07046 and for INE694I07038 was mentioned as Rs. 102.60 Crores.

It is further noted that final redemption as per agreed terms was initially due on October 31, 2019 which was extended to 3 dates vide 4th amendment to trust deed dated 14th November 2019 i.e. 20% Redemption on 31-10-2020, 30% Redemption on 31-01-2021 and 50% Redemption on 30-04-2021. The redemption date was subsequently extended to April 30, 2021, vide 5th amendment to trust deed dated October 22, 2020. Further vide 6th amendment to trust deed dated November 24, 2020, the date of redemption was further extended to March 31, 2022. In this regard, BSE, vide its email dated April 18, 2023 and Vistra vide its email dated April 21, 2023 had submitted to SEBI that PSCL had not created Recovery Expense Fund till date.

20.3. The Noticee, as part of its submissions, contended that '....*The delay in the creation of the Recovery Expense Fund ("**REF**") was due to the incompetence of the compliance/secretarial team which had instructed our client that an REF would not have to be created as there was no profit generated by the NCDs. This compliance team has now been replaced...'*

In this regard, I note that while the Noticee had contended that '…*The delay in the creation of the Recovery Expense Fund ("**REF**") was due to the incompetence of the compliance/secretarial team…'. ,* no details, whatsoever, have been submitted by the Noticee regarding creation of REF such as when the REF was created and with how much amount etc. Accordingly, I note that the Noticee had failed to demonstrate with relevant details and documents that REF had been created. In view thereof, in particular that the submissions of the Noticee are in the nature of mere assertions, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

20.4. In view thereof, in particular, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I find that the allegation that the Noticee failed to create and maintain Recovery Expense Fund with effect from April 01, 2021, stands established. Therefore, I hold that Noticee had violated SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020.

21. **It was inter alia alleged that the Noticee did not comply with provisions related to continuous disclosures. Accordingly, it was alleged that Noticee violated provisions of Regulation 52(1), Regulation 54(2), Regulation 52(4), Regulation 13(3), Regulation 50(1), Regulation 57(1), Regulation 6(1), Regulation 7(1), Regulation 50(2), Regulation 53(2), Regulation 57(4), Regulation 57(5) of LODR Regulation.**

21.1. In this regard, it was inter alia observed and/or alleged by SEBI that, Noticee did not comply with provisions related to continuous disclosures as detailed below:

Applicable LODR Regulation	Quarter/FY	Submission Status	Delay in days
52(1)	Mar-21	Delayed submission	237
54(2)	Mar-21	Non submission	596

Applicable LODR Regulation	Quarter/FY	Submission Status	Delay in days
52(1)	Sep-21	Non submission	458
54(2)	Sep-21	Non submission	458
52(4)	Sep-21	Non submission	458
52(1)	Dec-21	Non submission	367
54(2)	Dec-21	Non submission	367
52(4)	Dec-21	Non submission	367
13(3)	Dec-21	Non submission	391
52(1)	Mar-22	Non submission	262
54(2)	Mar-22	Non submission	262
52(4)	Mar-22	Non submission	262
13(3)	Mar-22	Non submission	301
52(1)	Jun-22	Non submission	210
54(2)	Jun-22	Non submission	184
52(4)	Jun-22	Non submission	184
13(3)	Jun-22	Non submission	184
52(1)	Sep-22	Non submission	94
54(2)	Sep-22	Non submission	94
52(4)	Sep-22	Non submission	94
13(3)	Sep-22	Non submission	118
57(1)	Apr-21	Non submission	684
57(1)	Apr-21	Non submission	684
57(1)	Apr-21	Non submission	684
57(1)	Apr-21	Non submission	684
57(1)	Apr-22	Non submission	683
57(1)	Apr-22	Non submission	683
57(1)	Apr-22	Non submission	683
57(1)	Apr-22	Non submission	683
6(1)	Dec-2020 to Jun - 2022	Non submission	546
7(1)	Dec-2020 to Jun - 2022	Non submission	546
6(1)	Sep-22	Non submission	92
7(1)	Sep-22	Non submission	92
53(2)	FY 2021-22	Non submission	53

Relevant provision of LODR Regulations	Quarter/FY	Submission Status	Due Date	Submission Date by PSCL	Date upto which fine is calculated/Review date	Delay in days
50(1)	Apr-21	Non submission	15/03/2021	-	28/09/2022	530

Note: As per regulation 50(2) of SEBI (LODR) Regulation, 2015, *The listed entity shall also intimate the stock exchange not later than the date of commencement of dispatch of notices, in*

50(2)	FY 2021-22	Non submission	Refer the note below	-	31/10/2022	-
57(4)	Mar-22	Delayed submission	31/03/2022	27/03/2023	-	361
57(5)	Jun-22	Non submission	11/07/2022	-	27/09/2022	78

case of any annual general meeting or extraordinary general meeting that is proposed to be held for obtaining shareholder approval for the proposals at clauses (c) and (d) under sub-regulation (1) of this regulation;

It is noted from material available on record that the due date for submission under Regulation 50(2) of LODR Regulation had not been included since the Noticee had not informed the Stock Exchange about the date on which the notices were dispatched by the Noticee.

21.2. As regards the alleged violation of Regulation 52(1) and 52(4) of LODR Regulations, it is pertinent to draw reference to the text of the relevant provisions, which inter alia reads as under:

'…

Financial Results.

***52**.(1) The listed entity shall prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board within forty-five days from the end of the quarter, other than last quarter, to the recognised stock exchange(s):*

Provided that for the last quarter of the financial year, the listed entity shall submit un-audited or audited quarterly and year to date standalone financial results within sixty days from the end of the quarter to the recognised stock exchange(s):

Provided further that in case of entities which have listed their debt securities, a copy of the financial results submitted to stock exchanges shall also be provided to Debenture Trustees on the same day.

…

(4) The listed entity, while submitting quarterly and annual financial results, shall disclose the following line items along with the financial results:

(a) debt-equity ratio;
(b) debt service coverage ratio;
(c) interest service coverage ratio;
(d) outstanding redeemable preference shares (quantity and value);
(e) capital redemption reserve/debenture redemption reserve;
(f) net worth;
(g) net profit after tax;
(h) earnings per share:
(i) current ratio;
(j) long term debt to working capital;
(k) bad debts to Account receivable ratio;
(l) current liability ratio;
(m) total debts to total assets;
(n) debtors' turnover;
(o) inventory turnover;
(p) operating margin percent;
(q) net profit margin percent:

Provided that if the information mentioned in sub-regulation (4) above is not applicable to the listed entity, it shall disclose such other ratio/equivalent financial information, as may be required to be maintained under applicable laws, if any.

…'

21.2.1. From the plain reading of the provisions in this regard, as brought out above, I note that the Noticee was inter alia required to prepare and submit un-audited or *audited* quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board within forty-five days from the end of the quarter, other than last quarter, to the recognised stock exchange(s) and for the last quarter of the financial year, the listed entity shall submit un-audited or audited quarterly and year to date standalone financial results within sixty days from the end of the quarter to the recognised stock exchange(s).

21.2.2. As regards 52(1) of LODR Regulations, the Noticee, as part of its submissions, contended that *'…For the quarter ended in March 2021, our client states that there was a delay in the audit of the financial statements. However, our client took immediate measures to comply with the non-disclosure through submission on February 21, 2022... For the quarters ended in September, December 2021 and March 2022, our client states that there was a delay in the audit, and therefore there was a delay in the disclosure. However, after the appointment of a new compliance team, the disclosures were submitted via email dated February 21, 2022 and were also submitted via the online portal on April 11, 2023.... For the quarter ended in June 2022, our client states that there was a delay in the audit, and therefore there was a delay in the disclosure. However, after the appointment of a new compliance team, the disclosures were submitted as soon as possible...The delay was due to the incompetence of the compliance/secretarial team which has now been replaced…'.*

In this regard, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee had submitted that there was delay in audit of the financial statements and therefore there was delay in disclosure for quarter ended March 2021, September 2021, December 2021, March 2022 and June 2022. Further in this regard, I also note that the Noticee had not submitted anything regarding the delay in respect of quarter ending September 2022.

21.2.3. In this regard, I note from material available on record that there was delay in submission of financial results in terms of Regulation 52(1) of the LODR Regulations viz., delay of 237 days for quarter ended March 2021, delay of 458 days for quarter ended September 2021, delay of 367 days for quarter ended December 2021, delay of 262 days for quarter and year ended March 2022, delay of 210 days for quarter ended June 2022, delay of 94 days for quarter ended September 2022. Further, as regards disclosure in terms of Regulation 52(4) of the LODR Regulations there was delay of 458 days for quarter ended September 2021, delay of 367 days for quarter ended December 2021, delay of 262 days for quarter and year ended March 2022, delay of 184 days for quarter ended June 2022, delay of 94 days for quarter ended September 2022.

21.2.4. As *regards* 52(4) of LODR Regulations, the Noticee, as part of its submissions, contended that *'…Our client states that there for the quarters ended in September 2021, December 2021, March 2022, June 2022 and September 2022 there was a delay in the audit, and therefore there was a delay in the disclosure. However, after the appointment of a new compliance team, the disclosures were submitted via email dated February 21, 2022 and were also submitted via the online portal on April 11, 2023. Thus, our client complied with Regulation 52(4) of the LODR Regulations as soon as was possible….'*

In this regard, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee had submitted that there was delay in audit and therefore there was delay in disclosure for quarter ended September 2021, December 2021, March 2022, June 2022 and September 2022.

21.3. As regards the alleged violation of Regulation 54(2) of LODR Regulations, it is pertinent to draw reference to the text of the relevant provisions, which inter alia reads as under:

'…
Security Cover.

__54__.(1)…

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

…'

21.3.1. In this regard, I note that in terms of Regulation 54(2) of LODR Regulations, the Noticee was required to disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities. In this regard, I note from material available on record that there was delay in disclosure in terms of Regulation 54(2) of the LODR Regulations viz., delay of 596 days for quarter ended March 2021, delay of 458 days for quarter ended September 2021, delay of 367 days for quarter ended December 2021, delay of 262 days for quarter and year ended March 2022, delay of 184 days for quarter ended June 2022, delay of 94 days for quarter ended September 2022.

21.3.2. In this regard, the Noticee, as part of its submissions, contended that *'…The delay was due to the incompetence of the compliance/secretarial team which has now been replaced…'.*

In this regard, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee had submitted that there was delay due to its compliance team.

21.4. As regards the alleged violation of Regulation 13(3) of LODR Regulations, it is pertinent to draw reference to the text of the relevant provisions, which inter alia reads as under:

'…

Grievance Redressal Mechanism.

13.(1)…

…

(3) The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

…'

21.4.1. In this regard, I note that in terms of Regulation 13(3) of the LODR Regulation, the Noticee was require to file with the recognised stock exchange(s) on a quarterly basis, within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter. In this regard, I note from material available on record that there was delay of 391 days for quarter ended December 2021, delay of 301 days for quarter ended March 2022, delay of 184 days for quarter ended June 2022 and delay of 118 days for quarter ended September 118 in respect of the disclosures required to be made by the Noticee in terms of Regulation 13(3) of LODR Regulations.

21.4.2. In this regard, the Noticee, as part of its submissions, contended that *'…Our client states that for the quarters dated March 2022 and September 2022, there was a technical glitch that did not allow submission of the Investor Grievance Redressal ("IGR") complaints on the BSE Portal, preventing them from uploading investor complaints…Despite there being no complaints, the IGR till date was uploaded as soon as possible. Thus, our client complied with Regulation 13(3) of the LODR Regulations as soon as possible. The delay was due to the incompetence of the compliance/secretarial team which has now been replaced…'*

In this regard, as regards contention of the Noticee that there was technical glitch in uploading IGR, firstly, I note that the Noticee had not submitted any relevant details and documents in support of their contention that there was any technical glitch, secondly, I note that the delay was observed with respect to four quarters i.e. December 2021, March 2022, June 2022 and September 2022 and while the Noticee had contended technical glitch as regard quarter ended March 2022 and September 2022, the Noticee had not submitted anything as regards the remaining two quarters i.e. December 2021 and June 2022. In view thereof, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

I also note that the submissions of the Noticee are in the nature of admission in so far as the Noticee had submitted that '…*the IGR till date was uploaded as soon as possible… The delay was due to the incompetence of the compliance/secretarial team…'.*

21.5. As regards the alleged violation of Regulation 50(1) and 50(2) of LODR Regulations, I note that extant applicable law in this regard inter alia required that the Noticee had to give prior intimation to the stock exchange at least eleven working days before the date on and from which the interest on its debentures and bonds, and redemption amount of debentures and bonds shall be payable. Further, in terms of Regulation 50(2) of LODR Regulation, the Noticee was inter alia required to also intimate the stock exchange not later than the date of commencement of dispatch of notices, inter alia in case of any meeting of the holders of non-convertible securities in relation to the proposal with respect to any matter affecting the rights or interests of holders of non-convertible securities.

21.5.1. In this regard, I note from material available on record that with respect to intimation under Regulation 50(1) of LODR Regulation, there was delay of 530 days and as regards intimation under Regulation 50(2) of LODR Regulations, the due date for the same had not been included since the Noticee had not informed the Stock Exchange about the date on which the notices were dispatched by the Noticee. I note that the initially the redemption amount of the NCDs was payable on October 31, 2019, further the due date for redemption was subsequently extended inert alia vide 4th amendment deed 14th November 2019 wehrein the redemption was to be made in phases i.e. 20% Redemption on 31-10-2020, and 30% Redemption on 31-01-2021. In this regard, I note that the Noticee had not demonstrated with relevant details and documents that the same was intimated to the stock exchange in terms of Regulation 50(1) and 50(2) of LODR Regulation.

21.5.2. In this regard, the Noticee, as part of its submissions, contended that *'…there was no proposal considered under Regulation 50 of the LODR Regulations for the alteration of the nature of the existing non-convertible debentures, as there are active negotiations between our client and the debenture holders. Thus, our client has not been presented with a formalized proposal regarding that needs to be intimated to the exchange. Thus, our client cannot be penalized for non-compliance of Regulation 50(1), (2) of the LODR Regulations…'*

In this regard, I note that the submissions of the Noticee are conflicting in nature in so far as at one instance the Noticee had submitted that '…*there are <u>active negotiations</u> between our client and the debenture holders…they <u>entered into negotiations with the Debenture Holders</u> regarding the redemption amount and the date of redemption has been <u>extended by both parties</u> through <u>amendments to the Debenture Trust Deed</u> from time to time…' '* while on the other instance the Noticee had submitted that *'…our client has not been presented with a formalized proposal…'.* Therefore, in my view, the contention of the Noticee in this regard is devoid of merit and hence not acceptable.

21.6. As regards the alleged violation of Regulation 57(1), 57(4) and 57(5) of LODR Regulations, it is pertinent to draw reference to the text of the relevant provisions, which inter alia reads as under:

'…

Intimations/ other submissions to stock exchange(s).

57. (1) The listed entity shall submit a certificate to the stock exchange within one working day of the interest or dividend or principal becoming due regarding status of payment in case of non-convertible securities

…

(4) The listed entity shall within five working days prior to the beginning of the quarter provide details for all the non-convertible securities for which interest/dividend/principal obligations shall be payable during the quarter.

(5) The listed entity shall within seven working days from the end of the quarter provide:

(a) a certificate confirming the payment of interest/dividend/principal obligations for non-convertible securities which were due in that quarter; and

(b) the details of all unpaid interest/dividend/principal obligations in relation to non-convertible securities at the end of the quarter

…'

21.6.1. From the plain reading of the provisions in this regard, as brought out above, I note that in terms of Regulation 57(1) of LODR Regulations, the Noticee was inter alia required to submit a certificate to the stock exchange within one working day of the interest or dividend or principal becoming due regarding status of payment in case of non-convertible securities. Further, in terms of Regulation 57(4) of LODR Regulations, the Noticee was also required to provide details for all the non-convertible securities for which interest/dividend/principal obligations shall be payable during the quarter to the stock exchange within five working days prior to the beginning of the quarter. Further, in terms of Regulation 57(5) of LODR Regulations, the Noticee was inter alia required to provide a certificate confirming the payment of interest/dividend/principal obligations for non-convertible securities which were due in that quarter and the details of all unpaid interest/dividend/principal obligations in relation to non-convertible securities at the end of the quarter to the stock exchange within seven working days from the end of the quarter.

21.6.2. I note from material available on record that in terms of Regulation 57(1) of LODR Regulations, there was delay of 684 days for quarter ended April 2021 and delay of 683 days for quarter ended April 2022 in respect of all the 4 listed NCDs. Further in terms of Regulation 57(4) and 57 (5) of LODR Regulation, I note from material available on record that there was delay of 361 days and 78 days respectively.

21.6.3. In this regard, the Noticee, as part of its submissions, contended that '…*our client* has *now submitted the required certificate regarding status of payment of interest or dividend or redemption to the BSE. Thus, our client complied with Regulation 57(1) and 57(5) of the LODR Regulations, as soon as possible…The delay was due to the incompetence of the compliance/secretarial team which has now been replaced…'.*

In this regard, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee had submitted that '…*The delay was due to the incompetence of the compliance/secretarial team…'.*

21.7. As regards the alleged violation of Regulation 6(1) of LODR Regulations, it is pertinent to draw reference to the text of the relevant provisions, which inter alia reads as under:

> *'…*
> ***Compliance Officer and his [43][/her] Obligations.***
> ***6****.(1) A listed entity shall appoint a qualified company secretary as the compliance officer.*
> *…'*

21.7.1. In this regard, I note that as regards disclosure with respect to Regulation 6(1) of LODR Regulations, there was delay of 546 days for period December 2020 to June 2022 and delay of 92 days for quarter ended September 2022.

21.7.2. In this regard, the Noticee, as part of its submissions, contended that *'…compliance team at the time had interpreted that there was no requirement to update the status of the Company Secretary and Compliance Officer in every quarter. Hence, there was no submission. However, after our client was made aware of the requirement for submission, it complied with the disclosure requirement under Regulation 6(1) of the LODR Regulations as soon as possible…'*

As regards Noticee's contention regarding the interpretation of law in this regard, I note that it is a cardinal principle of law that, 'Ignorantia juris non excusat'. In other words, ignorance of the law cannot be an excuse. In view thereof, in my view, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

Further, I note that the submissions of the Noticee are in nature of admission in so far as the Noticee had submitted that *'…Hence, there was no submission. However, after our client was made aware of the requirement for submission, it complied with the disclosure requirement …'.*

21.8. As regards the alleged violation of Regulation 7(1) of LODR Regulations, it is pertinent to draw reference to the text of the relevant provisions, which inter alia reads as under:

'…
Share Transfer Agent.
***7.**(1) The listed entity shall appoint a share transfer agent or manage the share transfer facility in-house:*
Provided that, in the case of in-house share transfer facility, as and when the total number of holders of securities of the listed entity exceeds one lakh, the listed entity shall either register with the Board as a CategoryII share transfer agent or appoint Registrar to an issue and share transfer agent registered with the Board
…'

21.8.1. In this regard, I note that as regards disclosure with respect to Regulation 7(1) of LODR Regulations, there was delay of 546 days for period December 2020 to June 2022 and delay of 92 days for quarter ended September 2022.

21.8.2. In this regard, the Noticee, as part of its submissions, contended that '…*Our client states that its compliance team at the time had interpreted that there was no requirement to update the status of the Share Transfer Agent in every quarter. Hence, there was no submission. However, after our client was made aware of the requirement for submission, it complied with the disclosure requirement under Regulation 7(1) of the LODR Regulations as soon as possible…'.*

As regards Noticee's contention regarding the interpretation of law in this regard, I note that it is a cardinal principle of law that, 'Ignorantia juris non excusat'. In other words, ignorance of the law cannot be an excuse. In view thereof, in my view, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

Further, I note that the submissions of the Noticee are in nature of admission in so far as the Noticee had submitted that *'…Hence, there was no submission. However, after our client was made aware of the requirement for submission, it complied with the disclosure requirement …'.*

21.9. As regards the alleged violation of Regulation 53(2) of LODR Regulations, it is pertinent to draw reference to the text of the relevant provisions, which inter alia reads as under:

'…
Annual Report.
***53.** (1)…*
…
(2) The listed entity shall submit to the stock exchange and the debenture trustee and publish on its website-(a) a copy of the annual report sent to the shareholders along with the notice of the annual

> *general meeting, not later than the date of commencement of dispatch to its shareholders; and (b) in the event of any changes to the annual report, the revised copy along with the details and explanation for the changes, not later than 48 hours after the annual general meeting.*
>
> *…'*

21.9.1. In this regard, the Noticee, as part of its submissions, contended that '…*Our client states that there was a delay in the preparation of the annual report, as there was a delay in the audit. Furthermore, our client states that it was unaware of the compliance requirements, as the compliance team had unprecedently left the organization. However, after our client finished preparing the Annual Report, the same was submitted…'.*

In this regard, I note that the submissions of the Noticee are conflicting in nature in so far as at once instance the Noticee had submitted that *'…<u>our client changed</u> its entire compliance and secretarial team and appointed the present compliance/secretarial team..'* while on the other instance the Noticee submitted *'..the compliance <u>team had unprecedently left</u> the organization..'.* In view thereof, in my view, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

Further, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee had submitted that *'…there was a delay in the preparation of the annual report, as there was a delay in the audit….'.*

21.9.2. In this regard, I note from material available on record that there was delay of 53 days for the financial year 2021-22 with regard to submissions to be made under Regulation 53(2) of LODR Regulations.

21.10. In view thereof, in particular, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I find that the allegation that the Noticee failed to comply with continuous disclosure requirements, stands established. Therefore, I hold that the Noticee had not complied with Regulation 52(1), Regulation 54(2), Regulation 52(4), Regulation 13(3), Regulation 50(1), Regulation 57(1), Regulation 6(1), Regulation 7(1), Regulation 50(2), Regulation 53(2), Regulation 57(4), and Regulation 57(5) of LODR Regulation.

22. **It was inter alia alleged that Noticee delayed submission of financial results, as stated. Accordingly, it was alleged that the Noticee had violated Regulation 52 of LODR Regulations and SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020.**

22.1. Here it would be, firstly, pertinent to draw reference to the text of the relevant provisions of the LODR Regulation and SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020 alleged to have been violated, which inter alia reads as under:

'…

Financial Results.

52*.(1) The listed entity shall prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board within forty-five days from the end of the quarter, other than last quarter, to the recognised stock exchange(s):*

Provided that for the last quarter of the financial year, the listed entity shall submit un-audited or audited quarterly and year to date standalone financial results within sixty days from the end of the quarter to the recognised stock exchange(s):

Provided further that in case of entities which have listed their debt securities, a copy of the financial results submitted to stock exchanges shall also be provided to Debenture Trustees on the same day.

…

(4) The listed entity, while submitting quarterly and annual financial results, shall disclose the following line items along with the financial results:

(a) debt-equity ratio;
(b) debt service coverage ratio;
(c) interest service coverage ratio;
(d) outstanding redeemable preference shares (quantity and value);
(e) capital redemption reserve/debenture redemption reserve;
(f) net worth;
(g) net profit after tax;
(h) earnings per share:
(i) current ratio;
(j) long term debt to working capital;
(k) bad debts to Account receivable ratio;
(l) current liability ratio;
(m) total debts to total assets;
(n) debtors' turnover;
(o) inventory turnover;
(p) operating margin percent;
(q) net profit margin percent:

Provided that if the information mentioned in sub-regulation (4) above is not applicable to the listed entity, it shall disclose such other ratio/equivalent financial information, as may be required to be maintained under applicable laws, if any.

…'

'…

CIRCULAR

SEBI/HO/CFD/CMD1/CIR/P/2020/106 ***June 24, 2020***

…

Sub: Further extension of time for submission of financial results for the quarter/half year/financial year ending 31st March 2020 due to the continuing impact of the CoVID-19 pandemic

…

*3. …Similarly, the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for the period ending March 31, 2020 for entities that have listed NCDs, NCRPS', CPs, MDS' is also extended to **July 31, 2020**.*

…'

From the plain reading of the provisions in this regard, as brought out above, I note that the Noticee was inter alia required to prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board within forty-five days from the end of the quarter, other than last quarter, to the recognised stock exchange(s) and for the last quarter of the financial year, the listed entity shall submit un-audited or audited quarterly and year to date standalone financial results within sixty days from the end of the quarter to the recognised stock exchange(s). In this regard, I further note that vide aforesaid circular dated June 24, 2020, the timeline to submit half yearly and/or annual financial results for the period ending Marach 31, 2020 for entities that have inter alia listed NCDs was also extended to July 31, 2020.

22.2. In this regard, it is noted from material available on record that following delays were observed by SEBI as regards compliance Regulation 52 of the LODR Regulations by the Noticee:

S.N.	**Relevant LODR Regulation**	**Quarter /FY**	**Submission Status**	**No of days delay**
a)	Regulation 52	Mar-18	Delayed Submission	1
b)	Regulation 52	Sep-19	Delayed Submission	1
c)	Regulation 52	Mar-20*	Delayed Submission	182
d)	Regulation 52	Sep-20	Delayed Submission	199

Note: *The due date of filing Financial Results under Regulation 52 of SEBI (LODR) Regulations, 2015 was extended to July 31, 2020 pursuant to SEBI circular dated SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020

22.3. The Noticee, as part of its submissions, contended that '…*due dates for its submission dated March 2018 and September 2019 be discharged, as it was a delay of merely one day. The delay was due to the incompetence of the compliance/secretarial team which has now been replaced…'*

In this regard, firstly, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee has submitted that '…The delay was due to the incompetence of the compliance/secretarial team..'.

Secondly, as regards Noticee's contention that *'…due dates for its submission dated March 2018 and September 2019 be discharged, as it was a delay of merely one day…',* I note that there were four quarters wherein delay was observed as regards Regulation 52 of the LODR Regulation and thus, two instances with delay of one day cannot be seen in isolation from the remaining two wherein the delay was of 182 days for quarter and year ending March 2020 and delay of 199 days for quarter ending September 2020. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

22.4. In view thereof, in particular, having regard to the facts and circumstances of the case, the material available on record and the submissions of Noticee, I find that the allegation that the Noticee delayed submission of financial results, stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 52 of LODR Regulations and SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?

23. It has been established in the foregoing paragraphs that Noticee had violated the following provisions of LODR Regulations and SEBI circulars dated October 22, 2020 and June 24, 2020.

23.1. Regulation 51 (1) of LODR Regulations and Regulation 51(2) read with clause A (11) of Part B of Schedule-III of LODR Regulations;

23.2. Regulations 6(1), 7(1), 13(3), 50(1), 50(2), 51 (3), 52, 52(1), 52(4), 53(2), 54(2), 55, 57(1), 57(4), 57(5), and 59, of LODR Regulation;

23.3. SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020;

23.4. SEBI circular SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020.

24. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia 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....."

25. Therefore, for the established violation, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under section 15HB of the SEBI Act, 1992 which reads as under:

"…

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 No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

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

SEBI Act, 1992

"…

Factors to be taken into account while adjudging quantum of penalty.

15J*. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or 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.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

…."

27. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. I also note that the Noticee had inter alia contended, as part of its submissions, that there were only two subscribers to each of the four listed NCDs. However, I cannot ignore that requirement of various provisions of LODR Regulations and SEBI circulars as in the instant matter were obligatory on the Noticee which the Noticee failed to comply with, as dealt with and established in the foregoing and which SEBI is duty-bound to inter alia enforce compliance of. In view thereof, I am of the view that such violation on part of the Noticee needs to be dealt with imposition of suitable penalty.

E. ORDER

28. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose penalty of Rs. 7,00,000/- (Rupees Seven Lakhs Only) upon the Noticee viz., Paranjape Schemes (Construction) Limited, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

29. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

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

31. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: MAY 31, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER