BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2018-19/2540-2545]

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

In respect of:

1. **Unitech Advisors (India) Pvt. Ltd. (PAN No.:AACCC5880D)**
2. **Mr. S. K. Misra (PAN No.:ADQPM3235L)**
3. **Mr. Anil Harish (PAN No.:AAAPH8876M)**
4. **Mr. Rakesh Dhingra (Pan No.:AAHPD6226A)**
5. **Mr. Mahesh Kumar Sharma (PAN No.:AYYPS1602E)**
6. **Mr. Vijay Tulshyan (PAN No.: ACFPT5009H)**

In the matter of
CIG Realty Fund

1. CIG Realty Fund (hereinafter referred to as 'CIG'), is a Venture Capital Fund registered with the Securities and Exchange Board of India (SEBI) under the erstwhile SEBI (Venture Capital Fund) Regulations, 1996 (hereinafter referred to as 'VCF Regulations'). Unitech Advisors (India) Private Limited (hereinafter referred to as 'UAIPL') is the investment advisor of CIG. UAIPL, vide its email dated April 17, 2017 provided the details of schemes launched by CIG are as under:-

Sr. No.	Name of the Scheme	Date of Final Closing	Total Corpus /Total funds raised (₹ in crores)	Total investment made (₹ in crores)	Total amount retained for expensed (₹ in crores)	Tenure of the scheme as per the PPM
1	CIG Realty Fund-Scheme 1	06-Oct-06	350.00	322.13	27.87	7 years from date of Final closing (The tenure may be extended for two 1 year terms by the Trustees upon recommendation of the Investment Advisor)
2	CIG Realty Fund-Scheme 2	28-Sep-07	298.50	269.57	28.93	
3	CIG Realty Fund-Scheme 4	26-Sep-09	64.85	57.11	7.74	6 years from date of Final closing (The tenure may be extended for two 1 year terms by the Trustees upon recommendation of the Investment Advisor)
Total			713.35	648.81	64.54	

2. SEBI noted that for 2 out of the above 3 schemes (i.e. "CIG Reality Fund-Scheme 1" and "CIG Reality Fund-Scheme 2") of CIG, the tenure of the scheme had already expired and none of the schemes had been liquidated. Further, for these two schemes, CIG had extended their tenure

even beyond the extension allowed in Private Placement Memorandum (PPM) of the respective schemes. The details of extension of these two are as follows:

Scheme	Extension	Period up to	On the basis of
1	1st	October 05, 2014	1st Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	2nd	October 05, 2015	2nd Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	3rd	October 05, 2018	3rd Extension of 3 years on the basis of response received from the investors, wherein 75% investors approved extension
2	1st	September 27, 2015	1st Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	2nd	September 27, 2016	2nd Extension of 1 year by the Trustees upon recommendation of the Investment Advisor
	3rd	September 27, 2019	3rd Extension of 3 years on the basis of response received from the investors, wherein 75% investors approved extension

3. SEBI also observed that out of investment worth approx. ₹649 crores made by CIG across all three schemes, CIG has not divested any of the investments. Thereafter, SEBI vide email dated September 05, 2017 sought summary of the outstanding unit holding pattern of the aforementioned scheme as on September 05, 2017. UAIPL vide email dated September 05, 2017 provided the requisite information. The summary of the unit holding pattern is as follows:

Category	No. of Investors	No. of Units (in crores)	Total Amount Invested (₹ in crores)	Total amount distributed till date, if any
SCHEME 1				
(A) Units held by Sponsor/Manager or entities related to Sponsor/Manager	73	11.07	110.58	NIL
(B) Units held by other investors	135	23.92	239.22	NIL
Total Outstanding Units (A+B)	208	35.00	350.00	NIL
SCHEME 2				
(A) Units held by Sponsor/Manager or entities related to Sponsor/Manager	77	8.77	87.68	NIL
(B) Units held by other investors	357	21.08	210.82	NIL
Total Outstanding Units (A+B)	434	29.85	298.50	NIL
SCHEME 4				
(A) Units held by Sponsor/Manager or entities related to Sponsor/Manager	7	5.17	51.65	NIL
(B) Units held by other investors	43	1.32	13.20	NIL
Total Outstanding Units (A+B)	50	6.49	64.85	NIL

From above information, SEBI observed that, CIG has not made any distributions to its unit holders from any of the above three schemes.

4. As per regulation 23(1) (a) read with regulation 16 of the VCF Regulations, a scheme of VCF has to be compulsorily wound up, when the period of the scheme as mentioned in the PPM is over and the schemes cannot be extended beyond the time period mentioned in the placement memorandum even if any extension is approved by the resolution of seventy-five percent of the

investors in the scheme. SEBI noted that for these two schemes, the third extension of 3 years period as mentioned above was not in compliance with PPM of the respective schemes. UAIPL vide aforementioned email dated April 17, 2017 also confirmed that there were no changes in the PPM after the final closing date of the schemes. Such extension of tenure of these schemes was alleged to be in violation of regulation 23(1) (a) read with regulation 16 of the VCF Regulations The relevant provision of the VCF Regulations alleged to have been violated by the Noticees are reproduced as follows:

Placement memorandum or subscription agreement.

16. (1) The venture capital fund shall—

(a) issue a placement memorandum which shall contain details of the terms and conditions subject to which monies are proposed to be raised from investors; or

(b) enter into contribution or subscription agreement with the investors which shall specify the terms and conditions subject to which monies are proposed to be raised.

(2) The Venture Capital Fund shall file with the Board for information, the copy of the placement memorandum or the copy of the contribution or subscription agreement entered with the investors along with a report of money actually collected from the investor.

Winding-up.

23. (1) A scheme of a venture capital fund set up as a trust shall be wound up,

(a) when the period of the scheme, if any, mentioned in the placement memorandum is over;

5. SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the alleged violation of regulation 23(1) (a) read with regulation 16 of the VCF Regulations, by UAIPL and Trustees of Schemes 1 and 2. The Trustees of Schemes 1 and 2 were as follows:

S. No.	Scheme	Trustees
1	Scheme 1	Mr. S. K. Misra
2		Mr. Anil Harish
3		Vistra ITCL (India) Ltd. (IL & FS Trust Company Ltd.)
4	Scheme 2	Mr. Rakesh Dhingra
5		Mr. Mahesh Kumar Sharma
6		Mr. Vijay Tulshyan

6. By a *communication-order* dated November 06, 2018, the undersigned has been appointed as Adjudicating Officer to inquire into and adjudge under section 15HB of the SEBI Act for the

alleged violations of regulation 23(1) (a) read with regulation 16 of the VCF Regulations, by UAIPL and aforesaid Trustees of Schemes 1 and 2.

7. Accordingly, on receipt of records, a notice to show cause bearing no. EAD-2/SS/VS/32867/2018 dated November 30, 2018 (hereinafter referred to as 'the SCN') was issued to the UAIPL and aforesaid Trustees of CIG in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with section 15I of the SEBI Act. By the SCN, the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act for the aforesaid alleged violations. The provision of sections 15HB of the SEBI Act are as follows:

> ***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.*

8. While the proceedings commenced vide the aforesaid SCN *qua* the Trustee; Vistra ITCL (India) Ltd. (IL & FS Trust Company Ltd.) have been disposed of in terms of an order dated March 22, 2019, this order deals with replies and submissions of other Noticees i.e. UAIPL, Mr. S. K. Misra, Mr. Anil Harish, Mr. Rakesh Dhingra, Mr. Mahesh Kumar Sharma and Mr. Vijay Tulshyan (these persons are hereinafter referred to by their respective names or the Noticee No. 1 to 6, respectively).

9. The Noticee No. 2 vide his letter dated February 5, 2019 submitted his reply to the SCN. The Noticee No. 3 vide his letter dated February 06, 2019 submitted his reply to the SCN and Noticees No. 1, 4 and 6, vide their individual letters dated December 29, 2018 filed their respective replies to the SCN.

10. Thereafter, in terms of rule 4(3) of the Adjudication Rules the Noticees herein were given an opportunity of personal hearing on February 07, 2019 when the Noticees No. 1, 4, 5 and 6 were represented by their Authorised Representatives (ARs) Mr. Saurabh Dev Karan Singh, advocate and Noticee No. 3 was represented by his Authorised ARs Mr. Sharan H. Jagtiani, advocate; Ms. Rishika Anil Harish, advocate and Mr. Sakrit N Kumar Srivastava, advocate, appeared before me.

The learned ARs of these Noticees made submission on the lines of their respective written reply. The Noticees No. 3 filed his post hearing submission vide his letter dated February 14, 2019 and Noticees No. 1, 4, 5 and 6 also filed post hearing submissions vide their common letter dated February 15, 2019. Noticee No. 2 had waived off the opportunity of personal hearing in the matter.

11. Noticee No. 2 has submitted that he had resigned on February 10, 2015 and was no longer involved with CIG. The Noticee No. 2 submitted the copy of his resignation letter to UAIPL.

12. Replies and submissions of the Noticee No. 3 are summarized as follows:-

    a. He was an independent director on the Board of Unitech Limited from 2001 to 2015.
    b. He was requested to act as a Trustee of CIG Realty Fund in connection with his role as an independent director of Unitech Limited.
    c. As the meetings of the Fund were held in New Delhi and the Noticee is residing in Mumbai, on account of his personal and professional commitments he was finding it difficult to travel to New Delhi for the meetings of the Fund and hence on May 25, 2015 therefore, he tendered his resignation as a Trustee of CIG Realty Fund.
    d. However, it was noticed that as per Clause 6.1 of the Indenture of Trust, any Trustee wishing to resign would have to not only provide three months' notice but also the Trustee would only be entitled to resign when a suitable replacement, acceptable to the other Trustees, had been found to take the place of the resigning Trustee. After following this process a suitable replacement was found and the resignation of the Noticee was accepted at the 16th meeting of the board of Trustees of CIG Realty Fund held on June 2, 2016. At the said meeting his resignation was given effect and one Mr. Rakesh Dhingra was appointed as Trustee.
    e. Thus, he remained a Trustee between May 2015 and June 2016, he had already put Fund to notice of his intention to resign and was only waiting for a suitable replacement. Further, he had resigned from the Fund with effect from June 2, 2016 and hence is not aware of any of the current status of divestment of the investment of the Fund or of any correspondence exchanged in 2017 or of the status of distribution to the unit holders as of the date of the SCN.
    f. Without prejudice to above it is submitted that there is no upper limit or maximum tenure fixed for a VCF under the Regulations. Additionally there is no bar prescribed in the VCF Regulations against amendment of either the PPM or the Contribution Agreement (CA).

g. Regulation 23 provided circumstances in which a VCF is to be wound up, which *inter-alia* include the following methods - (a) on the expiry of the term fixed in the PPM and (b) as and when directed by SEBI.

h. Where there is an express power of amendment contained in the PPM and such power is properly exercised, then the phrase when period of the scheme, *if any*, mentioned in the placement memorandum is over used in Regulation 23(1) (a) must necessary refer to the PPM as amended by the Trustees and investors on accordance with the prescribed procedure for amendment. Therefore, it is submitted that Regulation 23(1)(a) must be read to mean that the Fund should be wound up at the expiry of the term specified in the PPM-as amended form time to time.

i. The tenure of Schemes of the Fund were extended in terms of their respective PPM. The PPM of every schemes of the Fund has a similar amendment clause which read as follows:

   "Contribution Agreement may be amended only by the written consent of the Trustee (in consultation with the Investment Advisors) and of the Contributors representing 75% of the Capital Contributions of the Fund."

j. Each contributor to the scheme executed a separate CA which had an amendment clause as follows:

   "No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by the Parties."

k. The first two one-year extensions of the term of the Fund at the hands of the Trustees were admittedly permissible in terms of the express provisions of the PPM. Similarly, the third extension, as confirmed by 75% of the investors, was also expressly permissible in terms of the express provisions of the PPM read with the CA.

l. The charge is erroneous as there is no basis to show that the 75% of the investors cannot change. The basis that the period of scheme mentioned in PPM cannot be extended even if the extension is approved by the resolution of 75% of the investors in the scheme, is incorrect as such restriction is not provided in regulation 23(1)(a). In fact, SEBI had never questioned the approval of the 75% investors in scheme-1. The email dated August 13, 2015 clearly mentioned that the non-response by investors shall be deemed as acceptance by them. However, SEBI never objected to the same. If SEBI had any objection it could have invoked the powers under 23(d) and regulation 25(1) of the VCF Regulations and directed the winding up of the Scheme-1.

m. The 3rd extension, though recommended by Trustees (including the Noticee at that point of time) on the advice of the Investment Advisor, was in the interest of the investors.

n. Regulation 23(1) (a) of the VCF Regulations nowhere restricts extensions of the period of the scheme as was done in the instant case. All it says is that the scheme shall be wound up when the period of the scheme, if any, mentioned in PPM is over. Relying upon the order dated January 12, 2011of Hon'ble Supreme Court of India in *Civil Appeal No. 984 of 2006, Rajendra Prasad Gupta Vs. Prakash Chander Mishra*, it has been submitted that the provision of regulation 23(1)(a) should be interpreted to mean that unless expressly prohibited the extension as in this case was permitted under this regulation.

o. Having been informed of the third extension, if SEBI had been of the view that such extension was not permissible then SEBI could have taken recourse to regulation 23(1)(d) and compulsorily ordered winding up of the Fund.

p. Similarly, had SEBI any questions or concerns regarding the amendments at the hands of investor, the Board could have taken recourse to its rights under regulations 25 and instituted contemporaneous proceedings to inquire as to the nature of the amendment and take decision as to the validity thereof.

q. It is given that SEBI knew of the 3rd extension on September 14, 2015 itself-while the 2nd and admittedly legal extension was still in operation and given that SEBI chose not to take any action at that stage it is not permissible for SEBI to take the present action at this belated stage.

13. The replies and submissions of Noticees No. 1, 4, 5 and 6 are summarized as follows:

a. These Noticees have broadly adopted the arguments and submissions forwarded on behalf of Noticee No. 3 as regard the alleged extensions periods of Schemes-1 and 2 of CIG.

b. They have further submitted that regulation 23(1)(a) does not prescribed any fixed period for the scheme of the VCF. It leaves the period of the scheme to be mentioned in the PPM.

c. In terms of the amendment clause set out in the PPM and CA, the life of various Schemes of the Fund were extended with the approval of requisite majority.

d. The extension was proposed keeping in mind the best interest of the contributors.

e. Since 2012, the Fund has been putting its best efforts to explore exits from the project investment made in various cities of the country. However, due to depressed real estate market sentiment, the exits could not happen.

f. The placement memorandum, entered into the CA with every investor, issued by the Fund is in compliance with Regulation 16 of the VCF Regulations.

g. The regulation 17 (f) of the VCF Regulations makes it abundantly clear that a fixed tenure/term of the Scheme is not a mandatory requirement. Since regulation 17 makes use of words' if any' making it abundantly clear that a fixed term is not required to be stated in either the PPM or the CA.

h. The Regulations do not restrict the power to either amend the PPM or Contribution Agreement. The Regulations do not even propose or make it mandatory to have a fixed tenure of the Scheme. Since there is no express prohibition in the Regulations from extending the term /tenure of the Scheme; it cannot be impliedly read into the same.

i. Regulation 23 provides for winding up of the venture capital fund on such date when the term/tenure of the scheme comes to an end. Even Regulation 23 does not provide that the term/tenure of the scheme cannot be extended; or that the term/tenure of the schemes is ought to be fixed. Further, the term of the schemes would be regulated by the clause of the PPM and the CA (which can be amended subject to the terms and conditions stated therein).

j. The Schemes were extended beyond the dissolution date as mentioned above; after amendments made to CA as per the respective clauses of the PPM and the CA. Separate communications seeking consent of the Contributors were sent. Non-response to the said communications would be considered as deemed approval of the extension was clearly specified in the said communications. The aforesaid process of obtaining the consents was undertaken within the initial time period as proposed in the CA. Since more than 75% of the Contributors agreed for the extension proposed; therefore the said Scheme were extended.

k. The PPM as well as the CA allow amendments to be made to the clauses of the CA subject to approval of the said amendment by 75% of the Contributors representing total capital contribution. It is further emphasized that the term of the Schemes (which are covered by the Regulations) would be governed by PPM and the CA; and, not regulation 16 or 23 of the Regulations.

l. On May 26, 2015, representative of Fund met SEBI to discuss extension of the tenure of the Fund of Scheme-1. It was agreed during the meeting that the tenure of the scheme of the Fund must be left to collectively wisdom of the contributors. Subsequently, vide letter dated September 14, 2015, the decision of the Contributors for the extension of the tenure of Scheme-1 was intimated to SEBI.

m. Similar, process was followed at the time of extension of Scheme-2 of the Fund and on July 19, 2016, SEBI was apprised about the status of the Scheme-2. Thereafter, on September 17, 2016 SEBI was intimated about the final extension of Scheme-2.

14. I have considered the allegation levelled in the SCN, the aforesaid submissions of the Noticees and the relevant material available on record. in order to deal with contention raised by Noticees 1,3,4, 5 and 6 on the scope of the provisions of regulation 16 and regulation 23(1)(a) of the VCF Regulations, I deem it necessary to refer to scheme of those regulations. As per VCF Regulations, a VCF may receive investments only through private placement of its units. For this purpose, the VCF is obligated, under regulation 16, to issue a placement memorandum; or enter into contribution or subscription agreement with the investors. Such private placement memorandum (PPM); or the contribution/subscription agreement, as the case may be, should specify the terms and condition subject to which the monies are proposed to be raise by the VCF from investors. Thus, the terms and conditions for raising money from the investors have been left to be mentioned in PPM or the contribution/subscription agreement, as the case may be. Regulation 16(1) relates to the terms and condition pertaining to raising of money and does not refer to tenure or extension of tenure of the scheme. The period of maturity is specifically stipulated in regulation 17.

15. Regulation 17 prescribes the contents of placement memorandum or the contribution/subscription agreement including the period of maturity, if any, of the fund. The use of the word "namely" in regulation 17(1) indicates that the items listed in regulation 17(1) must be mentioned in PPM or contribution/subscription agreement. This word indicates what is to be included by name and does not intend to include something that is not listed in the VCF Regulations. This proposition is further substantiated by residuary clause listed in regulation 17(1)(l) which provides that any other information, than those listed, can only be specified by the Board. Thus, on harmonious construction of provisions of regulation 16 and 17 it is noted that both complement each other without diluting the effect of provisions of regulation 17. Therefore, if the VCF has contemplated the period of maturity of its scheme it must be mentioned in the PPM or contribution/subscription agreement, as the case may be. Regulation 23(1) (a) provides expiry of the period of the scheme as one of the ground of winding up of the scheme. This regulation does not deal with period of maturity as an item of content of PPM/CA or the terms and conditions of the scheme. The period of maturity as a content of PPM/CA is the domain of regulation 17 and not regulation 23.

16. In my view, the provision of regulation 16, 17 and 23 do not intend to give flexibility in the hands of the VCF to keep on changing the period of maturity after raising money through the PPM or contribution/subscription agreement. These provisions are not subservient to the terms and condones stipulated in PPM or contribution/subscription agreement, as the case may be. In view

of the above, I do not agree with the contentions of respective Noticees with regard to scope of applicability of regulations 16, 17 and 23.

17. Coming to the contentions raised by the Noticees with regard to the permissibility of 3rd extension of Scheme-1 and 2 as per the terms and conditions of PPM/CA, it is noted that admittedly, the tenure of both the schemes (i.e. Scheme-1 and Scheme-2 of CIG), as mentioned in PPM/ CA was 7 years form the date of final closing and could be extended for two 1 (one) year terms by the Trustees upon recommendation of the Investment Advisor. Accordingly, the period of maturity of the respective schemes was maximum of 9 years from the date of final closing. This term was in compliance of regulation 16 and 17 of the VCF Regulations. However, as found hereinabove, the VCF Regulations do not permit change of the term already mentioned in PPM/CA. Any term in PPM/CA would be contrary to the provisions of regulation 16 and 17. In this case, the PPM specifically defines that the "term" means "*the life of CIG Realty Fundd-1 which is 7 years and which can be extended two 1 year periods by the Trustees, on the recommendation of the Investor Advisor.*" Thus, the term of the scheme has been defined as a fixed term with maximum two 1 year extensions. Further, the PPM clearly permits winding up or dissolution of the Schemes earlier than the period mentioned in PPM. However, it does not provide anywhere for the postponement of winding up on expiry of period of the maturity. The PPM also provides that the contribution agreement to which any investor is party may be amended only by the written consent of the Trustees in consultation with the Investment Advisor and of the investors representing 75% of the capital contribution of the Fund. However, in my view, this clause cannot dilute the requirements of regulation 16 and 17 so as to postpone the winding up on expiry of expressed/disclosed period of maturity.

18. I further note that as per clause 1.3 of the CA the provisions of the CA shall prevail over contrary provision of PPM as to matters expressly addressed in the CA. The authority for extension of the period of the Schemes is nowhere provided for in the CA. In fact, clause 8.1 of the CA expressly prescribes the fixed tenure of the schemes for a period of 7 years and it may be extended for two additional period of 1 (one) year each by the Trustees, on recommendation of Investment Advisor. It further stipulates that after expiry of prescribed tenure, the respective schemes shall be dissolved and dissolution proceeds shall be distributed amongst the Contributors of the scheme. This provision is clearly in terms of regulation 16, 17 and 23 and prevails over any implied permission provided in the PPM. I further note that clause 8.2 of the CA permits winding or dissolution of the schemes prior to the expiry of the disclosed tenure of the scheme, if all the contributors constituting not less than 75% of the aggregate capital contribution pass a resolution in that behalf in a duly convened meeting of the contributors. However, such permission has not

been granted for extension of period of maturity so as to postpone the winding up and dissolution of the scheme. The amendment clause 16.3 of the CA, which is clothed with negative mandate, prohibits modification of the CA or waiver of the terms and condition unless made in writing and duly executed by the parties. This clause is not an omnibus clause so as to amend the expressed period of maturity which is the essence of the conditions of regulation 16 and 17 read with consequence provided in regulation 23 of the VCF Regulations.

19. In view of the express provision of regulation 23(1)(a) any intimation of the decision of extension of the schemes to SEBI officials cannot be treated as valid compliance. The very fact that the competent authority in SEBI has felt satisfied to initiate the instant proceedings shows that SEBI has not accepted the propositions or decision of CIG to extend the tenure of its schemes beyond the period expressly mentioned in the PPM/CA. The Noticee No. 3 has contended that if there was any objection, SEBI could have invoked the provisions of regulations 23(1)(d) and 25(1) of the VCF Regulations and directed the winding up of the schemes. It is noted that in terms of regulation 23(1)(d), amongst other grounds as provided in clause (b) and (c), the scheme can also be wound up if the Board so directs in the interest of investors. This power is not related to the expiry of the period of the scheme. Regulation 25 empowers the Board to inspect or investigate the books of account, records etc. of VCF. In my view, the power of the Board to initiate instant proceeding under section 15I of the SEBI Act is not fettered by the provision of regulation 23(1)(d) and regulation 25. It is the discretion of competent authority in SEBI to initiate the proceedings under section 15I or to resort to power to issue direction under regulation 23(1)(d) in the facts and circumstances of the case. In this case, the instant proceedings have been initiated in exercise of such discretion by the competent authority.

20. As mentioned hereinabove, in terms of the CA only the dissolution of the schemes prior to the expiry of the maturity period was permissible in this case and this could be done only if all the contributors constituting not less than 75% of the aggregate capital contribution passed a resolution in that behalf in a duly convened meeting of the contributors. However, in this case the CIG had extended the tenure of its schemes for 3 years that too without the effective resolution passed in duly convened meeting of contributors. Rather, CIG had treated the non-response of contributors as acceptance of the extension of the schemes for another 3 years. Even the procedure for amendment of terms of clause 16.3 of the CA, which in any case could not be resorted for amending the tenure of the schemes of CIG, was not followed.

21. In view of the above, I hold that as per the said tenure mentioned in the respective PPM and CA, the Scheme-1 should have been wound up on October 5, 2015 and Scheme-2 should have been

wound up on September 27, 2016. Therefore, the 3rd extension of 3 years in Scheme-1 and Scheme-2, whereby the winding up of the respective schemes was postpone/deferred, was in violation of the provisions of regulation 23(1)(a) of the VCF Regulations. Therefore, the case deserves imposing of monetary penalty under section 15HB of the SEBI Act.

22. I note that the Noticees No. 2 and 3 did not remain as Trustees of the Fund when the period of Scheme-2 was extended for three years after September 27, 2016 and the charge against the Noticee No. 2 and 3 is only with regard to 3rd extension of Scheme-1. I note that the Noticees No. 2 and 3 had tendered their resignation to the UAIPL on February 10, 2015 and May 25, 2015, respectively, which is well within the permissible limit of 2nd Extension of 1 year of Scheme-1 by the Trustees. I note that as per Trust Deed, the Trustees had to give 3 month prior notice period before their resignation and has to serve as Trustees till the suitable replacement is found. Further, in terms of clause 12.3 of the CA the Trustee shall continue to hold office till such time as new Trustee is appointed by the Settlor to replace the Trustee. In this case, admittedly the Noticees No. 2 and 3 continued to hold office of Trustees of CIG even after their resignation and while holding office as such they had permitted the 3rd extension of the Scheme-1 in 15th meeting of Board of Trustees held on June 30, 2015 when UAIPL (Noticee No. 1) had proposed for the 3rd extension of tenure of Scheme-1 by 3 years. Subsequently, on acceptance of resignation Noticees No. 2 and 3, the Trustee of Scheme-1 the Noticees No 4, 5 and 6 were appointed as Trustees of the Fund. They were Trustees of Scheme-2 and had permitted the 3rd extension of Scheme-2 by 3 years on recommendation of Noticee No. 1. By virtue of the obligations under the Investor Advisory Agreement, the Investment Advisor (Noticee No. 1) and respective Trustees (Noticees No. 2 to 6) are responsible for the violation in this case.

23. For the purpose of adjudication of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J of the SEBI Act, which reads as follows:-

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investor/+s 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 of an adjudicating officer 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.

24. Having regard to the factors listed in section 15J, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. It has been observed by SEBI that CIG has not made any distributions to its unit holders from any of its schemes. Noticee has claimed that it has stared distribution of its proceeds however, it has not shown any evidence in this regards. Be that as it may, SEBI has also not chosen to advice/ direct dissolution of the schemes that were extended in violations of Regulations as aforesaid.

25. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I, hereby impose a monetary penalty on the Noticees under section 15HB of SEBI Act as per following table. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

Sr. No.	**Name of Noticee**	**Amount of Penalty (₹)**
1	Unitech Advisors (India) Pvt. Ltd. (Noticee No. 1)	₹2,00,000
2	Mr. S. K. Misra (Noticee No. 2)	₹1,00,000
3	Mr. Anil Harish (Noticee No. 3)	₹1,00,000
4	Mr. Rakesh Dhingra (Noticee No. 4)	₹1,00,000
5	Mr. Mahesh Kumar Sharma (Noticee No. 5)	₹1,00,000
6	Mr. Vijay Tulshyan (Noticee No. 6)	₹1,00,000

26. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account, the details of which are as follows:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

27. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in following table should be sent to "The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

28. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: March 28, 2019 **Santosh Shukla**

Place: Mumbai **Chief General Manager & Adjudicating Officer**