BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SV/GD/2023-24/29947-29948)

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

In respect of:

Noticee	Name of the Noticee	PAN
1.	Aliens Developers Private Limited	AAFCA7204E
2.	IDBI Trusteeship Services Limited	AAACI8912J

In the matter of Aliens Developers Private Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as 'SEBI') received a reference letter dated December 29, 2022 from Debenture Trustee i.e. IDBI Trusteeship Services Ltd. (hereinafter referred to as "ITSL/ DT/Noticee 2") with respect to non-submission of information and documents which are required to be submitted by an issuer of listed debt securities under SEBI Regulations and circulars issued thereunder by Aliens Developers Private Limited (hereinafter referred to as "ADPL/ Company/ Issuer/Noticee 1"). The debt securities issued by ADPL are listed on the debt segment of BSE.

2. In order to examine the compliance status of the company with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "SEBI (LODR) 2015") and circular w.r.t maintenance of Recovery Expense Fund (REF), the matter has been examined by seeking compliance related information from the Stock Exchange, Debenture Trustee and the Company. The period of examination has been

considered from January 2021 to December 31, 2022 (hereinafter referred to as "examination period").

3. Based on the findings of examination, SEBI initiated adjudication proceedings against Noticee 1 and Noticee 2 (hereinafter referred to as "Noticees") for the violations of the provisions as tabulated below:

Sr. No	Noticee	Violations
1.	Noticee 1	1. Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III, Regulation 51(3), second proviso to Regulation 52(1), Regulation 54(1), Regulation 56 and Regulation 59 of SEBI (LODR) 2015. 2. SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020
2.	Noticee 2	Regulation 15(1)(r) and 15(1)(s) of SEBI (Debenture Trustee) Regulations

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI vide order dated May 24, 2023 appointed the undersigned as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**), and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules, 1995'**) read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 15A(b) and Section 15HB of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref. SEBI/HO/EAD-8/AS/GD/2023/33404-08 dated August 18, 2023 (hereafter referred to as "**SCN"**) was issued to the Noticee 1 and 2 respectively in terms of the provisions of Rule 4 of the SEBI Adjudication Rules

vide speed post and email dated August 18, 2023. I note that SCN was successfully delivered through speed post and digitally signed email.

6. The allegations levelled against the Noticees in the SCN are reproduced as follows:

<u>Non Discosure of Default to Stock Exchange</u>

a. DT, vide email dated January 27, 2023 (enclosed as Annexure-C) has submitted that as per the discussion between Issuer and investors it was mutually agreed for extension of moratorium period for payment of interest till March 2021 due to the pandemic. Further BSE vide email dated February 03, 2023 and February 08, 2023 (enclosed as Annexure-D) has submitted that the company has not disclosed any material events including intimation of default by the issuer. Details of defaulted debt securities is received by the Exchange from depository viz. NSDL and the name of Aliens Developers Private Limited has not been in any of the data received from NSDL.

b. It was observed that the issuer and the investors mutually agreed to change the structure of the cash flows of the listed debt securities without complying with the requirements prescribed under Regulation 59 of the SEBI (LODR) 2015. Thus, it is alleged that the Noticee 1 by not disclosing the intimation of default to stock exchanges, Noticee 1 has not complied with Regulation 51 (1) and Regulation 51(2) of SEBI (LODR) 2015 read with clause A (1) of Part B of Schedule-III.

<u>Failure to disseminate events/ information on the website of the listed entity</u>

c. DT, vide email dated January 27, 2023 informed that the Issuer has not disclosed the required information on their website. BSE, vide email dated February 03, 2023 also informed about the non-compliance status of the issuer.

d. Noticee 1, vide letter dated February 16, 2023 (enclosed as Annexure-E) has apparently acknowledged the fact that due to certain technical glitches, it was not able disclose the required information on the website and it is taking immediate steps and assure to rectify/ update the same within 15 days.

e. In view of the above, by not disclosing the material events which have a bearing on performance / operation of listed entity and price sensitive information, it is alleged that Noticee 1 has violated Regulation 51(3) of SEBI (LODR) 2015.

<u>Failure to submit the copy of the financial results to DT within the period prescribed</u>

f. DT, vide its email dated January 27, 2023 has informed that the Issuer has not complied with Regulation 52 (1). Noticee 1 vide its email dated February 16, 2023 has apparently acknowledged that there has been a delay in submission of financial results on account of various financial constraints and issues beyond the control of the company to the DT. Noticee 1 further stated that it'll submit all financials to the DT within 45 working days.

g. In view of the above, by not submitting copy of the financial results to Debenture Trustee within the period prescribed under second proviso to Regulation 52 (1) of SEBI (LODR) 2015, it is alleged that Noticee 1 has violated second proviso to Regulation 52 (1) of SEBI (LODR) 2015.

<u>Failure to maintain 100% security cover for secured listed non-convertible securities</u>

h. DT, vide its emails dated January 27, 2023 and March 30, 2023 (enclosed as Annexure-F) has submitted that the issuer has not complied with maintenance of 100% security cover for secured listed non-convertible securities. However, Noticee 1, vide its letter dated February 16, 2023 has apparently submitted that the company had maintained at all times more than 100% security cover in connection with its secured listed NCDs. Noticee 1 further submitted that a certificate from the Statutory Auditor confirming the same shall be submitted to the DT within 45 days. However, Noticee 1 has not submitted any documentary evidence in support of its claim.

i. In view of the above, by not maintaining 100% security cover for secured listed non-convertible securities, it is alleged that Noticee 1 has violated Regulation 54(1) of SEBI (LODR) 2015.

<u>Failure to submit the information/ documents to the Debenture Trustee</u>

j. DT, vide its email dated January 27, 2023 has submitted that the company has not complied with Regulation 56. Noticee 1 in this regard has apparently acknowledged that on constraints and issues beyond the control of the company, there has been delay in submission of documents and information to the DT. Noticee 1 further stated that it'll submit required documents and information to the DT within 45 working days.

k. In view of the above, by not submitting information/documents to Debenture Trustee, it is alleged that Noticee 1 has violated Regulation 56 of SEBI (LODR) 2015.

<u>Non creation and maintenance of Recovery Expense Fund</u>

l. DT, vide its email dated February 03, 2023 (enclosed as Annexure-G) has informed that it has not received any proof of creation of Recovery Expense Fund (hereinafter referred to as "REF") from the Issuer. Further BSE, vide its email dated February 08, 2023 has submitted that the issuer has not paid REF till date. Noticee 1, vide its letter dated February 16, 2023 has apparently submitted that it shall immediately create the required REF and shall comply with this regulation within 7 days.

m. In view of the above, it is alleged that Notice 1 has not complied with the SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020.

<u>Failure to comply with regulatory requirements w.r.t material change in the structure of debt securities</u>

n. DT, vide its email dated January 27, 2023 has submitted that as per discussion between the Issuer and investor it was mutually agreed for extension of moratorium period till March 2021 due to the pandemic. Further the issuer has started paying interest from April 2021 and have paid the interest for the month of April 2021. Thereafter, the issuer has been making payment to the debenture holders as per the cash flow available with them and the debenture holders has been accepting the payment and have not declared event of default. The last payment made by the issuer and accepted by the debenture holder was on 25th January, 2023 and thereafter on 15th February 2023.

o. It was observed that issuer and the investors mutually agreed and decided to change the structure of debt security in terms of payment of interest on it. Any change in the interest payment schedule is a material change in the structure of debt security which warrant compliance with Regulation 59 of LODR Regulations. In accordance with this Regulation, inter-alia, no material modification in the structure of debt securities can be carried out without prior approval from the stock exchanges. Such modification includes change in the structure of the NCDs in terms of coupon, redemption or otherwise, which indicates that the scope of modification under this regulation is very wide which also covers the change in structure of cash flow associated with the debt security. The application for approval of stock exchange shall be made only after approval of board of directors and debenture trustee and obtaining consent from holders of not less than three-fourths by value. Once the issuer gets its security listed on the stock exchange(s), it is bound to comply with all regulatory requirements associated with the listing.

p. Thus, it is alleged that the Noticee 1 has not complied with Regulation 59 of SEBI (LODR) 2015.

Failure to intimate the non-compliance by the issuer to SEBI & Failure to exercise due diligence to ensure compliance by the issuer with Regulation 59

q. Also, Noticee 2 failed to intimate the aforesaid non-compliance of regulation 59 by the issuer to SEBI, as required under Regulation 15(1)(r) of SEBI (Debenture Trustee) Regulations. Further Noticee 2 also failed to exercise due diligence to ensure compliance by the issuer as required under Regulation 15(1)(s) of SEBI (Debenture Trustee) Regulations.

r. Thus, it is alleged that Noticee 2 has violated Regulation 15(1)(r) and 15(1)(s) of SEBI (Debenture Trustee) Regulations.

7. Vide email dated September 01, 2023, Noticee 1 requested for extension of time for submission of reply to the SCN, acceding to the request and in line with principles of natural justice, Noticee 1 was granted time till September 14, 2023.Vide email dated September 13, 2013, Noticee 1 has submitted its reply to the SCN.

8. The key submissions made by Noticee 1 vide email dated September 13, 2013 are as under:

a. *SEBI Observation: Failure to disseminate events/information on the website of the listed entity. Allegation: Violation of Regulation 51(3) of SEBI (LODR)*

6.1. As stated in Noticee 1's letter dated February 16, 2023, addressed to you, annexed at Annexure E of the SCN ("Previous Reply"), Noticee 1 has maintained a full functional & accessible website disclosing all relevant information as per the LODR Regulations containing all relevant disclosures.

6.2 The website of Noticee 1 maintained at URL https://aliensgroup.in/investors/ disclosing its' annual reports, audited financial results, credit rating, debenture trustee information, information related to Composition of Board of Directors, details of RTA in a separate tab titled "Other Disclosures and Reports". Pertinently, compliances related to Regulation 51(3) of the LODR Regulations were not previously updated due to some technical glitches and the stated tab was not active. Subsequently, Noticee 1 took immediate action to rectify the same and to disclose the information pertaining to regulation 53 of SEBI (LODR) Regulations 2015 on expedited basis.

6.3 It is worth highlighting that in the Previous Reply, Noticee 1 brought to SEBI's attention that due to certain technical glitches, the particular tab relating to disclosures was not active on its' website for a short time. However, Noticee 1 took immediate action and ensured that all the disclosures as required by Regulation 51(3) including all disclosures to the stock exchange for the last five years are on Noticee 1's website.

6.4 Noticee 1 is of the firm opinion that Regulation 51(3) of the LODR Regulations was not violated by Noticee 1 by any ill-intention and it was just due to technical glitches and to substantiate this, screenshots of Noticee1's website from its' investors' page as on the date of submitting this reply are annexed herewith for reference as Annexure A.

b. *SEBI Observation: Failure to maintain 100% security cover for secured listed non – convertible securities. Allegation: Violation of Regulation 54(1) of SEBI (LODR) 2015*

7.1 Noticee 1 submits that it has maintained an asset cover of 100% or more for its' secured listed non-convertible debentures and has not violated Regulation 54(1) of the LODR Regulations, as also submitted in its' Previous Reply.

7.2 To support its' submissions, Notice 1 is producing the statutory auditors' certificates for each quarter from March 2021 till March 2023 certifying that 100% of the asset cover has been maintained by Notice with respect to its' listed NCDs during the examination period. Hereto annexed as Annexure B (colly) are the relevant certificates by the statutory auditor NAC and Associates LLP, Chartered Accountants.

7.3 Notice 1 is of the firm belief that the statutory auditor's certificates are conclusive evidence that the requisite asset / security cover was maintained and Notice 1 is not in violation of Regulation 54(1).

c. *SEBI Observation: Non creation and maintenance of Recovery Expense Fund Allegations: Not complied with the SEBI circular No. SEBI/HO/MIRSD/CRADT/CIR/P/ 2020 /207*

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8.1 Notice 1 submits that it has created and maintained a Recovery Expense Fund in the manner required under the SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207.

8.2 Notice 1 had also communicated this creation of the Recovery Expense Fund to the Bombay Stock Exchange ("BSE") vide its' email dated February 17, 2023, and several correspondences after that. In fact, BSE has confirmed receipt of the Recovery Expense Fund vide email dated March 14, 2023. Hereto annexed as Annexure C is the relevant email thread between Notice 1 and BSE.

8.3 The BSE website also contains a list of all recovery expense funds created by different companies pertaining to the SEBI circular. The name of Notice 1 appears on the mentioned list at Sr. No. 20, reflecting an amount of INR 75,000/- in its' Recovery Expense Fund. Hereto annexed and marked as Annexure C-1 is a copy of the mentioned list as downloaded on September 5, 2023.

8.4 In light of this documentary evidence, Notice 1 is of the firm opinion that Notice 1 is not in violation of the said SEBI Circular and has complied with all the requirements thereunder.

d. *SEBI Observation: Failure to submit the Information/documents to the Debenture Trustee, Allegation: Violation of Regulation 56 of SEBI (LODR) 2015*

9.1 Notice 1 had vide email dated December 14, 2021, provided relevant financial details for FY 2020-2021 to Noticee 2 and had subsequently updated Noticee 2 from time to time as to the financial results of Noticee 1. Hereto annexed as Annexure D is a copy of the email thread from December 14, 2021.

9.2 In fact, subsequent to the first inquiry email from SEBI, to ensure that no lapses or miscommunication, Noticee 1 vide email dated March 29, 2023, has shared an entire folder containing all relevant financial documents from FY 2018 till FY 2023 with Noticee 2. Further as recently as August 30, 2023, financial documents are have been provided to Noticee 2. Hereto annexed and marked as Annexure D-1 and D-2 are copies of the email threads from March 29, 2023 and August 30, 2023 respectively. Noticee 1 craves leave to share the contents of the folders as and when necessary.

9.3 In light of the above, Regulation 56 of SEBI (LODR) 2015 has not been violated by Noticee 1 and the submissions made by Noticee 2 in its' letters to SEBI are prejudicial as they have failed to disclose these material communications.

e. SEBI Observation: Failure to submit the copy of the financial results to DT within the period prescribed. Allegation: Violation to second proviso to Regulation 52(1) of SEBI (LODR) 2015

10.1 Pertinently, this allegation has only been considered on the basis of information provided by Noticee 2 without authenticating its' veracity. Noticee 1 submits that Noticee 2 was always in the loop via correspondences and that data shared with BSE was always disclosed to Noticee 2.

10.2 In fact, Annexure D, D1 and D2 as produced herewith are evidence of Noticee1 sharing its financial documents with Noticee 2. In light of the above, it is evident that Noticee 1 has not violated Regulation 52(1).

10.3 Without prejudice to the above, it is worth noting that the examination period referred to in the SCN was during the Covid-19 pandemic when Noticee 1 along with most other businesses in the country was adversely affected. In fact, several employees of Noticee 1 including its' key managerial personnel were impacted by the Covid-19 pandemic and struggled with ill-health during portions of this period. It is worth highlighting that Noticee 1 was constrained to divert its' focus primarily on its employees' welfare and medical expenses such as setting up of quarantine centers for its' employees. During this time, the overall functioning of Noticee 1 was *impacted and the communications with Notice 2 may have been affected as well. Hereto annexed and marked as Annexure E (colly) are ledgers reflecting the medical expenses incurred by Noticee 1 during the Covid-19 pandemic.*

10.4 Therefore, any minor delay that may have occurred in formally tendering the financial results to Noticee 2 during the examination period, the same has in no way prejudiced or affected Noticee 2's rights and Noticee 2 always had a clear picture as to the financial status of Noticee 1 and was constantly apprised of the same. In fact, Noticee 2 had on several occasions during the examination period provided its' no objection towards project related activities undertaken by Noticee 1. Hereto annexed and marked as Annexure E-1 (colly) are NOCs provided by Noticee 2 to Noticee 1. Pertinently, these NOCs would never have been provided by Noticee 2 if there were any compliance lapses by Noticee 1. Further Noticee 1 has always responded to Noticee 2 with respect to any queries and has shared data as and when called upon to do so by Noticee 2.

f. SEBI Observation: Failure to comply with regulatory requirements with respect to material change in the structure of debt securities and Non-disclosure of default to stock exchange.Allegation: Non-compliance with Regulation 59 of SEBI (LODR) 2015 along with Regulation 51(1) and Regulation 51(2) of SEBI LODR 2015 read with clause A (1) of Part B od schedule -III

11.1 Noticee 1 humbly submits that in the present instance Regulation 59 of the LODR Regulations will not apply, as there were no material changes that had occurred and for which prior approval of the stock exchanges would be necessary.

11.2 The events contemplated by SEBI are a purported default by Noticee 1 and a moratorium on intertest payments. It is worth highlighting that there was never any actual formalized arrangement between Noticee 1 and the debenture holders with respect to any moratorium on interest payments.

11.2 In light of the pandemic and additional expenses which Noticee 1 was constrained to incur (as produced at Annexure E) and other essential operational costs, Noticee 1 was facing a financial strain, similar to most businesses across the country and globe. Pertinently, at this point in time, financial institutions across the country had offered leniency to borrowers, and the government itself had initiated emergency relief schemes for borrowers. The debenture holders had also granted some time to Noticee 1 to streamline its' cash flows in view of the pandemic.

Pertinently, this time however cannot be considered a moratorium as additional interest was levied by the debenture holders during this period.

11.3 Pertinently, the parties involved, i.e. Noticee 1, and the debenture holders were agreeable to this change and in the scheme of events, Noticee 1 did not believe that the changes in question were liable to be disclosed to the stock exchanges.

11.4 In fact, with the support offered by the debenture holders, by August 2022, Noticee 1 was able to obtain a sanction of more than INR 330 crores from SWAMIH Investment Fund I for its' project and was able to continue supporting over 10,000 persons with this financial closure. Pertinently, Hereto annexed and marked as Annexure F is a copy of the sanction letter dated August 22, 2022 from SWAMIH to Noticee 1.

11.5 Further, even as on date, Noticee 1 has been able to secure an exit to debenture holders and Noticee 1 and has received funding from Nisus Finance & Investment Managers LLP. Hereto annexed and marked as Annexure F-1 is the offer letter provided by Nisus on June 28, 2023. Accordingly, Noticee 1 has been able to raise substantial funding for its' project after the slight hiccup during the pandemic and as such there has the nature of the debt securities in question has remained the same.

11.6 In light of the above, Noticee 1 denies any wrongdoing or violation of Regulation 59 of SEBI (LODR) 2015 and /or Regulation 51(1) and Regulation 51(2) of SEBI LODR 2015 read with clause A (1) of Part B od schedule -II.

9. Noticee 2 has vide email dated August 30, 2023 submitted its reply to the SCN. The key submissions made by Noticee 2 vide letter dated August 30, 2023.

   a. *The Noticee No.2 is very much conscious of the provisions of Regulation 59 of SEBI (LODR) Regulations, 2015 and very particular in compliance of the same by our clients. It is strongly submitted that the alleged non-observance of Regulation 15(1)(r) and 15(1)(s) of the Debenture Trustee Regulations are unfounded. Due diligence on the part of the Noticee No. 2 has not been lacking at any stage, and the Noticee No. 2 was diligent in looking out for any possible contravention. The same will be evident from the following chronology of events:*

   14th February, 2023 - Noticee No. 2 for the first time received an intimation from the Issuer enquiring about a possibility of a proposed restructuring by email.

20th February, 2023 – Noticee No. 2 informed the Issuer about the requirements under Regulation 59 of the LODR Regulations.

1st March, 2023 – Email by Issuer stating that Regulation 59 is not applicable to it.

6th March, 2023 - Reply by Noticee No. 2 emphasising the need to comply with Regulation 59 in case the Issuer goes in for restructuring.

17th May, 2023 – Another email by the Issuer to the Noticee No. 2 about their possibility of going in for a restructuring.

18th May, 2023 – Reply sent by Noticee No. 2 once again informing the Issuer about the requirements under Regulation 59 of the LODR Regulations and also stating the Noticee No. 2's willingness to resign from the position of debenture trusteeship in case there is non-compliance by the Issuer.

Copies of the emails dated 14.02.2023, 20.02.2023, 01.03.2023, 06.03.2023, 17.05.2023 and 18.05.2023 are annexed hereto and marked as Annexure – 1 (Colly).

b. *It is further humbly submitted that admittedly the Noticee No.1 (hereinafter referred to as 'Noticee No. 1/ the Issuer') and the Edelweiss Group, the Sole Corporate debenture holder (hereinafter referred to as 'Edelweiss/ Sole Debenture Holder') have only discussed mutually without any written and formal communication and agreement. Subsequent to such discussion, the Noticee No. 1 have been making the payment and the Sole Debenture Holder and the same have been accepted by the Sole Debenture Holder on an ad hoc basis. It is pertinent and relevant to mention here that there has been no documented restructuring of the NCDs as contemplated or envisaged under SEBI (LODR) Regulations, 2015. Further, the payments being made to the Sole Debenture Holder by Noticee No. 1 were without following any pre-defined and restructured terms and there was no pre-fixed frequency of time i.e. fixed due dates of payment and exact amount of payment that is to made by the Noticee No. 1. The payments were being made randomly and same was being accepted by the Sole Debenture Holder.*

c. *The dictionary meaning of restructuring is a method used by individual borrowers and lenders to avoid defaulting on current debts by negotiating the loan terms. In this case there is:-*

i) *No method or any formulae is used*
ii) *No due dates are fixed for payment*
iii) *No amount of payment is fixed*
iv) *No terms of payment are documented*

v) No agreement is executed much less any valid, binding and concluded contract is executed

c. Further, Reg. 59 of SEBI (LODR) Regulations, 2015 reads as follows :

Structure of non-convertible debt securities and non-convertible redeemable preference shares.

59. (1) The listed entity shall not make <u>material modification without prior approval of the stock exchange(s)</u> 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) <u>The approval of the stock exchange referred to in sub-regulation (1) shall be made only after</u>:

(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.

d. To satisfy the basic contours of Regulation 59, the following facts should be present :

(i) First and foremost, the specific Terms of change in payment of coupon, redemption is required to be well defined, articulated, crystallised and documented for Reg. 59 to be attracted.

In the present case the terms of change in payment of coupon is not well defined, articulated, crystallised and documented and not decided by the Issuer and the Edelweiss being the sole debenture holder (without existence of such terms, the approval of what will be done).

(ii) A proposal from the issuer is required for seeking approval for change in terms of issuance. No such written request (proposal) from the Issuer for change of terms of payment of interest was received.

iii) Accordingly, No approval of Board (Board Resolution) of the Issuer Company for change in terms of payment of interest was submitted.

iv) Accordingly, No written approval from the Sole Debenture holder for change in terms of payment of interest was obtained.

v) In the absence of any proposal for change in terms from the issuer, and in absence of Board Resolution and Debenture Holder approval, Noticee No.2 as a Debenture Trustee has also not given any approval for change in terms of payment of interest.

As highlighted above, there is a <u>total absence of the above parameters and ingredients to satisfy the provisions of Regulation 59 (1) of SEBI (LODR) Regulation</u>, and therefore, there is no valid and binding restructuring of NCD's in eyes of law. Also, <u>there is a total absence of the above parameters and ingredients to satisfy the provisions of Regulation 59 (2) of SEBI (LODR) Regulation</u>, there is no approval from Board of Directors of the Issuer nor has the consent of the Debenture Trustee been given. There is also no written approval of the debenture holders on the terms and conditions of the purported restructuring. In the absence of satisfying the criterion laid down in regulation 59, there is no restructuring of the NCDs in the first place.

e. The very fact that the Noticee No.2 has not given any approval for change in terms of payment of interest etc., there is no restructuring and as such the question of intimation under Regulation 15 (1) (r) does not arise for violation of Reg. 59 of SEBI (LODR) Regulation, 2015 and therefore there is no violation of Regulation 15(1) (r) and 15(1) (s) of SEBI (Debenture Trustee) Regulations, 1993.

f. <u>It is also very pertinent to record here as admittedly in para 19 of the notice under reply, it has been stated that :</u>

<u>"it was observed that issuer and the investors mutually agreed and decided to change the structure of the debt security in terms of payment of interest on it".</u>

<u>This alleged agreement and decision has been arrived at between the Issuer and the Investor. There is no record of any such agreement / decision / understanding being formally conveyed to the Noticee No. 2. There has till date been no formal proposal for restructuring sent to the Noticee No. 2 seeking the consent of Noticee No. 2 as mandated under Regulation 59 of the SEBI LODR Regulations.</u>

g. *<u>The so called mutual decision of the Noticee No. 1 and Sole Debenture Holder, was never put into practise by the Noticee No. 1 and the Sole Debenture Holder. The entire proposed transaction is infructuous and therefore, requirements under Regulation 59 of SEBI (LODR) Regulations, 2015 was not required to be fulfilled, accordingly, there is no question of violation of Regulation 15(1)(r) of SEBI (DT) Regulation, 1993, by the Noticee No. 2.</u>*

h. *There is no change or any revision or modification in structure of NCDs in terms of coupon, redemption or otherwise. The Noticee No.1 and the Edelweiss the Sole Corporate Debenture Holder has not indicated any modification in existing terms of the NCDs and never approached us the Noticee no.2 for any amendatory documentation etc. to give effect to the same.*

i. *Edelweiss, the sole corporate debenture holder has all along maintained status quo in all respect and was not interested in changing any terms and conditions of the debenture issue and jeopardize their security and inflow of funds in their accounts. The Commercial terms of the restructuring were never finalized between the issuer and sole debenture holder.*

j. *Further, we invite your kind attention to the letter dated the 16th February, 2023 addressed by Noticee No. 1 to SEBI in response to the SEBI's Email dated the 3rd February, 2023. A copy of the said letter is enclosed hereto as <u>Annexure – 2</u>. It would be observed from the said letter that there is no whisper about the restructuring in the said letter.*

k. *In view of above, it is clear and established that there is no restructuring of any nature whatsoever and therefore provisions Regulation 59 of SEBI (LODR) Regulations are not attracted and as such there is no violation of Regulation 15(1)(r) and 15 (1) (s) of the SEBI (Debenture Trustee) Regulatins,1993 by Noticee No.2.*

l. *It is also very pertinent to note, that Noticee No. 2 has followed up and corresponded with Noticee No. 1 and the Sole Debenture Holder through various mails (more than 90 emails) throughout the years 2020-21, 2021-22 & 2022-23, the table marked and attached as <u>Annexure – 3 Colly</u>, shows the efforts and endeavours initiated by*

Noticee No. 2 towards the compliance. The Mails mentioned above are marked and attached as <u>Annexure – 4</u>.

m. *Further, please find below the series of correspondences by Noticee No. 2 with Noticee No. 1 and the Sole Debenture Holder.*

(i) *Email exchange dated 07.05.2021 Noticee No. 2 took up the matter of informal discussion between Noticee No. 1 and the Sole Debenture Holder with regards to the moratorium period, as was informed to us by the CRA. Vide return email Noticee No. 1, informed us that there has been some discussion with the Sole Debenture Holder for extension of the moratorium period from March, 2019 to March, 2021 and also informed that no formal documentation to give effect to such extension was executed as of that date. The same understanding was also confirmed by the Sole Debenture Holder.*

(ii) *Vide Email dated 07.07.2021 Noticee No. 1 has intimated Noticee No. 2 that they have requested BSE for extension of time for submission of Financials for March, 2021, same was based on our requesting for financials from Noticee No. 1.*

(iii) *Vide email dated November 19, 2021, Noticee No. 1 informed us that March, 2021 and June, 2021 compliance pendency would be shared as soon as possible.*

(iv) *Vide email dated November 24, 2021 Noticee No. 1 requested for further extension of submitting compliances upto December 15, 2021. On the same day Noticee No. 2 intimated to the Sole Debenture Holder that if compliances are not received within timeline of December 15, 2021, then Noticee No. 2 would have to intimate the non – compliance to SEBI and CRA which could affect the rating of company and SEBI may issue SCN and levy huge penalty.*

(v) *Noticee No. 2 have undertaken several follow ups with Noticee No. 1 for submission of Quarterly/ Half Yearly compliances. However, the Noticee No. 1 failed to submit the requisites and accordingly Noticee No. 1 informed SEBI regarding such non-submission of compliances vide letter dated December 22, 2021 and vide letter dated December 29, 2022.*

(vi) Thereafter, vide email dated February 14, 2023, Noticee No. 1, provided us a proposed restructuring note and draft agreements.

(vii) Vide our email dated February 20, 2023, addressed to the Sole Debenture Holder and Noticee No. 1, we highlighted the requirement of adherence to Reg. 59 of SEBI (LODR) Regulations, 2015 for undertaking any restructuring as proposed vide Noticee No. 1's email dated February 14, 2023.

Thereafter, pursuant to the instruction of the Sole Debenture Holders, vide email dated April 11, 2023, Noticee No. 2 issued a Default Notice on Noticee No. 1.The emails mentioned hereinabove as annexed hereto and marked as Annexure – 5 'Colly'.

n. In view of the above regular and voluminous correspondence made by the Noticee No.2 with all the stakeholders and SEBI, Noticee No. 2 has undertaken requisite steps for complying with Regulation 15(1)(s). Accordingly, it is denied that the Noticee no.2 has violated Regulation 15(1) (r) and 15(1) (s) of SEBI (Debenture Trustee) Regulations as alleged in para 22 of the impugned notice referred to above.

o. Further, due to the continuous non-compliance by the Noticee No. 1, vide our email dated 18.05.2023 addressed to the Sole Debenture Holder, we conveyed our willingness to resign as debenture trustee from the transaction of the Noticee No. 1 and have also requested the sole debenture holder to appoint a successor trustee so that we can handover the transaction at the earliest. Copy of the email dated 18.05.2023 is annexure hereto and marked as Annexure – 6.

p. In fact, the Issuer has written to the Noticee No. 2 vide its emails dated 21.08.2023, 22.08.2023 & 23.08.2023 seeking to know the procedure to change the Debenture Trustee. From the same it is apparent that the Issuer is non cooperative with the directions of the Noticee No. 2. Copy of the email is marked and attached as Annexure – 7 'Colly'.

q. Additionally, according to the Press Release dated 11.05.2022 by Brickwork Credit Rating Agency, the Noticee No. 2, informed about the quarterly and half yearly non-compliance of the Noticee No. 1 through the mail dated 02.05.2022. Also, according *to the Press Release dated 05.06.2023, it has been reaffirmed by the Credit Rating Agency that the Issuer being Noticee No. 1 is not co-operating. The Copies of the Press Releases dated 11.05.2022 and 05.06.2023 is marked and attached as Annexure 8 – Colly.*

r. *Further, vide letter dated 16.02.2023 addressed to SEBI by Noticee No. 1 itself has admitted the lapses and delay in adherence to regulatory compliances.*

s. *With reference to Para 27 of the notice, we hereby confirm that we are willing and ready to explain our responses in a personal hearing and provide any further information/ clarification that you may need. Therefore, we request you to provide us an opportunity of personal hearing in the matter.In the circumstances, we humbly submit that the Noticee No. 2 has been dutiful and diligent in complying with the Regulations as prescribed by SEBI, it is the Noticee No. 1 who has not been complying with the Regulations. In addition, as there is no material restructuring of the NCDs, there was no breach in Regulation 59 of LODR, consequently, Noticee No. 2 has not infringed Regulation 15(1) (r) and 15(1) (s) of the Debenture Trustee Regulations.*

10. Vide email dated September 22, 2023, Noticees were initially provided hearing opportunities on October 04, 2023.However, vide email dated September 22, 2023, the Authorized Representative viz. Mr. Satyan Israni, (hereinafter referred to as 'AR') of Noticee 2 has requested for postponement of hearing. Acceding to the request, hearing with respect to Noticee 2 was rescheduled to October 05, 2023. On October 04, 2023, the AR viz. Ms. Simran Kasat, appeared on behalf of Noticee 1 and reiterated the submissions made vide reply dated September 13, 2023. On the scheduled date of hearing, the AR appeared on behalf of Noticee 2 and reiterated the submissions made vide reply dated October 04, 2023 and August 30, 2023.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:

I. **Whether Noticee 1 has violated provisions of Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III, 51(3), 52(1), 54(1), 56 and 59 of LODR Regulations and SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020?**

II. **Whether Noticee 2 has violated provisions of Regulation 15(1)(r) and 15(1)(s) of SEBI (Debenture Trustee) Regulations?**

III. **Do the violations, if any, attract monetary penalty under section 15A(b) & 15HB of the SEBI Act, 1992?**

IV. **If the answer to Issue No. I, II & III is in affirmative, then what should be the quantum of monetary penalty?**

12. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are provided hereunder:

Relevant provisions of SEBI (LODR) 2015

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 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 [listed non-convertible securities] shall make disclosures as specified in Part B of Schedule III.]

(3) 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.

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

[*See* Regulation 51(2)]

A*. 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:*

(1) [expected default in the timely payment of interest, dividend or redemption payment or both in respect of the non-convertible securities and also default in the creation of security for non-convertible debt securities as soon as the same becomes apparent;]

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 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 the information is submitted to stock exchanges

Asset Cover.

54. *(1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred per cent. asset cover or higher asset cover as per the terms of offer document/Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.*

Documents and Intimation to Debenture Trustees.

56. (1) The listed entity shall forward the following to the debenture trustee promptly:

(a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised:

Provided that in the case of debentures or preference shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.

(b) a copy of all notices, resolutions and circulars relating to-
new issue of non-convertible debt securities at the same time as they are sent to shareholders/ holders of non-convertible debt securities;
(ii) the meetings of holders of non-convertible debt securities at the same time as they are sent to the holders of non-convertible debt securities or advertised in the media including those relating to proceedings of the meetings;

(c) intimations regarding:

(i) any revision in the rating;
(ii) any default in timely payment of interest or redemption or both in respect of the non-convertible debt securities;
(iii) failure to create charge on the assets;

(iv) all covenants of the issue (including side letters, accelerated payment clause, etc.)

(d) a half-yearly certificate regarding maintenance of hundred percent asset cover or higher asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed non-convertible debt securities, by the statutory auditor, along with the financial results, in the manner and format as specified by the Board:

Provided that the submission of this certificate is not applicable where bonds are secured by a Government guarantee.]

1A. The listed entity shall also disclose to the Debenture Trustee at the same time as it has intimated to the stock exchange, all material events and/or information as disclosed under regulation 51 of these regulations in so far as it relates to the interest, principal, issue and terms of non-convertible debt securities, rating, creation of charge on the assets, notices, resolutions and meetings of holders of non-convertible debt securities.]

(2) The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.

(3) The listed entity may, subject to the consent of the debenture trustee, send the information stipulated in sub-regulation (1), in electronic form/fax.

Structure of non-convertible 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.

(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:

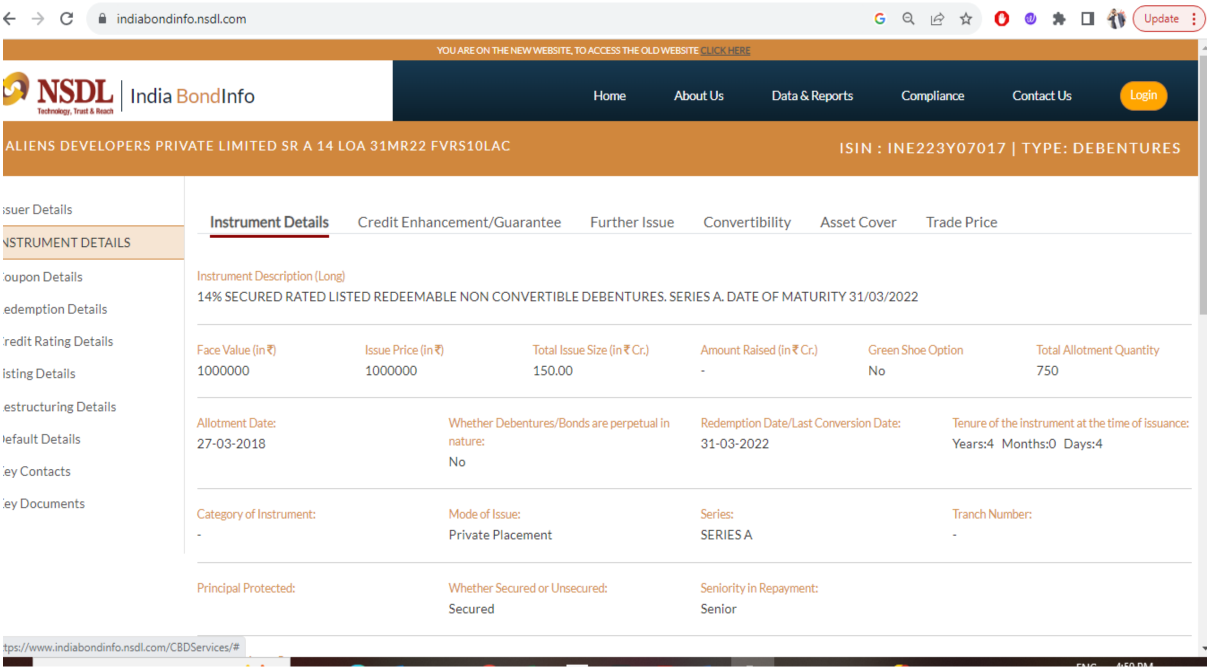
Provided that the listed entity shall provide the facility of remote e-voting to facilitate such consent."

Regulation 15(1)(r) and 15(1)(s) of the SEBI (DT) Regulations:

15(1) It shall be the duty of every debenture trustee to-

(r) inform the Board immediately of any breach of trust deed or provision of any law, which comes to the knowledge of the trustee.
(s) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement), Regulations, 2015, the listing agreement of the stock exchange or the trust deed or any other regulations issued by the Board pertaining to debt issue;"

13. At the outset, the details of the security issued by the Noticee 1, which is the subject matter in the instant proceedings, is given below from the website https://www.indiabondinfo.nsdl.com/ a database on all corporate bonds maintained by NSDL and www.bseindia.com where the said debentures have been listed. As per the information available, I note that the debentures having ISIN INE223Y07017 of issue size was Rs. 150 Cr of which in Series A Debentures of Rs 75 Cr was issued to a sole debenture holder. The face value of the debenture was Rs. 10 lacs and the coupon rate attached is 14% to be paid monthly. The screenshot of https://www.indiabondinfo.nsdl.com/ website is placed below for reference.



14. The details of the issue of Debentures by Noticee 1 is tabulated below:

ISIN	Issue Size	Allotment Date	Date of Listing	Maturity Date	Issue Type
INE223Y07017	Rs. 150 Cr.	27-03-2018	13-04-2018	31-03-2022	Private Placement

Issue I: Whether Noticee 1 has violated provisions of Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III, 51(3), second proviso to 52(1), 54(1), 56 and 59 of LODR Regulations and SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020

15. It was alleged that Noticee 1 ("Issuer") had failed to comply with regulatory requirements w.r.t material change in the structure of debt securities. It was further alleged that Noticee 1 had not disclosed material event including intimation of default to Stock Exchange. It was alleged that Noticee 1 and the investors mutually agreed and decided to change the structure of debt security in terms of payment of interest on it. Any change in the interest payment schedule or redemption is a material change in the structure of debt security which warrant compliance with Regulation 59 of LODR Regulations. In accordance with this Regulation, inter-alia, no material modification in the structure of debt securities can be carried out without prior

approval from the stock exchanges. Noticee 1 has in this regard submitted that Regulation 59 of the LODR Regulations will not apply, as there were no material changes that had occurred and for which prior approval of the stock exchanges would be necessary. Further Noticee 1 submitted that with respect to the purported default by it and a moratorium on interest payments they wished to highlight that there was never any actual formalized arrangement between Noticee 1 and the debenture holder with respect to any moratorium on interest payments. Further due to Covid pandemic, Noticee 1 too had faced financial constraints and the debenture holder had also granted some time to them to streamline its' cash flows in view of the pandemic. Pertinently, this time however cannot be considered a moratorium as additional interest was levied by the debenture holders during this period. Thus, the parties involved, i.e. Noticee 1, and the debenture holder were agreeable to this change and in the scheme of events, However, Noticee 1 did not believe that the changes in question were liable to be disclosed to the stock exchanges.

16. From the above, it is noted that Noticee 1 and its sole debenture holder had modified the terms of debentures through mutual discussion which has resulted in change in structure of cash flows. It is noted that the interest payments were being made differently from what were the original terms of the debentures. Also it is seen that while maturity of the Debentures was March 31, 2022 the same were not redeemed then. The various interest payments being done by the Noticee 1 were being accepted by the Debenture Holder without invoking default even post the maturity date. Thus even if it is accepted that there might have not been a written agreement, by the conduct of the Issuer and Investor, it is seen that there has been changes with respect to the payments of the debentures / structure of cash flow which should have been informed to the Stock Exchange. The Noticees belief that it was not liable to be disclosed to the stock exchange cannot be accepted. Changes in the structure of cash flow of interest payments / extension of maturity of debentures are material changes in accordance with Regulation 59 of LODR Regulations which required prior approval of stock exchanges. Also default in interest payments / redemption of the debentures are required to be informed to the Stock Exchanges in terms of provisions specified under Regulation 51(1) and Regulation 51(2) of SEBI LODR

2015 read with clause A (1) of Part B of Schedule –III and I note that Noticee 1 has not done so.

17. Thus this act of mutually modifying the essential terms of debentures by Noticee 1 and its debenture holder in undocumented form which led to change in structural cash flows of the debentures without following the due procedure and making attendant requisite disclosures goes against the spirit of the provisions specified under Regulation 59 of LODR Regulations along with Regulation 51(1) and Regulation 51(2) of SEBI LODR 2015 read with clause A (1) of Part B of Schedule - III

18. I also note that the debt security issued by Noticee 1 is listed on stock exchange, which means, the same can be sold by existing investor to new investor. But in the present case, there is no information in public domain (i.e. stock exchange disclosure) which indicate that the terms of the security / interest payments being made have been different from what was stated for the debenture. Thus, it would cause prejudice to any new investors who may have bought the security with inadequate information.

19. At this juncture, I would like to rely on Hon'ble SAT ruling in Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, wherein the Hon'ble SAT has observed that, "the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."

20. Further Hon'ble SAT in its order in Appeal No. 583 of 2019 dated July 8, 2020 in the matter of *ICICI Bank Limited vs. SEBI* had held that "The purpose and spirit of disclosure in a disclosure-based regulatory regime is simple and clear; disclose all material and price sensitive events/information and disclose even when one is in doubt. It does not have to be tested with finer legal examination, hairsplitting arguments or semantics".

21. Further, in *Mr. Ankur Chaturvedi vs SEBI* (Appeal no. 434 of 2014) decided on August 04, 2015, the Hon'ble SAT has held that "As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty...."

22. Accordingly, it is essential to maintain transparency regarding the company's functioning and to eliminate information asymmetry. Further correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision.

23. In view of the reasons recorded hereinabove**, I hold that the Noticee 1 has not complied with the requirements prescribed under Regulation 59, Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III of the SEBI (LODR) 2015.**

24. It was further alleged that Noticee 1 has failed to disseminate events/information on the website of the listed entity. Noticee in its reply submitted that it has maintained a functional website and disclosed financial results in separate tab titled "Other Disclosures and Reports", however it was not previously updated due to some technical glitches and the stated the tab was not active. Noticee 1 had subsequently rectified the same on expedited basis.

25. I note from material available on record, that during the examination period, Noticee 1 has not disseminated material events and information on the website of the company. Noticee 1 in its reply has admitted the said fact and attributed the same to technical glitches. The violation was not by any ill intention.

26. I note that Noticee 1 had taken corrective action to enable website function properly, however post examination compliance does not absolve the Noticee 1 from the violation already committed. Thus, the violation had occurred is established.

27. In view of the above facts and admissions of the Noticee, **I hold that Noticee 1 has violated Regulation 51(3) of SEBI (LODR) 2015.**

28. It was also alleged that Noticee 1 has failed to submit the copy of the financial results to DT within the period prescribed. Noticee 1 in its reply has submitted that DT was always in the loop via correspondences and the data shared with BSE was always disclosed to Noticee 2. It was further submitted that the examination period referred was during the Covid-19 pandemic when Noticee 1 along with most other businesses in the country was adversely affected. Noticee 1 submitted that its' key managerial personnel were impacted by the Covid-19 pandemic and struggled with ill-health during portions of this period. Noticee 1 has further averred that the overall functioning of Noticee 1 was impacted and the communications with Noticee 2 may have been affected as well. Also Noticee 1 submitted that Noticee 2 was not prejudiced or its rights were not affected by delay in formally tendering results as Noticee 2 always had clear picture of financial status of Noticee 1 and was apprised of the same and had on several occasions provided its no objection towards project related activites undertaken by Noticee 1.

29. In accordance with Regulation 52(1) of SEBI (LODR) 2015, Noticee 1 was required to submit the financial results within 45/60 days of the end of the quarter to stock exchanges and Debenture Trustees on the same day the information is submitted to stock exchanges. I note that the financials of FY 20-21 was submitted to the debenture trustee vide email dated December 10, 2021. Noticee 1 provided results for the period September 2018 to the period ended 31st March 2022 on March 29, 2023. Also the March 2023 quarter compliances were submitted on August 30, 2023. Also it is seen that the NOCs mentioned were given to various Flat Buyers with respect to Agreement for Sale being entered into with Noticee 1 and for the Buyer

availing Loans towards purchase of the property. I note that NOCs given were not relating to compliance of provisions by Noticee 1.

30. I note from material available on record i.e. the email correspondences between Noticee 1 & Noticee 2 and the dates of submissions mentioned above that there has been considerable delay in submitting the financial results during the examination period. Noticee 1 had *interalia* submitted that the examination period was during the Covid-19 pandemic when most of businesses in the country was adversely affected. Noticee 1 has also submitted that its employees were also affected by the Covid-19 pandemic and struggled with ill-health during the period. In this regard, I note that the aforementioned submission of the Noticee 2 while it can be taken as a mitigating factor while adjudging the penalty does not absolve the Noticee from the violation which is established regarding the delays in reporting of financials.

31. In view of the above facts and admissions, **I hold that Noticee 1 has violated second proviso to Regulation 52(1) of SEBI (LODR) 2015.**

32. It was alleged that Noticee 1 has failed to maintain 100% security cover for secured listed non – convertible securities. Noticee 1 in this regard has submitted that Noticee 1 it has maintained an asset cover of 100% or more for its' secured listed non-convertible debentures. Noticee 1 has submitted statutory auditors' certificates for each quarter from March 2021 till March 2023 certifying that 100% of the asset cover has been maintained by Noticee 1 with respect to its' listed NCDs during the examination period in support of submission.

33. I note that upon perusal of material available on record i.e. statutory auditors' certificates for each quarter from March 2021 till March 2023 certifying that 100% of the asset cover has been maintained by Noticee 1 with respect to its' listed NCDs. From the perusal of asset cover certificates issued by statutory auditors of quarter ending March 2021, September 2021, September 2022 and December 2022. I note that statutory auditor has certified that asset cover is more than cover on market

value on net summary basis. Thus, I am inclined to accept the submissions of the Noticee 1.

34. Thus, in view of the documentary evidences produced before me, **I note that violation with respect to Regulation 54(1) of SEBI (LODR) 2015 is not established.**

35. It was alleged that Noticee 1 has failed to submit the information and documents to the debenture trustee. Noticee 1 in its reply has submitted that it had provided relevant financial details for FY 2020-2021 to debenture trustee Noticee 2 and had subsequently updated Noticee 2 from time to time as to the financial results of Noticee 1. Noticee 1 vide email dated March 29, 2023, has shared an entire folder containing all relevant financial documents from FY 2018 till FY 2023 with Noticee 2. Further as recently as August 30, 2023, financial documents are having been provided to Noticee 2

36. I have perused the material available on record and evidence submitted by the Noticee. In this regard, I note that from the email correspondences between Noticee 1 & Noticee 2 that there was delay in submitting information and documents, asset cover certificates and compliances certificate to Noticee 2. I note that the financials of FY 20-21 and Asset cover certificate for FY21 was shared with the debenture trustee vide email dated December 10, 2021. Further the SEBI compliance report was also shared with Noticee 2 with a delay of more than 6 months and above. With regards to the contention of Noticee 2 that it had submitted all documents on March 29, 2023 and further on August 30, 2023 it is noted that the same were after SEBI had raised queries in the matter. Violation by Noticee 1 of Regulation 51 and second proviso to Regulation 52(1) has already been established on pre-pages.

37. In view of the above, **I hold that Noticee 1 has violated Regulation 56 of SEBI (LODR) 2015.**

38. It was alleged that Noticee 1 has not created and maintained Recovery Expense Fund based on the letter of Noticee 2 and BSE email of February 8, 2023. Noticee 1 in its reply stated that it has communicated the creation of the Recovery Expense Fund to the Bombay Stock Exchange ("BSE") vide its' email dated February 17, 2023, and several correspondences after that. Further BSE has also confirmed receipt of the Recovery Expense Fund vide email dated March 14, 2023. Noticee 1 has in support on his contention submitted a list available on BSE website which contain list of all recovery expense funds created by different companies pertaining to the SEBI circular, wherein name of Noticee 1 appears on the mentioned list at Sr. No. 20, reflecting an amount of INR 75,000/- in its' Recovery Expense Fund.

39. I have perused the material available on record and evidence submitted by the Noticee 1 i.e. BSE email dated March 14, 2023. I note that in accordance with the provisions of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020, the provisions of the aforesaid circular came into force w.e.f. January 01, 2021. Also an additional 90 days time period was given to issuers whose debt securities were already listed on stock exchanges. Thus, Noticee 1 was required to comply with the same by March 31, 2021.

40. In the instant case, I note from perusal of material available on record. BSE has *vide* email dated March 14, 2023 confirmed the receipt of REF. It is pertinent to mention that BSE has vide email dated February 21, 2023 informed Noticee 1 to submit condonation from SEBI for non- creation of REF. Thus, in view of the aforesaid, I note that delayed compliance does not absolve the Noticee 1 from the violation already committed.

41. In view of the foregoing**, I hold that Noticee 1 had violated provisions of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020**.

Issue II: Whether Noticee 2 has violated provisions of Regulation 15(1)(r) and 15(1)(s) of SEBI (Debenture Trustee) Regulations

42. It was alleged that Noticee 1("Issuer") and the investors mutually agreed and decided to change the structure of debt security in terms of payment of interest on it. Any change in the interest payment schedule is a material change in the structure of debt security which warrant compliance with Regulation 59 of LODR Regulations. In accordance with this Regulation, inter-alia, no material modification in the structure of debt securities can be carried out without prior approval from the stock exchanges. Thus, Noticee 2 allegedly failed to intimate the aforesaid non-compliance of Regulation 59 by the Noticee 1 to SEBI, as required under Regulation 15(1)(r) of SEBI (Debenture Trustee) Regulations. Further Noticee 2 also allegedly failed to exercise due diligence to ensure compliance by the issuer as required under Regulation 15(1)(s) of SEBI (Debenture Trustee) Regulations.

43. Noticee 2 in its reply has *interalia* submitted that Noticee 1 and the Edelweiss Group, the Sole Corporate debenture holder (hereinafter referred to as 'Edelweiss/ Sole Debenture Holder') have only discussed mutually without any written and formal communication and agreement. It further submitted that issuer has been making the payment to the Sole Debenture Holder and the same have been accepted by debenture holder on an ad hoc basis. The payments being made to the Sole Debenture Holder by Noticee No. 1 were without following any pre-defined and restructured terms and there was no pre-fixed frequency of time i.e. fixed due dates of payment and exact amount of payment that is to made by the Noticee No. 1. The payments were being made randomly and same was being accepted by the Sole Debenture Holder. Edelweiss, the sole corporate debenture holder has all along maintained *status quo* in all respect and was not interested in changing any terms and conditions of the debenture issue and jeopardize their security and inflow of funds in their accounts. The Commercial terms of the restructuring were never finalized between the issuer and sole debenture holder.

44. In accordance with Regulation 59 of SEBI (LODR), in case there is any change in terms of debt securities like tenure, repayment structure, coupon, etc., the listed company has to take written consent from debenture holders, approval of debenture trustee and approval from stock exchange. In the absence of any proposal for

change in terms from the issuer, and in absence of Board Resolution and Debenture Holder approval, Notice No.2 as a Debenture Trustee has also not given any approval for change in terms of payment of interest. Accordingly, there is no restructuring and as such the question of intimation under Regulation 15 (1) (r) does not arise for violation of Reg. 59 of SEBI (LODR) Regulation, 2015 and therefore there is no violation of Regulation 15(1) (r) and 15(1) (s) of SEBI (Debenture Trustee) Regulations, 1993. The Noticee No. 2 also submitted that it had followed up and corresponded with Noticee No. 1 and the Sole Debenture Holder through various mails (more than 90 emails) throughout the years 2020-21, 2021-22 & 2022-23, which showed the efforts and endeavours initiated by Noticee No. 2 towards compliances. Noticee No. 2 had also undertaken several follow ups with Noticee No. 1 for submission of Quarterly/ Half Yearly compliances and when it failed to submit the requisites accordingly Noticee No. 2 had informed SEBI regarding such non-submission of compliances vide letter dated December 22, 2021 and vide letter dated December 29, 2022. Also Noticee No. 2 submitted that it had informed about the quarterly and half yearly non-compliance of the Noticee No. 1 through the mail dated 02.05.2022 to Brickwork Credit Rating Agency which was mentioned by it in its Press Release dated 11.05.2022. Also the Credit Rating Agency in its Press Release dated 05.06.2023 had reaffirmed that the Issuer Noticee No. 1 is not co-operating.

45. Further, Noticee 2 submitted that it was only vide email dated February 14, 2023, that Noticee No. 1, had provided them with a proposed restructuring note and draft agreements. In response Noticee 2 vide email dated February 20, 2023, addressed to the Sole Debenture Holder and Noticee No. 1, had highlighted the requirement of adherence to Reg. 59 of SEBI (LODR) Regulations, 2015 for undertaking any restructuring as proposed vide Noticee No. 1’s email dated February 14, 2023.

46. Further, Noticee 2 submitted that due to the continuous non-compliance by the Noticee No 1, vide their email dated 18.05.2023 addressed to the Sole Debenture Holder, they had conveyed their willingness to resign as debenture trustee from the transaction of the Noticee No 1 and had requested the sole debenture holder to

appoint a successor trustee so that they can handover the transaction at the earliest. Also Noticee 2 submitted that Noticee 1 vide its emails dated 21.08.2023, 22.08.2023 & 23.08.2023 had sought to know the procedure to change the Debenture Trustee. From the same it is apparent that the Issuer is non cooperative with the directions of the Noticee No. 2.

47. The Noticee 2 submitted that in view of the regular and voluminous correspondence made by the Noticee No.2 with all the stakeholders and SEBI, Noticee No. 2 has undertaken requisite steps for complying with Regulation 15(1)(s). Accordingly, Noticee 2 denied that it has violated Regulation 15(1) (r) and 15(1) (s) of SEBI (Debenture Trustee) Regulations.

48. Further, Noticee 2 submitted that the alleged violation can at the most be construed as an irregularity and placed their reliance upon the judgement dated 25.07.2011 by the Hon’ble SAT in the UPSE Securities Ltd vs SEBI (Appeal no 109 of 2011). Also Noticee 2 further submitted that it has substantially complied with the requirements of the said Regulations and would like to rely upon the Doctrine of Substantial Compliance as laid down by the Hon'ble Supreme Court in CCE, New Delhi vs. Hari Chand Shri Gopal & 0rs. [2010 (182) ECR 0143 (SC] which inter-alia, states that:
“The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to void hardship in eases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements" "Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance, Substantial compliance means actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed."

49. In the instant case, I have carefully gone through the various submissions made by Noticee 2. It is noted from the material on record that Noticee 2 has in its role as the Debenture Trustee across the years been corresponding with Noticee 1 and the Debenture holder and has also brought the non-compliances by Noticee 1 to attention of Credit Rating Agency and to SEBI. Noticee 2 had written to SEBI in the matter in 2021 and 2022 and it is noted that the present case originated based on examination of the Noticee 2's letter. Further in the instant case for the Debentures issued there is only one Debenture holder, that too a Corporate investor, who appears to have been in dialogue with the Issuer Noticee 1 and had been accepting the interest payments without raising default / complaint. Noticee 2 had not received any formal document seeking its approval for any change in terms of the Debentures and when it received draft of restructuring proposal Noticee 2 had highlighted to Noticee 1 and the Debenture Holder the requirement of adherence to Reg. 59 of SEBI (LODR) Regulations, 2015 for undertaking any restructuring.

50. Thus, in view of the submissions made by Noticee 2 and the reasons recorded hereinabove, **I hold that violation of Regulation 15(1)(r) and 15(1)(s) of SEBI (Debenture Trustee) Regulations by Noticee 2 is not established.**

Issue III. Does the violations, if any, attract monetary penalty under section 15 A(b) & 15HB of the SEBI Act, 1992

51. In light of findings and observations made with respect to the Noticees brought out in the foregoing paragraphs, I hold that Noticee 1 has violated applicable SEBI Regulations and Circulars namely Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III, Regulation 51(3), second proviso to Regulation 52(1), Regulation 56 and Regulation 59 of LODR 2015 and SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020. The said violations make the Noticee 1 liable for monetary penalty under the provisions of Section 15 A(b) & 15HB of the SEBI Act. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which inter-alia has held that -*

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

The relevant provisions of the aforementioned Section 15A(b) and Section 15HB of the SEBI Act are as under:

SEBI Act, 1992

***Penalty for failure to furnish information, return, etc*.**
15A. If any person, who is required under this Act or any rules or regulations made thereunder, —
(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations 65[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

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 IV. If the answer to Issue No. I, II & III is in affirmative, then what should be the quantum of monetary penalty?

52. While determining the quantum of penalty under the provisions of Section 15A(b) and 15HB of the SEBI Act, it is important to consider the relevant 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-I 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.

[111][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.]

53. In the present matter, I note from the material available on record, it is difficult to quantify the disproportionate gains made by the Noticee 1. Further I note that, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee 1 in the instant matter. As regards repetitive nature of default, I note that no past action has been taken by SEBI against the Noticee 1. I also take into consideration the fact that corrective actions have been taken by Noticee 1. Also I note that in this particular matter there was only a single Debenture holder that too a corporate entity who was in dialogue with the Issuer Noticee 1 and thus aware of the matters. Also the Noticee 1's submissions regarding Covid hardships is being taken as a mitigating factor. Thus, I feel appropriate to levy a penalty, which is commensurate with the nature of violation committed by the Noticee 1 and which acts as a deterrent factor for the Noticee 1 and others in protecting the interest of the investors in securities market.

ORDER

54. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read

with Rule 5 of the Adjudication Rules 1995, I hereby impose following penalty under section 15HB of the SEBI Act, 1992 and 15A(b) of the SEBI Act, 1992 on Noticee 1:

Noticee	**Violative Provisions**	**Amount of penalty (in ₹)**
Noticee 1- Aliens Developers Private Limited	Regulation 51(1) and Regulation 51(2) read with clause A(1) of Part B of Schedule-III, Regulation 51(3), second proviso to Regulation 52(1), Regulation 56 and Regulation 59 of SEBI (LODR) 2015. SEBI circular no SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020	7,00,000

I am of the view that the aforesaid penalty is commensurate with the violation/allegations levelled against Noticee 1.

55. Noticee 1 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

56. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

57. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to Noticees and also to the SEBI.

Place: Mumbai	**SHASHI KUMAR VALSAKUMAR**
Date: December 29, 2023	**ADJUDICATING OFFICER**