BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/BS/RG/2023-24/29321

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

In respect of:
Catalyst Trusteeship Limited
(PAN: AACCG4147R)
Windsor, 6th Floor, Office No. 604
C.S.T. Road, Kalina, Santacruz (East)
Mumbai-400098

In the matter of Utkarsh Small Finance Bank Ltd.

A. FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received a *suo motu* settlement application for violation of the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**SEBI LODR Regulations**") from Utkarsh Small Finance Bank Ltd. (hereinafter referred to as "**USFB"**), to settle certain disclosure related violations with regards to the issue of Non-Convertible Debentures (hereinafter referred to as "**NCDs"**). To examine whether there were any violations of the relevant provisions of Companies Act, 2013 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 read with Section 59 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (hereinafter referred to as "**ILDS Regulations**") with respect to issuance of NCDs by the USFB (hereinafter referred to as the "**Noticee**"), during the period January 21, 2017 to May 17, 2021, an investigation was carried out. During investigation,

certain contraventions with regard to the public issue guidelines under the Companies Act, 2013 and ILDS Regulations, with respect to issuance of NCDs of the ISIN INE735W08012 by USFB, were observed. Also, during the investigation it was observed that Catalyst Trusteeship Limited (hereinafter referred to as the "**Noticee**") had acted as a Debenture Trustee to the aforesaid issue of NCDs of ISIN INE735W08012 by USFB. Therefore, the role of the Noticee was also investigated in the matter and it was observed that the Noticee had violated Regulation 15(1)(s) of Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**DT Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed Ms. Geetha G as the Adjudicating Officer under Section 19 read with sub-section (1) of Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules"), vide communique dated May 25, 2022, to enquire into and adjudge under Section 15HB of SEBI Act for the alleged contraventions of Regulations 15(1)(s) of DT Regulations by the Noticee. Upon transfer of Ms. Geetha G, vide communique dated September 19, 2022, Shri Amit Kapoor was appointed as the Adjudicating Officer. Subsequently, the undersigned has been appointed as Adjudicating Officer vide communique dated October 06, 2022.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. The show cause notice (hereinafter referred to as "**SCN")** bearing no. EAD1/SM/RG/55896/1/2022, dated November 03, 2022, was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15HB of the SEBI Act for the alleged violations of Regulations 15(1)(s) of DT Regulations. The said SCN was served upon the Noticee through Speed post and email.

4. **The allegations levelled against the Noticee in the SCN:**

From the Shelf Disclosure Document (hereinafter referred to as "**SDD**") of the aforesaid issue of NCDs of ISIN INE735W08012 by USFB, it was noted that Noticee was appointed as Debenture Trustee to the aforesaid issue of NCDs by USFB. Therefore, the Noticee was asked to provide details related to the issuance of NCDs bearing ISIN no. INE735W08012 by USFB. The Noticee had replied vide emails dated May 05, 2021, August 05 & 09, 2021 and September 17, 2021. Vide the aforesaid replies, the Noticee submitted that it had received the Beneficiary Position statement (hereinafter referred to as "**BENPOS statement**") dated July 20, 2018 and July 27, 2018 for the said NCDs on August 09, 2021 from USFB. In this case, it was observed that aforesaid issue of NCDs was originally intended to be a privately placed issue where the NCDs were allotted to Karvy Capital Limited (hereinafter referred to as "**KCL**") on July 11, 2018. However, due to the subsequent transfer of NCDs by KCL on July 20, 2018 to 355 investors, the issue attracted the provisions of the public issue norms and it was alleged that USFB had violated the following provisions of the ILDS Regulations in respect of the public offer of NCDs. The debentures were subsequently listed on Bombay Stock Exchange on 27 July, 2018.

5. **Role of the Noticee**

As per regulation 15(1)(s) of DT Regulations, "*it shall be the duty of debenture trustee to exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, SEBI (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*". Therefore, it was the Noticee's prerogative to ensure compliance by USFB with the relevant laws and Regulations. In the instant case, it was alleged that the Noticee did not exercise necessary due diligence to ensure compliance by USFB with the Companies Act, 2013, ILDS Regulations and with the terms set out in the SDD of the said issue. Hence, it was alleged that the Noticee had violated Regulation 15(1)(s) of DT Regulations.

6. Vide its email dated November 29, 2022, the Notice replied to the allegations levelled in the SCN as follows:

   i. *The term 'due diligence' is a relative term and in absence of specific guidelines, the parameters thereof need to be considered as to how a reasonable / prudent person may act in a given situation. As such, in the context of ensuring the compliance of provisions of Companies Act, 2013 and / or SEBI Regulations by USFB, specific clauses have been incorporated in the Debenture Trustee Agreement dated 06.07.2018 and also in the Debenture Trust Deed dated 09.07.2018. The text of relevant clauses of the said documents are as follows:*

Debenture Trustee Agreement 06.07.2018:

2.3 The Company shall comply with, and furnish such information on a regular basis as is required under, the provisions of the Debenture Trustees Regulations, Debt Listing Regulations, SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015 on format of Uniform Listing Agreement (as amended from time to time) read with the SEBI LODR Regulations, the Companies Act, 1956, the Companies Act, 2013 and other applicable laws.

Debenture Trustee Deed dated 09.07.2018:

Clause 3.5 (h)(vii)(E) – Affirmative Covenants

The company shall:

(E) comply with:

(1) all laws, rules, regulations and guidelines (including but not limited to environmental, social and taxation related laws), as applicable in respect of the Debentures and obtain such regulatory approvals as may be required from time to time;

(2) Debenture Trustees Regulations as in force from time to time, in so far as they are applicable to the Debentures and furnish to the Debenture Trustees such data, information, statements and reports as may be deemed necessary by the Debenture Trustee in order to enable them to comply with the provisions of Regulation 15 thereof in performance of

their duties in accordance therewith to the extent applicable to the Debentures;

(3) the provisions of the Act in relation to the issue of the Debentures;

As such it will be observed that the duty is cast upon the issuer / USFB to comply with the provisions of all relevant Laws, Regulations and to furnish to specific declaration to that effect to the debenture trustee.

ii. *With a view to ensure compliance by the issuer companies, including USFB, Catalyst has devised a procedure to obtain quarterly basis, the confirmation / declaration from debenture issuer companies, about compliance of all relevant laws, SEBI Regulations. Similar quarterly confirmations have been obtained from USFB from time to time.*

iii. *While we do not offer our comments on the point whether the present issue of NCDs was a 'deemed public issue' or otherwise, it is seen that the said conclusion is drawn mainly on the fact that the first allottee transferring the debentures to 355 investors. In this context, it is submitted that the NCDs are 'transferable' and 'listed' on Stock Exchange.*

As such, it is not within the purview of debenture trustees to monitor the transfer of debentures.

iv. *As per Clause 3 of SEBI Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2019/68 dated May 27, 2019 on the subject of 'Enhanced disclosure in case of listed debt securities'*

3. Furnishing of updated list of debenture holders to the DTs by Issuers / Registrars to an Issue and Share Transfer Agent (RTA)

a. RTAs/ Issuers shall henceforth forward the details of debenture holders to the DT at the time of allotment and thereafter by the seventh working day of every next month in order to enable DT to keep their records updated and to communicate effectively with the debenture holders, especially in situations where events of default are triggered"

It will be seen that the obligation of submitting the BENPOS to debenture trustee is on RTA / Issuer and the object to furnish such information, is to enable the DT to keep its records updated with DT with a view to take prompt action in case of defaults such as communicating important developments, conveying meetings, seeking instructions from time to time. As such, carrying out microscopic examination of such BENPOS by debenture trustee, for other purposes like transfers of debentures, which is permissible as per the nature of debentures, is certainly not expected.

In view of the same, it may not be proper to attribute any lapse on the part of Catalyst for delay in getting the BENPOS from RTA / Issuer and or increase in number of debenture holders, in the context of 'due diligence' by Catalyst.

v. It is submitted that till receipt of the Notice, Catalyst was not aware of violation of provisions of Companies Act, 2013, SEBI Regulations by USFB, particularly in view of the specific and positive confirmation by USFB about compliance, in its recent statement. However, in case SEBI concludes violation of said provisions, on the part of USFB, then appropriate further action will be taken against USFB in accordance with the provisions of debenture trust deed.

7. In the interest of natural justice, an opportunity of hearing was provided to the Noticee on August 10, 2023. The Noticee's Authorised Representative (hereinafter referred to as "**AR**") appeared for hearing and reiterated the submissions made vide their letter dated November 29, 2022. Further, the Noticee made additional submissions during the course of hearing and submitted that detailed written submissions would be forwarded to SEBI by 18 August, 2023.

8. Vide its email dated 18 August, 2023, the AR of the Noticee made additional submissions which are summarised as below:

I. ***The Notice is vague, unclear and ambiguous since it does not disclose the: (a) exact nature of charge against the Noticee; and (b) time period of violation by the Noticee***

a) No enquiry/proceedings can be sustained on vague charges [Canara Bank vs. Debasis Das, (2003) 4 SCC 557 @ para 15; Anant R. Kulkarni vs. Y.P. Education Society and Ors., (2013) 6 SCC 515 @ para 16; Gorkha Security Services vs. Govt. of NCT of Delhi, (2014) 9 SCC 105 @ para 21 and Networth Stock Broking v. SEBI, SAT Order dated June 19, 2012 in Appeal No. 5 of 2012@ para 6]. Proceedings based on vague and unspecific allegations are in contravention of the principles of natural justice and any order passed thereon is wholly vitiated.

b) SCN neither sets out the standard that the Noticee was required to meet under law, nor does it set out the exact manner in which the Noticee has allegedly failed to meet the expected standard.

c) SCN does not set out the exact time period for which the Noticee is held to be in violation of Regulation 15(1)(s) of the DT Regulations. It is submitted that the absence of such period of violation, by itself, is a violation of the principles of natural justice and is vitiated [Hussainmiya vs. State of Gujarat, 1999 CriLJ 2401 @ para 8];

d) The SCN ipso facto fastens liability on the Noticee for the contraventions of USFB.

II. *Notice is issued against the Noticee only in November 2022 (i.e., after a delay of more than 4 years from the alleged date of cause of action which occurred in July, 2018). This is in violation of principles of natural justice.*

III. *The SCN: (a) does not contain any particulars of any alleged action or inaction by the Noticee which can be said to be in breach of Regulation 15(1) (s) of the DT Regulations; (b) fails to make the Noticee understand the exact charge it is required to meet/ answer; and (c) does not disclose the period of alleged violation, the Notice is vitiated for want of natural justice, and ought not to be proceeded with on this ground alone.*

IV. *The SCN finds its genesis in the settlement application filed suo moto by USFB in February 2021 for certain non-compliances under the LODR*

Regulations. The said settlement application was not provided to the Noticee during the inspection of documents held on January 4, 2023, on the grounds that the same is third party information and thus, confidential. Since the premise of the entire matter is USFB's settlement application, the same forms an integral part of the documents that are relevant to and directly have a nexus with the present matter and the role of the Noticee in the same. Accordingly, a copy of the same is required to be provided to Noticee to adequately address the charges raised against it, since any document which has a nexus or is relevant to the initiation of proceedings against the Noticee is to be provided to the Noticee [T. Takano v. SEBI, (2022) 8 SCC 162 @ paras 50 and 62].

V. Submissions based on merit:

a) The Noticee has satisfactory and adequately discharged its obligation of exercising reasonable degree of due diligence in the matter

i. *While the DT Regulations under Regulation 15(1)(s) require a DT to exercise due diligence, it does not set out the standards of diligence or duty of care that a DT is required to meet. Absent any specific requirement, the salient principles laid down by various courts would govern what is the expected standard of due diligence. Such established principles are set out below:*

- *The ambit of due diligence is within what is expected from a reasonable and prudent person.*
- *The expected standard of due diligence is not a straight-jacket formula and would be the diligence or care a reasonable person would employ in a given situation; and*
- *The standard of due diligence i.e. reasonableness and prudence do not by themselves imply casting doubts or suspicion without reason*

ii. *In this context, the Noticee has relied on the following judgements: [Chander Kanta Bansal vs. Rajinder Singh Anand, (2008) 5 SCC 117 @ para 16; Almondz Global Securities Limited v. SEBI, SAT Order in Appeal Nos. 275, 276, 301 of 2014 and 207 of 2015 @ paras 47 and 52; JM Mutual Fund and JM Capital Management Pvt. Ltd. vs. Securities and Exchange Board of India, (2005) 65 CLA 193 @ para 40; Imperial Corporate Finance & Services Pvt. Ltd., Mumbai v. Securities and Exchange Board of India, Mumbai, SAT Order dated July 30, 2004 in Appeal No.56/2003 @ para 19; In the matter of PNB Investment Services Ltd. (pertaining Initial Public Offer of Taksheel Solutions Ltd.), SEBI Order WTM/RKA/ID-8/96/2014 dated August 5, 2014 @ para 10].*

b) Documentation entered for the NCD issue ensured due compliance by USFB with the terms thereof and with relevant laws

i. *DT had incorporated various confirmations/ representations made by USFB in the Disclosure Document, DTA and DTD which stipulate that USFB was in compliance with all the provisions of applicable law.*

ii. *USFB was responsible to keep the DT aware of any information/ event in order for the DT to comply with its obligations under the DT Regulations (See, Clause 6.3.1. (h)(vii)(E) @ pg. 60-61 of the Disclosure Document). In this regard, the Disclosure Document also specifically provides that any deviation from the terms of the Disclosure Document must be informed to the DT immediately (See, clause 6.3.4(b) @ Page 65 of the Disclosure Document). As the DT cannot be expected to presume or foresee any deviation or contravention of the terms of the Disclosure Document in the absence of any notice or knowledge of non-compliance and without sufficient ground or basis, this clause functions as a* *mechanism to facilitate the due diligence responsibilities of the DT.*

c) ***The Noticee was not a party to the arrangement between USFB and KCL***

i. *The entire arrangement of the down selling and such arrangement was solely and entirely between KCL and USFB and the Noticee was not a party to the same. There is not a single finding in the Investigation Report on any facts or circumstance that even remotely suggest that the Noticee was aware of, or was party to, the down selling of NCDs by KCL to 355 investors. The Investigation Report also does not allege any inaction or lapse by the Noticee, in the absence of which, the Noticee could have discovered or could have become aware of the down selling by KCL to 355 investors in breach of the applicable provisions of law.*

ii. *In view of the above and per the information available with the Noticee, there was nothing to indicate foul play or arouse suspicion that a regulated entity such as USFB would, in alleged contravention of the NCD documentation, representations made therein and law, undertake a public issuance of NCDs. In this regard reference is drawn to the relevant case law jurisprudence (i.e., the decisions in: (a) Almondz vs. SEBI, Appeal Nos. 275, 276, 301 of 2014 and 207 of 2015 @ para 47; and (b) PNB WTM Order, WTM/RKA/ID-8/96/2014 dated August 5, 2014@para 40) which state that ambit due diligence does not include looking through lens of suspicion without any basis.*

d) ***BENPOS statement was not available with the Noticee***

i. *The obligation to provide the updated list of debenture holders to the DT's by the issuers/ registrars to an issue and share transfer agent first arose only vide SEBI circular dated*

May 29, 2019 (Enhanced Supervision of Debt Listed Securities).

ii. *Even the above requirement, if applicable at the time of issuance of the NCDs, would only have resulted in the Noticee being provided the BENPOS statement on the seventh day of the subsequent month (in this case, on or about August 7, 2018, i.e., after the listing of the NCDs on the BSE), and could not have indicate any down selling which may have taken place in July 2018*

iii. *Prior to the May 2019 Circular, basis Regulation 14 of the DT Regulations read with model trust deed (SH-12), the trust deed was required to be entered into between the DT and the issuer under Rule 18(5) of the Companies (Share Capital and Debentures) Rules, 2014, and the issuer was required to furnish only quarterly report to the DT containing an updated list of the names and addresses of the Debenture Holders. In the present case, Clause 6.3.1(h)(ii) @ Page 59 of the Disclosure Document,*

iv. *Therefore, both legally and contractually the first BENPOS statement the Noticee was required to receive was of the first quarter post allotment of the NCDs which was only in September 2018. As such, the Noticee first received the BENPOS statement as of September 28, 2018 from USFB vide email dated May 7, 2021. At this time the NCDs were already listed, and the BENPOS statement as of September 28, 2018 would not indicate any down selling which may have taken place in July 2018*

e) Penalty not warranted in the present case & Section 15J factors

i. *Noticee has not made any disproportionate gain, caused any loss to any investors and has not committed repetitive default in the instant case.*

ii. *SEBI vide its order dated April 25, 2023 has only imposed a penalty of 1.5 Lakhs on KCL. Considering the penalty imposed on the principal party for the alleged down selling of NCDs and considering the Noticee was not involved in the arrangement between KCL and USFB, a lenient view should be taken (alternatively, a warning or lesse penalty would be a proportionate action in the given case).*

iii. *Judicial precedents demonstrate that in cases where non-compliance is technical or venial in nature, while the law may entitle the regulatory authority to impose a penalty, a penalty need not necessarily be imposed. [Hindustan Steel Ltd. v. State of Orissa, AIR 1970 SC 253 @ para 8; Cabot International Capital Corporation v. Adjudicating Officer, SEBI, (2001) 40 CLA 326 @ para 28]. In such circumstances, the role of a regulator is to rehabilitate and bring to an end litigation, which may not cast a stigma on the appellant, who otherwise, admittedly, has maintained a good track record [Reliance Industries Limited v. SEBI, [2004] SAT 68 @ para 11]*

iv. *In a matter (albeit with respect to a merchant banker) related to violations of not conducting adequate due diligence, the Hon'ble Whole Time Member of SEBI has taken the view that a warning is commensurate with the said allegations. Please see below the relevant judgment in this regard [M/s. Virvo Financial Services Private Limited (merchant banker) in the matter of rights issue of M/s. Ram Kaashyap Investments Limited, WTM/RKA/SRO/54/2013 decided on December 20, 2013.*

v. *SEBI has, depending on facts and circumstances, in cases where the violation is venial and that there is no established charge of unfair gain/ advantage, taken a lenient view in the matter and held that a warning would suffice [Shri Parasram Holdings Private Limited (stock broker),* *WTM/GM/NRO/NRO/12473/2021-22 dated July 6, 2021 @ paras 27 and 28].*

D. CONSIDERATION OF ISSUES AND EVIDENCE

9. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/ submissions of the Noticee made during the instant proceedings before the undersigned. In the light of the aforesaid factual position, I proceed to adjudicate the matter, and find that essentially, the following issues arise for determination in the instant matter:
    - *i. Issue 1: Whether the Noticee has failed to comply with Regulation 15(1)(s) of DT Regulations?*
    - *ii. Issue 2: If answer to the aforesaid question is affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15HB of the SEBI Act?*
    - *iii. Issue 3: If answer to the aforesaid question is affirmative, what should be the quantum of the monetary penalty?*

10. Before proceeding with the matter on merits, I would first deal with the preliminary objections raised by the Noticee with respect to:

10.1. The Noticee has submitted that the SCN is vague as it does not disclose the exact nature of charge against the Noticee and the time period of violation by the Noticee. The Noticee in support of its contention has quoted the judgments, viz; Canara Bank vs. Debasis Das, (2003) 4 SCC 557 @ para 15; Anant R. Kulkarni vs. Y.P. Education Society and Ors., (2013) 6 SCC 515 @ para 16; Gorkha Security Services vs. Govt. of NCT of Delhi, (2014) 9 SCC 105 @ para 21 and Networth Stock Broking v. SEBI, SAT Order dated June 19, 2012 in Appeal No. 5 of 2012@ para 6].

10.2. In this context, I would like to note that the SCN clearly states the factual context of issuance of aforesaid NCDs, which was meant to be a private placement but ultimately turned out to be a public issue because of downselling of NCDs by KCL to 355 investors. The SCN clearly mentions that the Noticee had failed to exercise necessary due diligence as per the provisions of Regulation 15(1)(s) of DT Regulations to ensure compliance by USFB with the Companies Act, 2013, ILDS Regulations and with the terms set out in the SDD of the said issue.

10.3. Also, the SCN has mentioned that the transfer of NCDs by Karvy Capital Limited to 355 investors took place on July 20, 2018 while the NCDs were listed on July 27, 2018. Hence, the contention of the Noticee that the SCN does not mention the period of violation, is devoid of merit.

10.4. Further, the Noticee has submitted that there is a delay of more than 4 years in issuance of SCN since the violation took place. Here, I would like to note that the irregularities with respect to issuance of aforesaid NCDs came to SEBI's notice only after the *suo moto* settlement application was filed by USFB in February 2021. Subsequently, further investigation was carried out and the SCN was issued against the Noticee in November 2022. Therefore, I do not find any merit in this submission of the Noitcee.

10.5. The Noticee has further objected that SEBI did not provide it with the *suo moto* settlement application filed by USFB in February 2021. In this regard, the Noticee has referred to the judgment of Hon'ble Supreme Court in T. Takano vs SEBI. I note from the material available on record that the aforesaid settlement application filed by USFB was with respect to violation of SEBI LODR Regulations. Subsequently, SEBI found violations of ILDS Regulations by USFB. Therefore, the violations and legal provisions pertaining to the SCN in the instant matter are different from the proceedings pertaining to the settlement application. Therefore, the Noticee's objection cannot be sustained and I conclude that the relevant documents pertaining to the case have been provided to the Noticee.

11. Having addressed the preliminary contentions of the Noticee, I will now proceed to deal with the merits of the case as regards the allegations made against the Noticee and its submissions in this regard.

12. The first issue to be addressed is as follows:

    Whether the Noticee has failed to comply with the Regulations 15(1)(s) of Debenture Trustees Regulation?

13. The SCN alleges that the Noticee being a Debenture Trustee to the issue of NCDs of ISIN no. INE735W08012 by USFB, which was originally intended to be a private placement, but due to the subsequent transfer of NCDs by KCL to 355 investors attracted the provisions of the public issue norms. In the process, the Noticee is alleged to have failed to exercise necessary due diligence to ensure compliance by USFB with the relevant laws and Regulations and hence alleged to have violated Regulation 15(1)(s) of DT Regulations.

14. The Noticee in its response to the SCN, has submitted that the standards of due diligence do not by themselves imply casting doubts or suspicion without reason and that it was issuer's responsibility to keep the Noticee informed about any deviation from the terms of SDD.

15. Further, the Noticee has submitted that basis Regulation 14 of the DT Regulations read with model trust deed (SH-12), the issuer was required to furnish only quarterly report to the Debenture Trustee containing an updated list of the names and addresses of the Debenture Holders. Therefore, the Noticee was required to receive the BENPOS statement only in September 2018. As such, the Noticee first received the BENPOS statement as of September 28, 2018 from USFB vide email dated May 7, 2021. At this time the NCDs were already listed, and the BENPOS statement as of September 28, 2018 would not indicate any down selling which may have taken place in July 2018.

16. I tend to agree with the above submission of the Noticee that the Noticee could not have found out about the downselling of NCDs by KCL to 355 investors even

if it would have received the BENPOS statement dated September 28, 2018, in time. It is not a disputed fact that the Noticee received the BENPOS dated September 28, 2018 on May 07, 2021. It is pertinent to mention that understanding the law in its true spirit would entail that the Noticee should have asked for the BENPOS statement in a timely manner.

17. DT Regulations cast various duties on the Debenture Trustees to ensure that the interests of the debenture holders are protected. In context of the present case, the Debenture Trust Deed contains following clauses:

    17.1. Clause 1.4 of Debenture Trust Deed (DTD) inter alia states as under:

    "*The Debenture Trustee notes and acknowledges the appointment of Karvy Capital Limited as the Debenture Holders' Representative"*

    17.2. Schedule II – Part B of DTD provides for "Conditions Subsequent" which inter alia includes:

    "(*a) the Company shall ensure that the Debentures are credited into the demat accounts of the respective Debenture Holders within 2 (two) Business Days from the Deemed Date of Allotment of the Debentures"*

18. It is noted from the facts of the case that KCL was appointed as a Debenture Holder Representative for the aforesaid issue. The said fact alone will not cast constructive knowledge that the Noticee could have been aware that debentures allotted to KCL may be downsold to other investors. It calls for meeting of minds between the Noticee and KCL, which is not seen clearly in this case and this fact alone will not impute knowledge on part of the Noticee about downselling of NCDs by KCL.

19. The requirement of receiving the BENPOS statement is cast on the Noticee as a quarterly requirement. I also find that vide a subsequent circular the requirement is to conduct the exercise on a monthly basis. Hence, the requirement of law in its bare literal sense cast the responsibility on a quarterly basis. However, this is not the true spirit of the Regulations.

20. Further, the Noticee has submitted that in the matter of rights issue of M/s. Ram Kashyap Investments Limited (albeit with respect to a merchant banker), with respect to the violations of not conducting adequate due diligence, the Hon'ble Whole Time Member of SEBI has taken the view that a warning is commensurate with the said allegations. I note that each case has unique facts and circumstances pertaining to it. Also, based on facts and circumstances of the present case, no parallel can be drawn in present proceedings with the aforesaid matter.

21. I note from the material available on record that even if the Noticee would have received the aforesaid BENPOS statement in time, it is not clear whether the Noticee would be able to identify the downselling of NCDs by KCL to 355 investors before listing. This is more so evident as the investigation report does not allege that that the Noticee was acting hand in glove with KCL in making the allotment flouting the norms of public issue. In the absence of any collusion between the issuer, Noticee and KCL or evidence indicating knowledge of the impending down selling by KCL, the only allegation against the Noticee in the peculiar facts and circumstances of the present case is that as a Debenture Trustee the Noticee has failed to exercise due diligence in the handling of the issue by USFB.

22. Therefore, in view of the above, considering the fact that as per law the receipt of BENPOS statement is mandated on quarterly basis at the relevant point in time, it cannot be clearly concluded that the Noticee did not exercise due diligence to ensure compliance by USFB with the relevant rules and regulations. In view of the same, the violation of the provisions of Regulation 15(1)(s) of DT Regulations which states that "*it shall be the duty of debenture trustee to exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, SEBI (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",* cannot be established against the Noticee.

23. Since, the violations are not established, Issue – 2 and 3 do not require any further consideration.

E. ORDER

24. Accordingly, the Adjudication proceedings initiated against the Noticee vide SCN dated November 03, 2022 stand disposed of without any penalty.

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

Date: September 20, 2023
Place: Mumbai

BIJU S
ADJUDICATING OFFICER