

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/GN/2024-25/30670]**

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

In respect of:

**Vistra (ITCL) India Limited
(PAN: AAACI6832K)**

In the matter of

Vistra (ITCL) India Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of M/s Vistra ITCL (India) Limited (hereinafter referred to as **Noticee / Vistra / DT**) Debenture Trustee (**DT**) from November 26, 2021 to December 03, 2021. The period covered in the inspection was from April 01, 2020 to September 30, 2021 (hereinafter referred to as '**Inspection Period**').
2. The scope of the inspection was to, inter alia, verify whether the Noticee had complied with the provisions of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as **SEBI (DT) Regulations**) and guidelines/circulars issued by SEBI from time to time.
3. Based on the findings of Inspection conducted by SEBI and the response of the Noticee dated March 22, 2022 submitted to SEBI, following alleged non-compliances were observed of SEBI (DT) Regulations and guidelines/circulars issued by SEBI from time to time.

S. No.	Alleged Violations	Regulatory Provisions
1	Initial due diligence	Regulation 13(a), 15(6) of SEBI (DT) Regulations, clause 4 of Code of Conduct of SEBI (DT) Regulations, and clause B(6) SEBI circular numbered

		SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.
2	Asset cover Certificate	Regulation 15(1)(t) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.
3	Poor Tracking of Interest Payments	Clause 2 and clause 3 of SEBI circular numbered SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 and Clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993.
4	Centralized Database for Corporate Bonds/ Debentures	Clause C of Annexure-I of SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013 and Clause-10 of Annexure-III of SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide communique dated January 18, 2023, appointed the undersigned as the Adjudicating Officer under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**) read with Sub-section 1 of Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **SEBI Rules**) to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter referred to as "**SCN**") dated January 31, 2023 was issued to the Noticee under rule 4(1) of the SEBI Rules to show cause as to why an inquiry should

not be held against it in terms of Rule 4 of SEBI Rules read with Section 15-I of SEBI Act and penalty, if any, be not imposed on Noticee under Section 15HB of the SEBI Act.

6. The non-compliances observed during the inspection and details of the violations alleged to have been committed by the Noticee are furnished hereunder: -

a) Initial due diligence

7. During inspection it was observed that the due diligence certificate was issued on September 08, 2021, the same day when the debenture trustee agreement had been executed. It was observed that DT allegedly started carrying out the activities associated with trusteeship prior to the execution of the written agreement, viz. Debenture Trustee Agreement (**DTA**). Therefore, it is alleged that DT is in violation of Regulation 13(a) of SEBI (DT) Regulations, 1993.
8. Further, in the case of Indel money limited it was observed that Issuer has allegedly recommended the Chartered Accountant (CA) and Company Secretary (CS) to be empaneled with the DT prior to the execution of DTA.
9. It is also observed that the same CA has given the security cover and asset cover on the basis of which the DT has issued Due Diligence certificate which have allegedly compromised the independence of due diligence exercised by the DT. The same CS recommended by the issuer has given the MCA search report.
10. In view of the same it is alleged that Noticee is in violation of Regulation 13(a), 15(6) of SEBI (DT) Regulations, clause 4 of Code of Conduct of SEBI (DT) Regulations, and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

b) Asset cover Certificate

11. During inspection it was observed that the Noticee uses services of its empaneled agencies for preparation of Asset cover certificate as per below process:
 - i. The DT sends email to issuer companies directing them to submit the quarterly Asset Cover Certificate from independent CA empaneled with DT. Such list of empaneled CAs along with their coordinates is shared with the issuers in advance. If the certificate is received from the empaneled CA Firm, the same is verified and moved forward to

Compliance team of DT for submission to stock exchange(s). For example, in the case of Phoenix Tech zone, on enquiring about the Asset cover certificate prepared by external agency, DT replied that the Asset cover certificate is received from company in June, and not from empaneled agency. The DT also shared the reminder email sent to the company which also contained the list of empaneled CAs.

ii. Cases wherein Asset Cover certificate is received from the Statutory auditor of the Company or from any other independent CA firm not empaneled with DT, in such cases it forwards received certificates to its empaneled independent CA for verification and preparation of asset cover certificate in specified format.

12. It is alleged that the current practice lacked due diligence and independent assessment by the DT in monitoring the asset cover due to below reasons:

i. Issuer has the option of selecting empaneled CA of its own choice. This may allegedly lead to potential conflict of interest where the manipulation in the certificate may be done as a Quid pro quo for higher fee since the fee is also directly paid by the issuer to the empaneled agency/ CA.

ii. The certificate is submitted by empaneled CA to the issuer rather than directly submitting to the DT. The issuer may withhold the certificate if it is not favorable and in turn may coordinate with another CA from the list for the certification of asset coverage.

iii. The DT may allegedly not be involved in the information/ queries sought by the CA from issuer while preparing the certificate which in itself defeats the purpose of independent monitoring of the asset cover by the DT.

13. Therefore, it is alleged that the practice of appointing and/or selecting empaneled agency through issuer along with payment of fees directly by the issuer to empaneled agencies indicates that DT is allegedly not carrying out due diligence independently and is allegedly being influenced by the issuer which defeats the purpose of regulatory intent in recent SEBI circulars.

14. In view of the above, it was alleged that the DT is not in compliance with the Regulation 15(1)(t) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

c) Poor Tracking of Interest Payments

15. During inspection, it was observed that DT could not produce any documentary evidence of an independent verification of payment of interest/ principal in the sample cases inspected.
16. Further, while perusing the details in respect of default on the obligations to consortium of banks and lenders under the One Time Resolution (OTR) by an issuer Future Retail Limited (FRL), it was observed that the DT was acting as DT for two ISINs issued by FRL. It was alleged during inspection that the DT has relied solely on the issuer confirmation for ascertaining the status of payment and has not confirmed from other independent sources. It was also alleged that the DT is not tracking the payment of interest on a continuous basis and allegedly not monitoring the interest payment calendar on a continuous basis as the DT has sought the payment confirmation from the issuer only when it inquired regarding the status of payment which is much later after the due dates of the interest payment.
17. On the basis of the inspection conducted and the reply of the Noticee, following was observed during inspection in the case of Future Retail Limited :
- a. Enquiring about interest payment from issuer on the due date only and not on T-7 days.
 - b. Not ascertaining the payment status from independent sources on timely basis.
18. In view of the same, it was alleged that the Noticee has violated clause 2 and clause 3 of SEBI circular numbered SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 and Clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993.

d) Centralized Database for Corporate Bonds/ Debentures

19. It is alleged that DT has not updated the default history in the below case:

Issuer Name	ISIN	Interest due Date
Blue Horizon Hotels Private Limited	INE416S07035	31 October 2020
		30 November 2020
		31 December 2020
		30 June 2021

20. Further, it may be noted that the DT has not updated the database for Blue Horizon Hotels Private limited. The same is not updated till October 04, 2022.

21. In view of the above, it was alleged that the Noticee is in violation of the Clause C of Annexure-I of SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013 and Clause-10 of Annexure-III of SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.
22. The SCN was issued at the last known address of Noticee through Hand Delivery, which was delivered. SCN was also sent through Digitally Signed E-mail dated February 01, 2023 which was delivered and the delivery of the notice is on record. Vide letter dated February 17, 2023, received on February 21, 2023 Noticee informed that it is in the process of preparing a settlement application as well as response to the SCN and collating the relevant documents is taking more time than anticipated, therefore, Noticee sought extension of five days i.e. till February 28, 2023 to submit reply to the SCN which was acceded to. In the interest of natural justice, vide hearing notice dated February 21, 2023 opportunity of hearing was provided to Noticee on March 03, 2023 and Noticee was advised to submit its reply on or before February 28, 2023. Hearing Notice was issued to the Noticee through Hand Delivery and through Digitally Signed E-mail dated February 24, 2023, which was delivered and the delivery is on record. Vide letter and email dated February 28, 2023 Noticee submitted the reply dated February 28, 2023 and the same is summarized below-

Vistra manages conflict of interest diligently and with reasonable care

- i. *Noticee submitted that as regards, the observation in the Show Cause Notice regarding direct payments being made to advisor(s) by issuer companies, Noticee submitted that market practice is that the costs of appointing advisor(s) is borne by issuer companies. Further, it submitted that this practice does not compromise on the independence of the advisor(s). In any event, pursuant to advise in SEBI's letter dated 3 March 2022 (3 March 2022 Letter), Vistra has earnestly modified the Policy on Conflict of Interest on 29 November 2022. Accordingly, clause (V) (2e) in the Policy on Conflict of Interest now states that "Vistra shall ensure the payment of fees/ remuneration of the appointed Advisors".*
- ii. *Noticee submitted that in the Show Cause Notice, while the insertion of clause (V) (2e) in the Policy on Conflict of Interest is acknowledged, it is also stated that the said clause does not explicitly provide that the payment will be made by Vistra only. Noticee submitted that the said clause states with sufficient clarity that the payments to financial advisors/experts shall be made only by Vistra. In fact, since the insertion of clause (V) (2e), to the best of their*

efforts and ability, *Vistra* has changed its practices and has taken steps towards ensuring that payments is made to advisors / experts without the involvement of the issuer companies. A few examples of the payments made directly by *Vistra* to third party advisors / experts are as below:

- i. *Cleanmax Enviro Energy Solutions Private Limited*
 - ii. *Vimal Plast India Private Limited*
 - iii. *TJ..IDC India Limited*
 - iv. *Shivakar Developer Private Limited.*
- iii. Noticee submitted it can further clarify in the Policy on Conflict of Interest that the payment to the advisor / expert shall be made by *Vistra* and thereafter be reimbursed by the issuer company.

Assertions in the Show Cause Notice regarding Indel Money Limited are incorrect

a. *Vistra had spent considerable time in conducting the due diligence of Indel Money*

- iv. Noticee submitted that it appointed *Radhika Vijayan and Associates (CA)* and *PCS M/s Fayiz & Associates (CS)* on 25 August 2021 to conduct due diligence, and the due diligence was completed on 6 September 2021. Given the above, Noticee submitted that considerable time was spent on conducting due diligence and it had displayed reasonable diligence and care.

b. *Conducting due diligence prior to execution of DTA*

- v. Noticee submitted that the DTA was discussed, and parties had arrived at an understanding in the month of August 2021. Further, the delay in signing the DTA, which was a ministerial act was delayed on account of Covid 19 related restrictions on movement imposed by the Government of Maharashtra in August 2021.
- vi. Noticee submitted that a contract can be entered into by parties without execution of a formal signed agreement. Further, mere absence of a signed formal contract would not affect the validity of the contract if the parties have implemented the said contract. In the present case, after agreeing to the terms and conditions of the DTA, *Vistra* engaged third party advisors to conduct due diligence and *Indel Money* cooperated with *Vistra* in the process which demonstrates that the DTA was being implemented by the parties. Given the above, *Vistra* submitted that due diligence exercise was not in violation of Regulation 13 of the DT Regulations.

c. *Vistra has duly complied with the code of conduct*

vii. Noticee submitted that it had appointed the CA and CS on exercise its discretion basis the credentials received. Further, Vistra has complied with its Policy on Conflict of Interest and applicable law since it had obtained an upfront conflict of interest declaration from the em panelled CA/ CS.

d. *The proess of preparation of Asset Cover Certificate is independent of any influence from the issuer company*

viii. Noticee submitted that presently, SEBI has not issued any guidance / directions on the manner in which due diligence is to be conducted by debenture trustees to monitor asset cover on a quarterly / half yearly basis in accordance with Regulations 15(l)(t) and 15(l)(s) of the DT Regulations. Further, SEBI has not explicitly prohibited debenture trustees from considering suggestions of an issuer while appointing external agencies for monitoring security cover from the list of em panelled agencies. Accordingly, Noticee submitted that the process adopted by it to monitor the security cover, as detailed above, demonstrates that the due diligence conducted by it or through its advisors is independent from influence of issuers, and in compliance with the DT Regulations as well as the circulars issued by SEBI.

ix. Noticee submitted that it is in the process of amending its policies on conflict of interest and due diligence by including clause for not sharing details of the external agencies appointed by it with the issuer until closure of due diligence process to its satisfaction.

Vistra has adequate system in place to track of payments of interest

x. Noticee submitted that it diligently tracks payment of interest / principal as per the interest payment calendar disclosed for every financial year on Noticee's website. Further, Noticee submitted that as a matter of practice, it first seeks payment confirmation from the issuer company, and if the issuer company does not revert within the required timeline, they follow up with the debenture holder for confirmation, and thereafter, Noticee checks disclosures made by the issuer company on stock exchanges.

xi. Noticee submitted that, the tracking of payment of interest/ principal is done through an in-house developed system (Bond System) by which automatic reminders are directly sent to the issuer companies reminding them about the payment due dates. This system generated communication is sent directly on T-7 basis, in compliance with the legal framework.

xii. Regarding the case of Future Retail Limited, Noticee submitted that:

a. It confirmed from the debenture holder in addition to checking with the issuer on the status

of payments to be made by the issuer.

b. It had issued the request for payment confirmations after the dates of 3 December 2021, 3 January 2022, 3 February 2022 and 3 March 2022.

c. For the payments due on 3 December 2021 and 3 January 2022, Noticee's official in-charge of the account at the relevant time had confirmed orally with the debenture holder that the requisite payments were made on 06 December 2021 and 03 January 2022. These payment confirmations were also sought on email, and the debenture holder confirmed the status of payment which forms part of SCN.

d. For payment due on 3 March 2022 was followed up with the Debenture holder, copy of which forms part of SCN.

xiii. Given the above, Noticee submitted that the allegations that Vistra does not (a) ascertain the status of payment of interest/ principal from independent sources apart from the confirmation from the issuer company; and (b) enquire about payment of interest/ principal from the issuer company on T-7 basis, is baseless and devoid of any merit. Hence, Noticee submitted that no inquiry ought to be held against it on this allegation.

Vistra is diligent in updating default history on Centralized Database

xiv. Noticee submitted that it regularly updates default cases in the Centralized Database. However, it inadvertently missed out on updating the default history of Blue Horizon Hotels Private Limited (JSIN: INE416S07035) for the interest payments due on 31 October 2020, 30 November 2020, and 31 December 2020. Noticee submitted that it took adequate and necessary steps in the context of the default including issue of necessary notices to the guarantor/s of Blue Horizon Hotels Private Limited. Further, the default was cured by Blue Horizon Hotels Private Limited on 31st December 2022. Also, Noticee submits that the failure to update the default history in this case is unique and does not represent a systemic failure on part of Vistra, and they ensured that they update the Centralized Database regularly and perform our duties with absolute diligence and commitment.

xv. Noticee referred to the observations of the Hon'ble Securities Appellate Tribunal in the matter of Piramal Enterprises Limited v. SEBI and of the Hon'ble Supreme Court in the matter of Adjudicating Officer , SEBI vs Bhavesh Pabari.

23. On the date of the hearing, Authorized Representative (AR) along with officials of the Noticee attended the hearing at the scheduled date and time and reiterated the submissions made vide reply dated February 28, 2023. Further, AR sought time till March 13, 2023 to

make additional submissions along with following documents-

- a. Details regarding practice of sharing the list of empaneled CA and Cs with the issuer.
- b. Details regarding other instances where the Noticee has initiated due diligence prior to execution of due diligence agreement for the period June 2020 – September 2021.
- c. Details regarding reminders sent to Future Retail Limited on T-7 days from the due dates and revised due date of the interest payments.
- d. Documents showing that information was shared with CRAs within T+1 days.

24. Vide reply dated March 24, 2023 Noticee along with the aforesaid documents made the following additional submissions –

- a. *Noticee submitted that the process of sharing the list of empanelled Chartered Accountants (CA) with the issuer companies in preparation of the Asset Cover Certificate was only undertaken for one quarter (i.e., April 2021 -June 2021) and was subsequently discontinued.*
- b. *Noticee submitted that it strictly maintains the element of 'independence' in the due-diligence process and does not share the list of empanelled service providers with the issuer companies. Moreover, on receipt of the quarterly compliance report, it appoints another CA to carry out the due diligence of the Asset Cover Certificate independently. Noticee submitted that at no point of time do they share the list of advisors with the issuer company.*
- c. *With regard to other instances where the Noticee has initiated due diligence prior to execution of Due Diligence Agreement for the period of June 2020 September 2021 Noticee submitted that the due diligence process in the present form, as contemplated under the DT Regulations, commenced from April 2021. Noticee submitted a copy of the details of the instances where the due diligence was conducted prior to entering of the Debenture Trustee Agreement between April 2021 to September 2021.*
- d. *With regard to reminders sent to Future Retail Limited on T-7 days from the due dates and revised due dates of the interest payments, Noticee submitted that the debenture holder, Azim Premji Trust, by way of letter dated 28 May 2021 approved the revision of due dates for payment of interest by Future Retail Limited (28 May 2021 Letter). Moreover, the Noticee has duly reminded Future Retail Limited of its interest payment obligations on T-7 basis from the due date (i.e., 3 June 2021) as well as the revised due dates (i.e., 3 December 2021, 3 January 2022, 3 February 2022 and 3 March 2022).*

The details are as follows

Sr. No.	Due Date	Date of Noticee's Email
1	3 June 2021	27 May 2021
2	3 December 2021	26 November 2021
3	3 January 2022	27 December 2021
4	3 February 2022	27 January 2022
5	3 March 2022	24 February 2022

e. Noticee submitted that with regard to the query regarding sharing information with CRAs pertaining to the issuances by the Blue Horizon there may have been minor, inconsequential delays in the issuance of these letters.

25. In addition to the above, Noticee submitted that it filed the application for settlement on March 03, 2023. As Noticee applied for settlement, further proceedings were kept in abeyance until the completion of settlement proceedings. Vide letter dated July 30, 2024 settlement division of SEBI informed Noticee about rejection of its settlement application. In the interest of natural justice vide email dated July 30, 2024, opportunity of hearing was provided to Noticee on August 06, 2024. AR of the Noticee attended the hearing on the scheduled day and reiterated the submissions already made reply dated February 28, 2023 and March 24, 2023. AR further sought time till August 07, 2024 for making submission of the following document-

(a) Revised Clause V(2e) of the Noticee's conflict of interest policy.

26. Vide letter dated August 07, 2024, Noticee submitted its policy on appointment and management of conflict of interest of advisors for listed secured debentures. Noticee further submitted that it has modified the policy on conflict of interest on June 21, 2023. Accordingly, clause V 2(e) of the updated policy on conflict of interest now states that "Vistra shall make the payment of fees/remuneration of the appointed advisors". Noticee submitted that the aforesaid revision significantly enhances its ability to manage conflicts of interest effectively and align its practices with SEBI's regulatory expectations.

27. Noticee referred to the AO's order dated March 14, 2024 in the matter of Mitcon Credentia Trusteeship Services Limited, and submitted that factors enumerated in Section 15J of the SEBI Act and the principle of proportionality as laid down by Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI vs Bhavesh Pabari. should be considered.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

28. I have taken into consideration the facts and circumstances of the case, submission made by the Noticee and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I: Whether Noticee violated the following provisions:

- (a) Regulation 13(a), 15(6) of SEBI (DT) Regulations, clause 4 of Code of Conduct of SEBI (DT) Regulations, and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.**
- (b) Regulation 15(1)(t) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.**
- (c) Clause 2 and clause 3 of SEBI circular numbered SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/72 dated June 30, 2017 and Clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993.**
- (d) Clause C of Annexure-I of SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013 and Clause-10 of Annexure-III of SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.**

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15HB of SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

29. Before proceeding further, it will be appropriate to refer to the relevant provisions:

Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993

Obligation before appointment as debenture trustees.

Regulation 13- No debenture trustee who has been granted a certificate under regulation 8 shall act as such in respect of each issue of debenture unless—

(a) he enters into a written agreement with the body corporate before the opening of the subscription list for issue of debentures.

Duties of the debenture trustees.

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

(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;

(t) [In case where listed debt securities are secured [,]it shall,-

(i) on a Quarterly basis-

(a) carry out the necessary due diligence and monitor the [security cover] in the manner as may be specified by the Board from time to time.

(ii) on a Half-Yearly basis-

(a)obtain a certificate from the statutory auditor of the issuer [regarding security cover] including compliance with the covenants of the Offer Document/Information Memorandum in the manner as may be specified by the Board from time to time.]

(6) Before creating a charge on the security for the debentures, the debenture trustee shall exercise independent due diligence to ensure that such security is free from any encumbrance or that it has obtained the necessary consent from other charge-holders if the security has an existing charge, in the manner as may be specified by the Board from time to time.

Code of Conduct.

Regulation 16- Every debenture trustee shall abide by the Code of Conduct as specified in Schedule III.

[SCHEDULE III]

Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993

[Regulation 16]

CODE OF CONDUCT

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

Clause 3. A Debenture Trustee shall fulfill its obligations in a prompt, ethical and professional manner.

Clause 4- A Debenture Trustee shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

Circular dated November 03, 2020 SEBI/HO/MIRSD/CRADT/CIR/P/2020/218

Creation of Security in issuance of listed debt securities and 'due diligence' by debenture trustee(s)

B. Due diligence by debenture trustee for creation of security

6. Debenture trustee(s) by itself or through its advisers or experts shall independently carry out due diligence. The terms and conditions with respect to exercising due diligence shall also be included in the debenture trustee agreement. The due diligence to be exercised by debenture trustee(s) with respect to creation of security shall inter-alia include the following:

6.1. Debenture trustee shall verify that the assets provided by Issuer for creation of security are free from any encumbrances or necessary permissions or consents has been obtained from existing charge holders by carrying out the following checks:

(a) Verify from Registrar of Companies, Sub-registrar, CERSAI, IU or other sources where charge is registered/disclosed as per terms.

(b) In case of conditional consent/permission received as per para 4.3(b) above:

i. Verify whether such conditional consent/permission given to Issuer by existing charge holders is valid as per terms of transaction documents;

ii. Intimate to existing charge holders via e-mail about the proposal to create further charge on assets by Issuer seeking their comments/objections, if any, to be communicated to debenture trustee within next 5 working days.

6.2. In case of personal guarantee, corporate guarantee and any other guarantees/ form of security, the debenture trustee shall verify the relevant filings made on websites of Ministry of Corporate Affairs, Stock Exchange(s), CIBIL, IU etc. and obtain appraisal report, necessary financial certificates viz. from statutory auditor in case of corporate guarantee, certificate from Chartered Accountant in case of personal guarantee, as applicable, of the guarantor/ Issuer.

Circular dated June 30, 2017 SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72

Clarification on monitoring of Interest/ Principal repayment and sharing of such information with Credit Rating Agencies by Debenture Trustees

Clause 2. It is clarified that the DTs shall have adequate systems to ascertain the status of payment of interest/ principal by issuer companies on due dates in timely manner and efficiently share such information with the CRAs in order to comply with the abovementioned provisions, which shall include the following:

i) The DTs shall, at least 7 days prior to the due date of interest/ principal payment, seek ISIN-wise information from issuer companies under intimation to CRAs advising them to confirm the status of payment of interest/ principal on or before the due date.

ii) If the issuer company confirms the status of payment or where no information is received from the issuer company on or before the due date, the DTs shall accordingly provide ISIN-wise information to the CRAs latest by one day after such due date which shall state the following:

a) Information about payment made on or before the due date or;

b) Information about delay/ default in payment or;

c) No information forthcoming from the issuer company on the payment status.

iii) In cases where the CRAs have been informed as per point no. 2(ii) above that no information is forthcoming from the issuer company on the payment status, the DTs shall update the payment status to CRAs as and when any such information is available with the DTs.

Clause 3. In addition to above, it is reiterated that the DTs shall also ascertain the status of payment by the Issuer Company on the due dates from various sources available at their disposal which, inter alia, include the websites of stock exchange & Issuer Company, debenture holders and quarterly reports submitted by Issuer Companies.

SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013

Centralized Database for Corporate Bonds/ Debentures

(C)Default History Information: Default history details: Whether there have been any defaults/delays in servicing any other debentures/bonds issued by the Issuer? If yes details thereof:

Nature of the Issue	Issue size	Due date of interest/redemption	Actual payment date and details	Default details

The above mentioned information shall be uploaded by Debenture Trustees.

SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021

Centralized Database for Corporate Bonds/ Debentures

Sr. No	Activity	Responsibility	Remarks
10.	Verification and Updating of default history information about the instrument/ issuer, as applicable in the database	Debenture Trustees	within 7 days of knowledge of default

SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

Chapter XIV–Centralized Database for corporate bonds / debentures

Clause 2- Responsibilities of parties involved, contents of the database and manner of submitting the information

2.5. Debenture Trustees: DTs shall access the database to verify the information regarding default history and other relevant information. In case of any discrepancy, debenture trustee

shall notify the same to stock exchanges and update the correct information in the database, within the time stipulated in Annex-XIV-C

FINDINGS

30. On perusal of the material available on record, giving regard to the facts and circumstances of the case and submissions of the Noticee I record my findings hereunder:

ISSUE I: Whether Noticee violated the following provisions:

(a) Regulation 13(a), 15(6) of SEBI (DT) Regulations, clause 4 of Code of Conduct of SEBI (DT) Regulations, and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

31. During inspection it was observed that, Noticee started carrying out the activities associated with trusteeship prior to the execution of the written agreement, viz. Debenture Trustee Agreement **(DTA)**. It was also observed that the issuer has recommended the name of CA and CS to be empaneled with Noticee. On the basis of the reports of the same CA and CS, Noticee has issued the due diligence certificate which have allegedly compromised the independence of due diligence exercised by the Noticee. Therefore, it was alleged that Noticee violated Regulation 13(a), 15(6) of SEBI (DT) Regulations, clause 4 of Code of Conduct of SEBI (DT) Regulations, and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

32. Noticee submitted that it does not rely on the recommendations of issuer companies for appointing advisors and it discourages direct communication between the advisors and the issuer company and all reports / findings of the advisors are shared with Vistra directly and not with the issuer company. Noticee further submitted that it is a market practice that the costs of appointing advisors is borne by issuer companies. Noticee admitted that the process of sharing list of empanelled CA with the issuer companies in preparation of Asset Cover Certificate was undertaken for one quarter of April 2021 to June 2021. The undersigned observe that there is an apparent contradiction in the submissions of the Noticee and it is observed that they were encouraging direct communication between the advisors and the issuer company. Therefore the abovementioned contention of the Noticee is not tenable.

33. Noticee submitted that it appointed Radhika Vijayan and Associates (CA) and PCS M/s Fayiz & Associates (CS) on 25 August 2021 to conduct due diligence, and the due diligence was

completed on 6 September 2021 therefore, considerable time was spent on conducting due diligence. Noticee further submitted that DTA was discussed, and parties had arrived at an understanding in the month of August 2021 and contract can be entered into by parties without execution of a formal signed agreement. Noticee also submitted that it had obtained an upfront conflict of interest declaration from the empanelled CA/ CS.

34. It is noted that regulation 13(a) of the SEBI (DT) Regulations, 1993 stipulates that the debenture trustee shall enter into a written agreement (“debenture trustee agreement”) with the Issuer before the debenture trustee agrees to act as debenture trustee in respect of the said issue of debt securities.
35. The undersigned notes from the material available that in the case of Indel Money Limited, the Debenture Trust Agreement was executed between the DT and the issuer company on September 08, 2021 for the issuance of the secured and unsecured NCDs amounting to Rs. 150 crores. Further, the due diligence certificate was issued on the same day when the debenture trustee agreement had been executed i.e. on September 08, 2021.
36. Regulation 13(a) of the SEBI (DT) regulations, 1993 clearly states that debenture trustee can act only after entering into written agreement. Thus the submission of the Noticee that contract can entered into without execution of a formal signed agreement is without any merits. Admittedly Noticee had initiated detailed due diligence process in August 2021 and reports were received from the CA/CS on September 06, 2021. Further, Noticee admitted that it carried out due diligence prior to entering into DTA between April 2021 to September 2021.
37. Therefore, the undersigned observes that the Noticee started carrying out the activities associated with trusteeship prior to the execution of the written agreement, viz. Debenture Trustee Agreement (**DTA**) and thereby violated Regulation 13(a) of SEBI (DT) Regulations, 1993.
38. It is noted that Regulation 15(6) of SEBI (DT) Regulations, 1993 states that before creating a charge on the security for the debentures, the debenture trustee shall exercise independent due diligence. Clause 4 of Code of Conduct of SEBI(DT) Regulations states that A Debenture Trustee shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment. Clause B(6) of SEBI Circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020 prescribes the details that is required to be submitted by the issuer at the time of entering into debenture

trustee agreement in order to enable the debenture trustee to exercise due diligence with respect to creation of security. The circular further prescribes the manner of due diligence to be carried out by the debenture trustee including the conditions to be met by the issuer company based on which the debenture trustee shall issue the due diligence certificate.

39. It is noted from the email communications of Noticee with Indel money limited, that the Issuer has recommended the Chartered Accountant (CA) and Company Secretary (CS) to be empaneled with the DT prior to the execution of DTA. Undersigned further notes from the material available that the same CA has given the security cover and asset cover on the basis of which the DT has issued Due Diligence certificate. The same CS recommended by the issuer has given the MCA search report.
40. It is further noted from the material available that the invoices were raised in the name of issuers by the DT and are paid directly by the issuer to the external valuers / Chartered accountant firm.
41. Further the undersigned notes from the material available that, for all the sample cases, the engagement letter entered between the DT and the external agencies has the following clause regarding service fee, " *The parties herein agree that while the engagement of the Advisor is done by Debenture Trustee for assistance in conducting the due diligence over the security in accordance with applicable SEBI regulations, the fees/ remuneration of the Advisor shall be paid by the Issuer within 45 days from the date of raising the invoice*".
42. It is noted that in reply to the SCN Noticee submitted that it has revised the policy on conflict of interest on June 21, 2023 and updated clause V 2(e) of the updated policy on conflict of interest states that "Vistra shall make the payment of fees/remuneration of the appointed advisors". However, it is noted from the sample engagement letter between the Noticee and external agencies during the inspection period that the fees/remuneration of the advisor was paid by the issuer and the corrective action was taken by the Noticee after the inspection.
43. In view of the above discussion, the undersigned observed that the issuer has recommended the name of CA and CS to be empaneled with Noticee. On the basis of the reports of the same CA and CS, Noticee has issued the due diligence certificate which have compromised the independence of due diligence exercised by the Noticee.

44. Therefore, the undersigned observes that the Noticee is in violation of Regulation 13(a), 15(6) of SEBI (DT) Regulations, clause 4 of Code of Conduct of SEBI (DT) Regulations, and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

(b) Regulation 15(1)(t) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

45. During inspection it was observed that Noticee sends email to issuer companies directing them to submit the quarterly Asset Cover Certificate from independent CA empaneled with Noticee. It was observed that the practice of appointing and/or selecting empaneled agency through issuer along with payment of fees directly by the issuer to empaneled agencies indicates that DT is allegedly not carrying out due diligence independently and is allegedly being influenced by the issuer.

46. In view of the above, it was alleged that the Noticee violated Regulation 15(1)(t) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020

47. Noticee submitted that SEBI has not explicitly prohibited debenture trustees from considering suggestions of an issuer while appointing external agencies for monitoring security cover from the list of empanelled agencies. However, the undersigned notes that clause B(6) of SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020 states that DT shall independently assess that the assets for creation of security are adequate for the proposed issue of debt securities. Therefore, the aforesaid contention of the Noticee lacks merit.

48. Regulation 15(1)(t) of DT Regulations 1993 states that in case of secured debt securities, it shall be the duty of every debenture trustee to carry out the necessary due diligence and monitor the asset cover in the manner as may be specified by the Board from time to time. As per Regulation 15(1)(s) of DT Regulations, it shall be the duty of every debenture trustee to 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.

49. Further, Clause B(6) of SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020 inter-alia states that Debenture trustee, by itself or through its appointed agencies viz. chartered accountant firm, registered valuer, legal counsel etc., shall prepare one or more reports viz. valuation report, ROC search report, title search report/ appraisal report, asset cover certificate, any other report/ certificate as applicable etc. and shall independently assess that the assets for creation of security are adequate for the proposed issue of debt securities.
50. The undersigned notes from the information available that the Noticee uses services of its empaneled agencies for preparation of Asset cover certificate as per below process:
- i. The Noticee sends email to issuer companies directing them to submit the quarterly Asset Cover Certificate from independent CA empaneled with Noticee. Such list of empaneled CAs along with their coordinates is shared with the issuers in advance. If the certificate is received from the empaneled CA Firm, the same is verified and moved forward to Compliance team of Noticee for submission to stock exchange(s). For example, in the case of Phoenix Tech zone, on enquiring about the Asset cover certificate prepared by external agency, Noticee replied that the Asset cover certificate is received from company in June, and not from empaneled agency. The Noticee also shared the reminder email sent to the company which also contained the list of empaneled CAs.
 - ii. Cases wherein Asset Cover certificate is received from the Statutory auditor of the Company or from any other independent CA firm not empaneled with Noticee, in such cases it forwards received certificates to its empaneled independent CA for verification and preparation of asset cover certificate in specified format.
51. It is noted from the above that the aforesaid practice of the Noticee lacked due diligence and independent assessment in monitoring the asset cover due to below reasons:
- i. Issuer has the option of selecting empaneled CA of its own choice. This may lead to potential conflict of interest where the manipulation in the certificate may be done as a Quid pro quo for higher fee since the fee is also directly paid by the issuer to the empaneled agency/ CA.

- ii. The certificate is submitted by empaneled CA to the issuer rather than directly submitting to the Noticee. The issuer may withhold the certificate if it is not favorable and in turn may coordinate with another CA from the list for the certification of asset coverage.
- iii. The Noticee may not be involved in the information/ queries sought by the CA from issuer while preparing the certificate which in itself defeats the purpose of independent monitoring of the asset cover by the Noticee.

52. Therefore, the undersigned observes that the practice of appointing and/or selecting empaneled agency through issuer along with payment of fees directly by the issuer to empaneled agencies indicates that Noticee is not carrying out due diligence independently and is being influenced by the issuer for the preparation of Asset cover certificate.

53. In view of the above, it is concluded that the Noticee is not in compliance with the Regulation 15(1)(t) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.

(c) Clause 2 and clause 3 of SEBI circular numbered SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 and Clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993.

54. During inspection Noticee could not produce any documentary evidence of an independent verification of payment of interest/ principal for 32 sample cases selected. Further, it was observed that Noticee enquired about interest payment from issuers on the due date only and not on T-7 days, therefore, it was alleged that Noticee violated clause 2 and clause 3 of SEBI circular SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 and Clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993.

55. Noticee submitted that the tracking of payment of interest/ principal is done through an in-house developed system (Bond System) by which automatic reminders are directly sent to the issuer companies reminding them about the payment due dates. This system generated communication is sent directly on T-7 basis, in compliance with the legal framework.

56. With regard to the case of Future Retail Limited, Noticee submitted that for the payments due on 3 December 2021 and 3 January 2022, Vistra's official in-charge of the account at the relevant time had confirmed orally with the debenture holder that the requisite payments were made on 06 December 2021 and 03 January 2022. These payment confirmations were also sought on email, and the debenture holder confirmed the status of payment and for payment due on 3 March 2022 was followed up with the Debenture holder.
57. Clause 2 of SEBI circular SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 provides that DTs shall have adequate systems to ascertain the status of payment of interest/ principal by issuer companies on due dates and at least 7 days prior to the due date of interest/ principal payment, seek ISIN-wise information from issuer companies under intimation to CRAs advising them to confirm the status of payment of interest/ principal on or before the due date. Further clause 3 requires a Debenture Trustee to confirm status of payments by the Issuer Company on the due dates from various sources available at their disposal which, inter alia, include the websites of stock exchange & Issuer Company, debenture holders and quarterly reports submitted by Issuer Companies.
58. It is further noted that clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993 provides that a DT shall make all efforts to protect the interest of debenture holders, shall fulfill its obligations in a prompt, ethical and professional manner and all at all times exercise due diligence, ensure proper care and exercise independent professional judgment.
59. It is observed from the information available that during inspection, Noticee could not produce any documentary evidence of an independent verification of payment of interest/ principal in the following sample cases inspected-

Table 2

<u>Sr. No</u>	<u>Name of the Issuer Company</u>
1	Indian Renewable Energy Development Agency Limited
2	Ashiana Housing Limited
3	Hero Fincorp Limited
4	Orissa Metalliks Private Limited
5	Tata Motors Limited

6	Aditya Birla Finance Limited
7	Ceat Limited
8	Sintex-Bapl Limited
9	Reliance Capital Limited
10	Kesoram Industries Ltd
11	Sintex Prefab And Infra Limited
12	Indore Municipal Corporation Limited
13	Aditya Birla Housing Finance Limited
14	Reliance Financial Limited
15	Consolidated Construction Consortium Limited
16	Blue Horizon Hotels Private Limited (Vega)
17	Fortress Constructions Private Limited
18	Dlf Cyber City Developers Ltd
19	Sintex Industries Limited
20	Reliance Commercial Finance Limited
21	Simplex Infrastructure Limited
22	Ridgecraft Homes Private Limited
23	Logix Buildtech Private Limited
24	Reliance General Insurance Company Limited
25	Kosamattam Finance Limited
26	Phoenix Tech Zone Pvt Ltd
27	liff Home Finance Limited
28	Muthoot Mini Financiers
29	Klm Axiva Finvest Limited
30	Reliance Securities Limited
31	Municipal Corporation Bhopal
32	Indel Money Limited

60. The undersigned notes that in reply to the SCN, Noticee submitted that it seeks payment confirmation from the issuer company, and if the issuer company does not revert within the required timeline, they follow up with the debenture holder for confirmation and

thereafter they check disclosure made by the issuer company on the stock exchange. However, for the sample cases mentioned above at table 2, Noticee could not produce any documentary evidence of an independent verification of payment of interest/ principal neither during inspection nor in reply to the SCN. Therefore, the aforementioned contention of the Noticee is not tenable.

61. Therefore, it is observed that for the aforementioned cases mentioned at table 2 above Noticee has relied solely on the issuer confirmation for ascertaining the status of payment and has not confirmed from any other independent sources.
62. Further, while perusing the details in respect of default on the obligations to consortium of banks and lenders under the One Time Resolution (OTR) by an issuer Future Retail Limited (FRL), it was observed that the Noticee was acting as debenture trustee for two ISINs issued by FRL. The details regarding the payment of interest for the two ISINs were inquired from the DT. The DT informed that the two ISINs are valued 100 cr and 99 cr each, in which there is sole debenture holder viz. Azim Premji Trust. While the interest payment was due in these cases on June 03, 2021, FRL had got approval from the debenture holder regarding the re-schedulement of the interest payment. From the perusal of the accorded approval, it is noted that the rescheduled due dates were December 03, 2021, January 03, 2022, February 03, 2022 and March 03, 2022.
63. From the material available before undersigned, the following was observed in the case of Future Retail Limited :
- i. The interest due on 3 June 2021 was rescheduled by the Debenture holder on May 28, 2021 and the revised due dates were December 03, 2021, January 03, 2022, February 03, 2022 and March 03, 2022.
 - ii. For the revised interest payment confirmation, DT sent the email communication to issuer on the interest due dates only instead of T-7 days. No other prior email communication was produced by the DT of prior date.
 - iii. For the interest due on December 03, 2021 and January 03, 2022, Debenture Holder's confirmation was received on February 22, 2022 and February 23, 2022. The email also states that telephonic discussion happened between DT and the debenture holder.

However, DT has not submitted any email communication sent by the DT to debenture holder for enquiring about the payment from issuer.

iv. For the payment due on March 03, 2022, the first email was sent by DT to the debenture holder on March 21, 2022. (18 days after the due date) and then on March 30 2022.

64. In reply to the SCN, Noticee submitted that it duly reminded FRL on T-7 days, the details are as follows-

S. No.	Due Date	Date of Noticee's Email
1	3 June 2021	27 May 2021
2	3 December 2021	26 November 2021
3	3 January 2022	27 December 2021
4	3 February 2022	27 January 2022
5	3 March 2022	24 February 2022

65. Noticee also submitted the copy of the system generated email sent to the FRL.

66. Therefore, on the basis of the above, the undersigned observes that in the case of FRL Noticee did tracking of interest payment by enquiring about interest payment from issuer on T-7 days.

67. However, as per regulation clause 3 of SEBI circular SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 Debenture Trustee should confirm status of payments by the Issuer Company on the due dates from various sources available at their disposal which, inter alia, include the websites of stock exchange & Issuer Company, debenture holders and quarterly reports submitted by Issuer Companies. However, it is observed that for the issuers mentioned at table 2 above and FRL, Noticee did not ascertain the status of payment of interest / principal from independent sources on timely basis.

68. In view of the above discussion, it is observed that Noticee has relied solely on the issuer confirmation for ascertaining the status of payment and has not confirmed from other independent sources. Therefore, it is concluded that the Noticee has violated clause 2 of SEBI circular numbered SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 and Clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993.

(d) Clause C of Annexure-I of SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013 and Clause-10 of Annexure-III of SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

69. During inspection it was observed that the Noticee did not update the default history of the issuer named Blue Horizon Hotels Private Limited for the interest due dates of October 31, 2020, November 30, 2020, December 31, 2020 and June 30, 2021 in the Centralized Database for Corporate Bonds/ Debentures'. Therefore, it was alleged that the Noticee violated Clause C of Annexure-I of SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013 and Clause-10 of Annexure-III of SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

70. It is noted that SEBI vide circular no. CIR/IMD/DF/17/2013 dated October 22, 2013 and subsequently vide SEBI/HO/DDHS/DDHS1/P/CIR/2021/572 June 04, 2021, on 'Centralized Database for Corporate Bonds/ Debentures' has mandated DTs to verify and update default history information about an instrument/issuer, as applicable in the database, within 7 days of knowledge of default.

71. The undersigned notes that in reply to the SCN and inspection findings Noticee admitted that they inadvertently missed out for October 2020, November 2020 and December 2020 updating default cases in NSDL centralized database.

72. From the material available it is observed that Noticee has not updated the default history in the below case till October 04, 2022 :

Issuer Name	ISIN	Interest due Date
Blue Horizon Hotels Private Limited	INE416S07035	31 October 2020
		30 November 2020
		31 December 2020
		30 June 2021

73. In view of the above and the admission of the Noticee, it is established that the Noticee is in violation of the Clause C of Annexure-I of SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013 and Clause-10 of Annexure-III of SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15HB of SEBI Act?

74. As has been established in the foregoing paragraphs that Noticee is in violation of the following provisions:-

- a) Regulation 13(a), 15(6) of SEBI (DT) Regulations, clause 4 of Code of Conduct of SEBI (DT) Regulations, and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.
- b) Regulation 15(1)(t) and 15(1)(s) of SEBI (Debenture Trustees) Regulations, 1993 and clause B(6) SEBI circular numbered SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020.
- c) Clause 3 of SEBI circular numbered SEBI/HO/MIRSD/MIRSD3/CIR/P/2017/ 72 dated June 30, 2017 and Clauses 1, 3 and 4 of the code of conduct defined in Schedule III read along with Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993.
- d) Clause C of Annexure-I of SEBI circular numbered CIR/IMD/DF/17/2013 dated October 22, 2013 and Clause-10 of Annexure-III of SEBI circular numbered SEBI/ HO /DDHS /DDHS1 /P/CIR /2021 /572 dated June 04, 2021 and Clause 2.5 of Chapter XIV of SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021.

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

76. Therefore, the undersigned is convinced that it is a fit case for imposition of penalty under the provisions of Section 15HB of the SEBI Act which reads as given below:

Section 15HB of SEBI Act: - Penalty for contravention where no separate penalty has been provided:

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided,

shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

77. While determining the quantum of penalty under sections 15HB of the SEBI Act and it is important to consider the factors stipulated in section 15J of SEBI Act which reads as under:-

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

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

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

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.”

78. In the present matter, it is noted from the material available on record, it is difficult to quantify the disproportionate gains made by the Noticee. Further it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee in the instant matter. As regards repetitive nature of default, the undersigned notes that no past action has been taken by SEBI against the Noticee. Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, 1992, Rules and Regulations and Circulars/directions issued thereunder etc. which it failed to do. Such disregard for the provisions of law governing the functioning of intermediaries calls for an appropriate penalty.

ORDER

79. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and

in exercise of power conferred upon the undersigned under section 15-I of the SEBI Act, 1992 read with rule 5 of the SEBI Rules, 1995, the undersigned hereby impose following penalty under section 15HB of the SEBI Act, 1992 on the Noticee:

S. No.	Name of entity	Penalty Provisions	Penalty (Rs.)
1	Vistra (ITCL) India Limited	Section 15HB of SEBI Act, 1992	6,00,000/- (Rs Six Lakh Only)

80. The undersigned is of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.
81. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.
82. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C/7, “G” Block BKC, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.” The Noticee shall also provide the following details while forwarding DD / payment information:

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

83. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
84. In terms of the provisions of rule 6 of the SEBI Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: August 22, 2024

**BARNALI MUKHERJEE
ADJUDICATING OFFICER**