BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: EAD/PM-RR/AO/19/2018-19)

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

In respect of:

M/s Central Bank of India

(Debenture Trustee; SEBI Reg. No. IND000000012)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an inspection of books of accounts, records and other documents of M/s Central Bank of India (hereinafter referred to as "the Noticee") during September 2009 to August 31, 2015 to (hereinafter referred to as "inspection period") for the possible violation of Regulations 13(a), 13A(a), 13A(b), 15(1A), 15(1)(n), of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as 'DT Regulations'), Regulation 23(4), (5), (6) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as 'ILDS Regulations') and SEBI Circular having No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007.

APPOINTMENT OF ADJUDICATING OFFICER

2. I have been appointed as the Adjudicating Officer, vide Order dated September 12, 2017 and communicated vide communique dated November 6, 2017under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Sections 15HB of the SEBI Act for the alleged violation

of Regulations 13(a), 13A(a), 13A(b), 15(1A), 15(1)(n), of SEBI DT Regulations, Regulation 23(4), (5), (6) of SEBI ILDS Regulations and SEBI Circular no. MIRSD/DPS III/Cir-11/07 dated August 06, 2007.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated December 12, 2017 (hereinafter referred to as 'SCN') was served by the undersigned on the Noticee at the latest address available on record. The SCN was issued to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15HB of the SEBI Act, for the aforesaid alleged violations.

4. It was alleged in the SCN that:

   A. Allegations with respect to Regulation 13(a) of the DT Regulations:

      a) During the inspection period it was observed that the Noticee had not entered into any written agreement with the Issuer Companies in respect of debenture issues of Britannia Industries Ltd and Deepak Fertilizers and Petrochemicals Corporation Ltd. These written agreements were accepted subsequent to the SEBI inspection conducted during September-October, 2009. The debenture issue of Britannia Industries Ltd closed on March 22, 2010 and three debenture issues of Deepak Fertilizers and Petrochemicals Corporation Ltd closed between during November 16, 2009 to July 7, 2010.

      Noticee, vide letter dated December 10, 2009, while responding to the findings to the inspection during September-October, 2009, inter alia, had submitted the following:

"Upon receipt of request letters from Companies, Trustee takes a decision whether to accept trusteeship or not based on information submitted/insisted. The Acceptance of Trusteeship is conveyed which inter alia contain with Terms and Conditions to act as such under the Trust Deed which is executed after allotment. The Written communication by Trustee prior to Execution of Trust Deed is the written agreement between Trustee and the Body Corporate."

Subsequently, the Noticee vide its reply dated December 16, 2010, submitted that

"We have since introduced the system of 'Written Agreements' with the Body Corporate before opening of the subscription for Debenture Issue."

Further, the Noticee vide letter dated July 10, 2012, in its Action Taken Report (ATR) pursuant to the inspection during September-October, 2009 of its Debenture Trustee activities stated as under.

"We have already started to enter into written Agreements with issuers before issue opening".

b) Compliance of the above was verified by SEBI during its inspection on August 14, 2015, August 27, 2015 and August 31, 2015 by seeking documents in respect of one debenture issue of Britannia Industries Ltd and three debenture issues of Deepak Fertilizers And Petrochemicals Corporation Ltd that were accepted by the Noticee subsequent to the SEBI inspection during September-October, 2009. However, it was observed that in spite of an

assurance given by the Noticee as mentioned above, it has not entered into written agreements with the issuer companies.

c) In view of the aforesaid observations, it was alleged that the Noticee has violated Regulation 13(a) of the DT Regulations.

B. Allegations with respect to Regulation 13A(a) of the DT Regulations:

a) During inspection period, it was observed that the Noticee acted as Debenture Trustee for IL & FS Ltd for its debenture issues. While acting as Debenture Trustee, its director(s) Mr. Shri K. Subbaraman also held directorship in IL&FS Ltd during February 02, 2006 to September 30, 2008 and Mr. Ramnath Pradeep during December 19, 2008 to September 01, 2009. Further, Mr. S. Bandyopadhyay (director of the Noticee) w.e.f. July 01, 2015 is also holding directorship in IL&FS Ltd, even though 6 debenture issues of IL&FS Ltd are to be redeemed.

b) In view of the aforesaid observations, it was alleged that the Noticee has violated Regulation 13A(a) of the DT Regulations.

C. Allegations with respect to Regulation 13A(b) of the DT Regulations:

a) During inspection period, it was observed that the Noticee while acting as a Debenture Trustee to Atlas Cycle Industries, provided loan of Rs. 5.68 crores on September 1, 2003 and Rs. 3.47 crore on September 26, 2003 and the said loan was not fully re-paid till the date of redemption of debentures.

Regulation 13A(b) of the DT Regulation prohibits the Debenture Trustees to act as such in case it has lent to the issuer and the loan is not yet fully repaid. However, with the amended DT Regulations

with effect from August 8, 2000, an opportunity has been given to the DTs to either relinquish / transfer the DT activity within two years from the commencement of the amended i.e. till August 08, 2002.

Therefore, the Noticee has alleged to have violated Regulation 13A(b) of the DT Regulation from 8/8/2002 to 29/11/2003.

b) Further, the Noticee while acting as Debenture Trustee to debenture issues of IL & FS Ltd, had started granting loans to IL & FS Ltd w.e.f. February 23, 1996 with overdraft a/c no. 1728102851. However the Noticee did not furnish details of loans granted since February 23, 1996 till October, 2008. The Noticee has further stated that the sanctioned amount limit of Rs. 82.50 crores was reduced to Rs. 35.00 crores w.e.f. July 9, 2009 and subsequently, the said limit was increased to Rs. 37.50 crores w.e.f. September 26, 2013.

In addition to the above, the Noticee had granted loan as Working Capital Demand Loan A/c No. 3326042543 w.e.f. February 28, 2014 with a sanctioned limit of Rs.37.50 crore till March 14, 2014 and the limit was increased from Rs. 35 crores to Rs. 37.50 crores w.e.f. Mach 19, 2014.

The Noticee had further clarified that the aforesaid limits are the overall limits and sanctioned limit means the borrower can borrow and repay the money within the overall sanctioned limit at any number of times.

It was further observed that during the period the Noticee has been acting / has acted as Debenture Trustee for 12 issues of IL & FS Ltd.

Noticee, vide letter dated December 10, 2009, while responding to the findings to the inspection during September-October, 2009, inter alia, had submitted the following:

"We have been acting as Trustee to IL&FS long before Regulation 13(A) made applicable. However, to comply with the regulation, bank's subsidiary has applied for Trustee licence. Once it is received, all Trusteeship shall be taken over by subsidiary. In the interest of business/Industry, it is not advisable to disturb it."

Thereafter, the Noticee vide its reply dated December 16, 2010 submitted that

"We have been acting as Debenture Trustee prior to SEBI (Debenture Trustees) (Second Amendment) Regulations, 2000. However, to comply with the Regulation 13 A (b), the wholly owned subsidiary of the bank; namely Centbank Financial Services Ltd. has now got registration as a Debenture Trustee (Registration No.- IND000000502) dated December 11, 2009 and all fresh Trustee assignments have been taken by the said subsidiary."

Further, the Noticee vide letter dated July 10, 2012, in its Action Taken Report (ATR) pursuant to the inspection during September-October, 2009 of its Debenture Trustee activities stated as under.

"The Bank has stopped accepting Debenture Trusteeship activity for such companies to whom the Bank has advanced financial assistance, since Dec-2009".

On the above, the Noticee had stated that it has issued Notice of relinquishment to IL&FS on November 11, 2014 and could not transfer the debt issues of IL&FS due to various reasons.

In this regard, it is pertinent to note that during the previous inspection of the Noticee i.e., during September 30, 2009 to October 9, 2009, adjudication proceedings were initiated against the Noticee for the alleged violations of the provisions of SEBI (Debenture Trustees) Regulations, 1993, SEBI (Issue and Listing of Debt Securities)Regulations, 2008, SEBI SEBI (Disclosure and Investor Protection) Guidelines, 2000 and vide Adjudication Order dated February 25, 2011, penalty of Rs 25 lakh was imposed on the Noticee. The observation of the Adjudicating Officer with respect to the submissions of the DT regarding the instant violations as mentioned below.

"I also find that instead of complying with the provisions of Regulation 13A within the time period provided therein, i.e., two years, the Noticee compounded the violation by accepting further business as debenture trustee. The Noticee has also stated that "In the interest of business*/Industry, it is not advisable to disturb it". I can do nothing but disagree with the Noticee for the reason that the Regulation 13A was introduced to specifically avoid such situation and ensure that the lender having an outstanding loan does not act as Debenture Trustee so that there does not arise any scope for conflict of interest and that the Debenture Trustee exercises independent professional judgment while performing its duties. In view of the above, I find that the Noticee has violated the provisions of Regulation 13A (b) of DT Regulations".*

c) In view of the aforesaid observations, it was alleged that the Noticee has violated Regulation 13A(b) of the DT Regulations.

D. Allegations with respect to Regulation 15(1A) of the DT Regulations:

a) During the course of inspection, it was observed that with respect to all the issues of Deepak Fertilizers and Petrochemicals Corporation Ltd., the Noticee had not obtained Certificate from the issuer's auditors in respect of end utilization of funds for all issues undertaken by it since previous inspection.

b) In view of the aforesaid observations, it was alleged that the Noticee has violated Regulation 15(1A) of the DT Regulations.

E. Allegations with respect to Regulation 15(1)(n) of the DT Regulations:

a) During the course of previous inspection, the Noticee had not communicated to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest as mandated vide Regulation 15(1)(n) of DT Regulations.

It was observed that the Noticee vide letter dated December 10, 2009, while responding to the findings to the previous inspection, inter alia, made the following submissions.

"In all the Debenture issues, the body corporates are highly rated Companies and the investors..... We have started implementing communication to Bondholders. Copy of letters sent to Bond Holders of HDFC and SSNNL are enclosed as confirmation".

Although, the Noticee had stated that it has started implementation of communication to debenture holders as per Regulation 15(1)(n) of DT Regulations, it has not furnished copies of letters in respect of all outstanding issues currently handled by it as Debenture Trustee.

b) In view of the aforesaid observations, it was alleged that the Noticee has violated Regulation 15(1)(n) of the DT Regulations.

F. Allegations with respect to SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007 and Regulation 23(4) (5) (6) of ILDS Regulations:

a) As per ILDS Regulations and SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007; the Debenture Trustees shall disseminate all information and reports on debt securities including compliance reports filed by the issuers and the debenture trustees to the investors and the general public by placing the same on their website.

During the course of inspection, it was observed that the Noticee had not disseminated the information of debt issues on its website

Further, as per Regulation 23(5)&(6) of ILDS Regulations, 2008 and SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007, the Debenture Trustees shall disclose the information to the investors and the general public by issuing a press release in the events of default by the issuer company to pay interest on debt securities or redemption amount, failure to create charge on the assets and revision of rating assigned to the debt securities.

Though the Noticee was handling certain default matters, it has not complied with SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007 and Regulation 23(4,5&6) of ILDS Regulations.

The noncompliance of dissemination of information regarding compliance and periodic reports received form the issuers was also observed during previous inspection. The Noticee, pursuant to the previous inspection, vide its letter dated July 10, 2012 stated that it is in the process of updating its website for dissemination as required.

b) In view of the aforesaid observations, it was alleged that the Noticee has violated SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007 and Regulation 23(4) (5) (6) of ILDS Regulations.

5. The Noticee, vide letter dated December 30, 2018 (preliminary submissions) and February 16, 2018 (additional submissions) submitted its reply to the SCN.

6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide hearing Notice dated January 25, 2018, the Noticee was granted an opportunity of personal hearing on February 8, 2018 at Securities and Exchange Board of India, 4th Floor, NCL Bandra Premises, Plot No. C-6, 'E' Block, Bandra- Kurla Complex, Bandra (E), Mumbai–400 051. The said hearing was attended by the Authorised Representatives of the Noticee namely, Mr. R. N. Hirve (General Manager-Treasury/ID/MBD), Mr. A. K. Das (Asst. General Manager-MBD), Mr. L. H. Motwani (Manager-Debenture Trustee) and Mr. Arun Kumar (Advocate & Corporate Legal Advisors). During hearing, the authorised representatives of the Noticee had desired to submit additional documents in the matter.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. I have taken into consideration the facts and materials available on record. I observe that the allegation levelled against the Noticee is that the Noticee violated the provisions of Regulations 13(a), 13A(a), 13A(b), 15(1A), 15(1)(n), of SEBI DT Regulations, Regulation 23(4), (5), (6) of SEBI ILDS Regulations and SEBI Circular having No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007.

After perusal of the material available on record, I have the following issues for consideration, viz.

I. *Whether the Noticee has violated the provisions of Regulations 13(a), 13A(a), 13A(b), 15(1A), 15(1)(n) of SEBI DT Regulations, Regulation 23(4), (5), (6) of SEBI ILDS Regulations and SEBI Circular having No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007?*

II. *Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act.?*

III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

8. Before moving forward, it is pertinent to refer to the relevant provisions of law which reads as under:

Relevant provisions of SEBI (Debenture Trustees) Regulations, 1993:

Obligation before appointment as debenture trustees.

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

Debenture Trustees not to act for an associate

13A.No debenture trustee shall act as such for any issue of debentures in case-

(a) it is an associate of the body corporate

"associate" in relation to a debenture trustee, or body corporate shall include a person,—

(i) who, directly or indirectly, by himself, or in combination with relatives, exercises control over the debenture trustee or the body corporate, as the case may be, or

(ii) in respect of whom the debenture trustee or the body corporate, as the case may be, directly or indirectly, by itself, or in combination with other persons, exercises control, or

(iii) whose director, is also a director, of the debenture trustee or the body corporate, as the case may be.

13A.No debenture trustee shall act as such for any issue of debentures in case-

(b) it has lent or is proposing to lend money to the body corporate:

Provided that in respect of debentures issued prior to the commencement of these regulations, the debenture trustee for such issue shall also comply with this regulation within two years from the commencement of these Regulations.

Duties of the debenture trustees

15. (1A) The debenture trustee shall:

(a) obtain reports from the lead bank regarding progress of the project;

(b) monitor utilization of funds raised in the issue;

(c) obtain a certificate from the issuer's auditors:

(i) in respect of utilization of funds during the implementation period of the project; and

(ii) in the case of debentures issued for financing working capital, at the end of each accounting year.

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

(n) Communicate to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest or redemption of debentures and action taken therefor.

Relevant provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008:

CONDITIONS FOR CONTINUOUS LISTING AND TRADING OF DEBT SECURITIES

Continuous Listing Conditions

23.(4) The issuer, the respective debenture trustees and stock exchanges shall disseminate all information and reports on debt securities including compliance reports filed by the issuers and the debenture trustees regarding the debt securities to the investors and the general public by placing them on their websites.

23.(5) Debenture trustee shall disclose the information to the investors and the general public by issuing a press release in any of the following events:

(a) default by issuer to pay interest on debt securities or redemption amount;

(b) failure to create a charge on the assets;

(c) revision of rating assigned to the debt securities.

23.(6) The information referred to in sub-regulation (5) shall also be placed on the websites, if any, of the debenture trustee, the issuer and the stock exchanges.

Relevant provisions of SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007

Dissemination of information on Debentures

"It has been decided that the companies issuing debentures and the respective debenture trustees/stock exchanges shall disseminate all information regarding the debentures to the investors and the general public.

Debenture trustee shall disclose the information to the investors and the general public by issuing a press release in any of the following events:

1. *default by issuer company to pay interest on debentures or redemption amount,*
2. *failure to create a charge on the assets,*
3. *revision of rating assigned to the debentures.*

Such information shall also be placed on the website of the debenture trustee, the issuer company and the stock exchanges.

Further, all information/reports on debentures issued including compliance reports filed by the companies and the debenture trustees shall be made public by disseminating on the websites of the companies and the debenture trustees. The same shall also be submitted to the stock exchanges for dissemination through their websites.

It is clarified that all the aforementioned requirements are in addition to the requirements specified under SEBI (Debenture Trustees) Regulations, 1993 and also in addition to the requirements mentioned under Listing Agreements for Debentures issued through Public/Rights Issue and for privately placed debentures".

Issue I: Whether the Noticee has violated the provisions of Regulations 13(a), 13A(a), 13A(b), 15(1A), 15(1)(n), of SEBI DT Regulations, Regulation 23(4), (5), (6) of SEBI ILDS Regulations and SEBI Circular having No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007?

9. Taking into account the facts of the case, the gist of allegations made against the Noticee as per the SCN, the summary of the submissions made by the Noticee and my findings thereof are specified below:

a) **Alleged violation:** The Noticee had not entered into written agreements with the issuer companies in respect of Britannia Industries Ltd. and Deepak Fertilizers and Petrochemicals Corporation Ltd. Therefore, it is alleged that the Noticee violated Regulation 13(a) of the DT Regulations.

Noticee's Submissions: Acceptance letter for appointment as debenture Trustee are deemed to be construed as written agreement in terms of Regulation 13 (a) of the DT Regulation, more so when DT Regulation do not prescribe any format of the Agreement. Therefore, the contention in SCN that we had not entered into written agreement with issuer Companies i.e. Britannia Industries and Deepak Fertilizers hence violated Regulation 13 (a) of the DT Regulation is not tenable and Bank deny the same.

My findings: From the submissions of the Noticee, I find that the Noticee had submitted appointment/acceptance letters with respect to one debenture issue of Britannia Industries Ltd. and two debenture issue of Deepak Fertilizers and Petrochemicals Corporation Ltd.

I don't accept the contention of the Noticee that the acceptance letters are deemed to be construed as written agreement. I find that though SEBI has not prescribed detailed format of the written agreement, SEBI has prescribed particulars of the written agreement under Regulation 13 of DT Regulations.

Therefore, I find that the Noticee has violated Regulation 13(a) of the DT Regulations.

b) **Alleged violation:** The Noticee, while acting as a Debenture Trustee for IL & FS Ltd, its director(s) Mr. Shri K. Subbaraman also held directorship in IL&FS Ltd during February 02, 2006 to September 30, 2008 and Mr. Ramnath Pradeep during December 19, 2008 to September 01, 2009. Further, Mr. S. Bandyopadhyay (director of the Noticee) w.e.f. July 01, 2015 is also holding directorship in IL&FS Ltd. Therefore, it is alleged that the Noticee has violated Regulation 13A(a) of the DT Regulations.

Noticee's Submissions: The Directors of the bank are appointed in terms of Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 **("Banking Acquisition ")** which inter-alia provides that Board of the bank shall include directors to be elected by the shareholders other than the Central Govt., from amongst themselves.

Accordingly, Bank had conducted election of two directors to be elected by shareholders other than Central Govt. on 30.06.2015 in terms of RBI and Central Govt. guidelines. Mr. S. Bandyopadhyay who was MD & CEO of LIC Pension Fund Ltd, a subsidiary Company of LIC of India was elected & assumed office of shareholder director in capacity of 'Independent Director' Category on 1st July, 2015. Though Mr. S. Bandyopadhyay may be common director in the Bank & IL&FS at the relevant time but considering that the Bank or its Promoter i.e. Central Govt. has no active role in the appointment of shareholder Director and more so he was representing LIC and other shareholders in the Bank & as a Nominee Director in IL&FS Ltd i.e. not involved in the management of either bank or IL&FS Ltd at relevant time.

We further submit that in terms of the proviso to Regulation 15(2)(b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 -

listed entities which are not companies, but body corporate or are subject to regulations under other statues, the provisions of corporate governance (covering inter alia the composition of the Board of Directors) as specified in Regulation 17,18,19, 20, 21, 22, 23, 24, 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C, D and E of Schedule V shall apply to the extent that it does not violate their respective statues and guidelines or directives issued by the relevant authorities. We submit that Central Bank of India is not a company but a body corporate constituted under the Banking Acquisition Act, and regulated by Reserve Bank of India. Accordingly, the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act. 1970 shall prevail over all other statutes (including DT Regulations) guiding the composition of the Board of Directors.

Further, Bank had already issued notice of relinquishment from debenture trusteeships business of IL&FS Ltd. on 05.11.2014 to IL&FS i.e. before election of Mr. S. Bandyopadhyay as Director of the Bank, however, IL&FS could not appoint new trustee and the Bank has to continue as Interim Debenture Trustee till the appointment of new trustee in compliance of the provisions of Regulation 15(3) of DT Regulations. Hence bank deny that it has violated Regulation 13A (a) of the DT Regulations.

My findings: The Noticee has submitted that Mr. S. Bandyopadhyay was appointed as shareholder director of the Noticee and appointment of Directors was as per Banking Regulation Act and the Noticee has no active role in appointment of Mr. S. Bandyopadhyay. Further, Mr. S. Bandyopadhyay was not involved in the management of the Bank/Noticee and IL&FS. In addition, Bank had already issued notice of relinquishment from debenture trusteeships business of IL&FS Ltd. on 05.11.2014 to IL&FS i.e. before election of Mr. S. Bandyopadhyay as Director of the Bank i.e., on July 1, 2015. Therefore, the Noticee stated that it has not violated Regulation 13A(b) of DT Regulations.

I do not accept the above contention of the Noticee as the allegations in the SCN are neither with regard to the procedure/manner of composition of board of Directors of the Noticee as a Public Sector Bank nor on the type of Directorship in the issuer Company.

I observe that the Regulation 13A(a) of the DT Regulations doesn't provide any exemption from compliance of the said Regulation. Further, the Noticee, though had sent Notice of relinquishment to IL&FS, at the time of appointment of Mr. S. Bandyopadhyay, was acting as Debenture Trustee for IL&FS.

In view of the above, I conclude that the Noticee has violated Regulation 13A (a) of the DT Regulations.

c) **Alleged violation:** The Noticee, while acting as a Debenture Trustee for IL & FS Ltd, provided loans to IL & FS Ltd. and thereby is alleged to have violated Regulation 13A(b) of the DT Regulations.

Noticee's Submissions: Regulation 13A of the DT Regulations deals with 'DT not to act for an associate' and was inserted by SEBI (DT) (Amendment) Regulations, 2003 w.e.f. 4.7.2003. Clause (b) of Regulation 13A inter - alia provides that 'No DT shall act as such for any issue of debenture in case it has lent and the loan is not yet fully repaid or is proposing to lend money to the body corporate.

Since June 2010, the Bank has stopped taking new Business of Debenture trusteeship and has continued to monitor the Suit filed/BIFR cases only.

The Bank has banking relationship with IL&FS since inception of the Company. The Bank has sanctioned the working capital limits to IL&FS since more than two decades and the limits are being reviewed every year

based on the requirement of the Company. The sanctioned limit from 18.10.2008 to 08.07.2009 was Rs.82.50 crore and was reduced to Rs.35.00 crore w.e.f. 09.07.2009 and stood at Rs.37.50 Crores w.e.f. 26.09.2013 which was being continued till the date of SEBI inspection.

The Bank has not enhanced the credit facilities to IL&FS during the period under investigation, however, considering the fact that bank cannot abruptly stop the credit facilitates to IL&FS due to various contractual obligations under various lending agreement and also its ramifications on various infrastructure projects undertaken by the IL&FS, the bank had decided to gradually exit from the position of debenture trustee of IL&FS and accordingly had issued notice for retirement from debenture trusteeships to IL & FS on 05.11.2014 advising IL & FS to appoint new DT so that the Bank could vacate from the trusteeships after completion of 30 days from date of issuance of the letter.

Thus, there was only one Company viz. IL & FS where Bank had acted both as a Lender and Trustee at relevant time thought it had initiated action to relinquish that trusteeship too.

Hence, Bank may be in non- compliance with Regulation 13A (b) of the DT Regulations for only some period but considering the position explained above, it is requested that the same may be condoned.

My findings: From the facts of the case and submissions of the Noticee, I observe that while the Noticee was acting as Debenture Trustee to issues of IL&FS, granted working capital loans to IL&FS. The said working capital loan limits were revised from Rs. 82.50 crore to Rs. 35 crore w.e.f. July 9, 2009 and subsequently, the said limit was increased to Rs. 37.50 crores w.e.f. September 26, 2013.

Further, in its submissions, the Noticee itself admitted that there was limited non-compliance on its part with regard to Regulation 13 A(b) of the DT Regulations.

In view of the above, I conclude that the Noticee has violated Regulation 13 A(b) of the DT Regulations.

d) **Alleged violation:** With respect to all the issues of Deepak Fertilizers and Petrochemicals Corporation Ltd., the Noticee had not obtained Certificate from the issuer's auditors in respect of end utilization of funds for all issues undertaken by it. Therefore, it is alleged that the Noticee violated Regulation 15(1A) of the DT Regulations.

Noticee's Submissions: Bank had acted as Trustees for three issues of Deepak Fertilisers & Petrochemicals Corporations Ltd. The First Issue was for Rs.100 crore. The debentures were allotted on 25.11.2009 under two series of Rs.50 crore each (10% Series and 9.75% Series) for a period of 6 years. The issue proceeds were utilized for Technical Ammonium Nitrate Project (TAN Project] at Plot K7 and K8 at MIDC Taloja. The second issue was for Rs.50 crore (8.35% series). The debentures under this series were allotted on 09.02.2010 for a period of 3 years. The third issue was also for Rs. 50 crore (9.35% series) The Debentures under this series were allotted on 15.07.2010 for a period of 5 years. The funds raised under these two later issues were utilized to augment the long term resources of the company and general corporate purposes.

However, after the hearing before Adjudicating Officer on 8th February, 2018, we had again revisited old records/files which were transferred to separate office place and we found that the Company was submitting the Funds utilization certificates at the time of submitting Quarterly Compliance Reports, which were also kept in the Quarterly Compliance Report files instead of keeping in the respective Debenture Issue files. For

your reference and records we enclose herewith following Funds utilization Certificates issued by their auditors M/s B.K. Khare & Co.

1. Certificate dtd. July 1, 2014 for Rs. 100 crore Issue (10% series & 9.75% Series) attached to the covering letter dated July 25, 2014 of the Company.
2. Certificate dated July 1, 2014 for 9.31% Rs. 50 crore series attached to the covering letter dated July 25, 2014 of the Company.
3. Certificate dated June 13, 2015.for Rs.100 crore issue (10% series & 9.75% series) and Certificate dated June 13, 2015 for Rs. 50 crore 9.31% series, both Certificates attached to covering letter dated August 14,2015 of the company.

Hence, Bank is not in non-compliance with Regulation 15(1A) of the DT Regulations.

My findings: From the aforesaid submissions of the Noticee, I find that the CA certificates of the issuer's auditors for the three issues of Deepak Fertilizers and Petrochemicals Corporation Ltd. contains fund utilization of the issues.

In view of the above, I conclude that the Noticee has complied with provisions of Regulation 15(1A) of the DT Regulations.

e) **Alleged violation:** The Noticee had not communicated to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest or redemption of debentures and action taken thereof. Therefore, it is alleged that the Noticee violated Regulation 15(1)(n) of the DT Regulations.

Noticee's Submissions: During the inspection, Bank was acting as trustee in respect of five companies only and there were no instances of defaults in payments of interest by the issuer company in case of IL &FS Ltd. A letter

under Joint Signature of the Company and Trustee was being sent to all the debentures holders of all the series of debentures of all the series of debentures every half year. Copies of three such letters dated December 17, 2013, July 17, 2014 and February 3 2015 attached with our reply for reference. Under point no.5 of these jointly signed letters redemption payments on due dates are specified.

Further, bank has already started sending communication under Regulation 15(1)(n) to the Debenture Holders, copies thereof uploaded in Bank's website and was submitted to SEBI vide letter dated October 5, 2015.

Hence, considering the position explained above, it is requested that the limited non-compliance of regulation 15 (1) (n) of the DT Regulation, which is more technical in nature and had not any adverse impact on the debentures holder (all the debentures have been redeemed) may be condoned.

My findings: Noticee submitted that it has acted as Debenture Trustee in 5 companies during inspection period i.e., September 2009 to August 31, 2015 and there were no instances of default in payment of interest by Issuer Company. Citing example of IL&FS, Noticee stated that letter was sent to debenture holders under joint signature of the Company and the Noticee as debenture trustee wherein it was disclosed to the debenture holders that company has made all coupon payments and redemption payments on due dates.

I find that Regulation 15(1)(n) clearly casts duty upon the debenture trustee to communicate to the debenture holders on half yearly basis. Therefore, I do not accept the contention of the Noticee that it has complied with the aforesaid Regulation by sending joint letters to the debenture holders. More so while Noticee acted as debenture trustee in 5 companies

during inspection period, it has submitted instance of sending half yearly joint letters to debenture holders in case of IL&FS only.

Though the Noticee vide letter dated October 5, 2015 submitted that it has started complying to Regulation 15(1)(n) since September 2015 (i.e., post inspection period), I find that it was non-compliant to the said Regulation during the inspection period.

In addition, I find that the Noticee itself admitted that there was limited non-compliance on its part with regard to Regulation 15(1)(n) of the DT Regulations.

In view of the above, I conclude that the Noticee has violated Regulation 15(1)(n) of the DT Regulations.

f) **Alleged violation:** The Noticee had not disseminated all information and reports on debt securities including compliance reports filed by the issuers and the debenture trustees to the investors and the general public by placing the same on their website. Further, the Noticee had not issued press release in respect of debenture issuer compliance report or events of defaults. Therefore, it is alleged that the Noticee violated the provisions of SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007 and Regulation 23(4) (5) (6) of ILDS Regulations.

Noticee's Submissions: Bank is complying with the said SEBI Circular and the periodical reports have also been uploaded on the Bank's website. The Bank had also confirmed to the Inspection Officer that there have been no defaults in payments of interest/redemption moneys by the issuer companies post SEBI inspection in 2009, hence no information in this regards was required to be posted on Bank's website or press release to be issued.

My findings: The Noticee has submitted that there have been no defaults in payment of interest/redemption money post SEBI inspection on 2009. Therefore, there was no requirement on the part of Noticee to post information on Bank's website or issue press release.

I do not accept the above contention of the Noticee as the aforesaid ILDS Regulation and SEBI circular doesn't require dissemination of information only in case of default rather it requires dissemination of all information and reports on debt securities including compliance reports filed by the issuers and the debenture trustees to the investors and the general public.

In view of the above, I conclude that the Noticee has violated the provisions of SEBI Circular No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007 and Regulation 23(4) (5) (6) of ILDS Regulations.

Issue II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act.?

The provisions of Section 15HB of the SEBI Act, 1992 read as under:

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."

10. In view of the findings cited in para 9 (d) above, no monetary penalty is warranted against the Noticee with regard to Regulation 15(1A) of the DT Regulations. However, for the reasons cited foregoing, I am convinced that the Noticee is liable for monetary penalty under Section 15HB of SEBI Act for violation of the provisions of Regulations 13(a), 13A(a), 13A(b), 15(1)(n), of

SEBI DT Regulations, Regulation 23(4), (5), (6) of SEBI ILDS Regulations and SEBI Circular having No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

11. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, 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.

12. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. However, I note that the Noticee Violated the provisions of Regulations 13(a), 13A(a), 13A(b), 15(1)(n), of SEBI DT Regulations, Regulation 23(4), (5), (6) of SEBI ILDS Regulations and SEBI Circular having No. MIRSD/DPS III/Cir-11/07 dated August 06, 2007.

ORDER

13. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of Rs 3,00,000/-(Rupees Three Lakh) on M/s Central Bank of India in terms of the provisions of Sections 15HB of the Securities and Exchange Board of India Act, 1992. In the facts and

circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

14. 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 favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

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

15. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the Division Chief (Enforcement Department - DRA- II) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for	

which payment was made e.g Quarterly, annually	
Bank Name and Account Number from which payment is remitted	
UTR No	

16. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: July 30, 2018
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER