BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 141 /2018-19]

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

In respect of:
M/s Vistra ITCL (India) Limited (formerly known as The IL&FS Trust Company Limited)
(SEBI Registration No. IND000000578)

In the matter of M/s LRN Finance Limited

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to perusal of documents relating to fund raising by M/s LRN Finance Ltd (hereinafter referred to as "Company/LRN") observed that M/s Vistra ITCL (India) Ltd (hereinafter referred to as Noticee/ITCL) Debenture Trustee of the aforesaid fund raising by LRN had violated Regulation 14, Regulation 15(1) (i) and Regulation 16 read with Code of Conduct Schedule III Clause (1), (2), (3), (4) and (5) of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "Debenture Trustees Regulations).

Appointment of Adjudicating Officer

2. The undersigned is appointed as the Adjudicating Officer vide communication order dated January 09, 2018, under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "AO Rules") to inquire and adjudge under Section 15HB of SEBI Act, on the Noticee for the alleged provision of the law.

Show Cause Notice, Reply and Personal Hearing:

3. Show Cause Notice dated March 12, 2018 (hereinafter referred to as 'SCN") was served on Noticee in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against the Noticee for the alleged provisions of law. The SCN issued was duly delivered.

Allegation against the Noticee:

4. It was observed that company had issued four series of Debentures. The details of the debenture issuances dealt by ITCL as follows:

Year/Name of Series	Issue opening date	Issue closing date	Date of maturity	No. of persons to whom allotted	Amount raised
2012-13 Series B Non-convertible Redeemable Debentures of Rs. 1000/- each	May 16, 2012	August 16, 2012	August 16, 2019	4178	Rs.27 Crore

5. ITCL was appointed as the Debenture Trustee to Series –B. From the annual report of LRN for FY 2012-13, it was observed that as on March 31, 2013, Series-B Debenture outstanding was Rs. 27 crore. As per the company's submission, the debentures were issued to 4,178 persons amounting Rs. 27 crore.

6. ITCL vide its letter dated November 04, 2016 submitted that upon receipt of the first Quarterly Compliance Report on February 12 2013, it came to their knowledge that Series B were issued to 4178 debenture holders and has raised Rs. 27 crore.

7. ITCL did not bring to the notice of SEBI regarding the higher number of debenture holders in contradiction of private placement as per Section 67 of the Companies Act, 1956. ITCL has reported that there were advertisements on websites of LRN calling for investors to invest into Series B after the closure of the series B i.e. August 16, 2012.

8. On scrutiny of the allotment list, it was observed that the most of the addresses of Debenture holders have only the village name and not the complete address. Further, from the list, it appears that the company issued debentures all over the country. It was alleged that ITCL did not establish the true and full identity of each of its clients, each client's financial situation and record of the same. Also the and did not contain full Know Your Clients .

9. It was observed from various correspondence by ITCL to LRN that ITCL had not raised its objection on LRN allotted Debentures to 4178 investors in private placement and beyond closure of issue, seeking subscription through its website advertisement and from public at large. which was in contradiction of private placement as per Section 67 of the Companies Act, 1956. Thus, from the above facts it is clear that the offer of debenture in Series –B has been made to public and the forms for subscription of debentures were freely circulated even after the closure of the issue and widely advertised. In view of the above, it was alleged that ITCL had not carried out proper due diligence while carrying out activities of the role of Debenture Trustee for the Series B and failed to comply with Regulation 14, Regulation 15(1) (i) and Regulation 16 read with Code of Conduct Schedule III Clause (1), (2), (3), (4) and (5) of Debenture Trustee Regulations.

Reply by the Noticee:

10. The reply submitted by the Noticee are broadly as follows:

10.1. The information with regard to the number of persons, who has subscribed to the debentures and the amount collected is a matter of record and needs no further explanation from our side.

10.2. In regard not bringing to the notice of SEBI about the highest number of debenture holders to 4178 against the normal stipulation of less than 50 subscribers in the case of private placement. There is no violation of 67(3) of the Companies Act, 1956 as the proviso restricting the subscription to 50 or less than 50 was not applicable to NBFC or public financial institutions as specified under Section 4(A) of Companies Act, 1956 (as it stood then).

10.3. on receipt of first QCR with higher number of debenture holders, we conducted a scrutiny and discovered advertisement on the website of LRN and at various other websites and took prompt action and issued warnings to LRN to withdraw such *advertisements. The said advertisements were withdrawn by the Issuer as a result of ITCL's action taken.*

10.4. ITCL wrote to inform about the highest numbers of debenture holders. ITCL had issued several letters dated May 24, 2013, May 31, 2013 and June 27, 2013 demanding explanation on various points, including asking for complete details of higher number of debenture holders of LRN viz. address, KYC documents, bank account details, amount invested and copies of Debenture Certificates issued etc to identify true and full identity of investors.

10.5. ITCL received a response from LRN but it was not found satisfactory. Thereafter, as a pro-active and precautionary measure, we issued a public notice on August 01, 2013 warning the investors and general public that LRN has not been authorized for raising further amount under the B-series issue to which we are the Debenture Trustee.

10.6. We would like to submit that "the client" appearing Schedule III Code of Conduct, Point 5 entire intention and the wordings in its entirety will mean in this context LRN (the Issuer) and not its subscribers. This is more so, as evidenced by the fact that as Debenture Trustee we are constrained to demand the financial situation of the subscribers and keep it with us. The Issuer company appoints Registrar and Transfer Agent (RTA) for carrying out such checks.. This can be checked from market practice across all issues in debt market in India. Hence in practice the Trustee Company has to completely rely on the statement made by the Issuer Company and RTA's with regard to the Investors.

10.7. The term "issue" has been defined under SEBI (Debenture Trustees) Regulations, 1993 and the understanding pursuant to this definition is that the SEBI (Debenture Trustees) Regulations, 1993, is applicable only to listed (public or private) placement of debentures.

10.8. It is submitted that as a Debenture Trustee we have taken all the steps and efforts to protect the interest of the Debenture holders.

10.9. ITCL had repeatedly written to LRN on the number of debenture holders. The number of debenture holders for the issue was informed/came to the knowledge of ITCL only upon receipt of the first QCR dated February 12, 2013. ITCL had issued several asking for clarification on various points.

10.10. It is submitted that needless at the cost of repetition would like to state that we have taken care and exercised our judgment in a very independent and professional manner.

Personal Hearing:

11. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticee on April 11, 2018 granting an opportunity of personal hearing before the undersigned on April 25, 2018.

12. On scheduled hearing date on behalf of the Noticee, the Authorized Representative (hereinafter referred to as "AR") appeared before me. Subsequent personal hearing was granted on August 27, 2018 pursuant to the Interim Order passed by Whole Time Member in the matter of M/s LRN Finance Ltd on July 25, 2018. Authorised representative appeared on the said date and did not make any further submissions.

ISSUES FOR CONSIDERATION/FINDINGS:

13. I have carefully perused the reply and submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are:

Issue I: Whether Noticee had violated Regulation 14, *15 (1) (i) and 16 read with Code of Conduct Schedule III clause (1), (2), (3), (4) and (5) of* DT Regulation?

Issue II Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992 on Noticee?

Issue III If so, what should be the quantum of monetary penalty?

14. Before proceeding further, I would like to refer to the relevant provisions of DT Regulations:

Obligation of the debenture trustees.

14. *Every debenture trustee shall amongst other matters accept the trust deeds which contain the matters specified in Schedule IV to the regulations.*

[Schedule IV]

CONTENTS OF TRUST DEED

Every debenture trustee shall ensure that the trust deed executed between a body corporate and debenture trustee shall amongst other things provide for the following matters namely: —

Preamble

1. *This section shall inter alia state the rights of the debenture holders and the manner in which these rights are vested in the trustee.*

Description of instruments

2. *This section shall inter alia state the purpose of raising finance through debenture issue, description of debentures as regards amount, tenure, interest/coupon rate, periodicity of payment, period for redemption, options available, terms of conversion/redemption of the debentures in terms of the issue to the debenture holders, debt equity ratio and debt service coverage ratio, if applicable.*

Details of Charged Securities (Existing or future)

3. *This section shall inter alia state the details regarding the following:*

i. Nature of charge, examination of title.
ii. Rank of charge of assets viz. first, second, pari passu, residual etc.
iii. Charging of future assets.
iv. Time limit within which the future security for the issue of debentures shall be created as specified in SEBI (Disclosure and Investor Protection) Guidelines, 2000.
v. Enforceability of securities, events under which security becomes enforceable.
vi. Obligation of company not to create further charge or encumbrance of the trust property without prior approval of the trustee.
vii. Minimum security cover required.
viii. Provision for subsequent valuation.
ix. Circumstances when the security will become enforceable.
x. Method and mode of preservation of assets charged as security for debenture holders.

xi. Circumstances specifying when the security may be disposed of or leased out with the approval of trustees.
xii. Procedure for allowing inspection of charged assets, books of account, by debenture trustee or any person or persons authorised by it.

Events of defaults

4. *This section shall clearly define the event of default which if occurs shall invite the actions by debenture trustee. This section shall also contain the steps which shall be taken by debenture trustee in the event of defaults.*

.***Rights of debenture trustees***

5. *This section shall inter alia provide that:*
i. Debenture trustee is entitled to inspect the registers of the company and to take copies and extracts thereof;
ii. Debenture trustee has a right to appoint a nominee director.

Obligations of body corporates

6. *This section shall inter alia state the following with respect to company's duties:*
1. to maintain Register of debenture holders with addresses with record of subsequent transfers and changes of ownership.
2. to keep proper books of account open for inspection by debenture trustee.
3. to furnish whatever required information to debenture trustee including copies of reports, balance sheets, profit and loss accounts etc.
4. to keep charged property/security adequately insured and in proper condition.
5. to permit debenture trustee to enter and inspect the state and condition of charged assets.
6. to pay all taxes, cesses, insurance premia with respect to charged property/security, on time.
7. to inform debenture trustee before declaring or distributing dividend.
8. to comply with all guidelines/directions issued by any Regulatory authority, with respect to the instant debenture issue.
9. to create debenture redemption reserve as per the SEBI (Disclosure and Investor Protection) Guidelines, 2000 and the provisions of Companies Act and submit an auditor's certificate to the trustee.
10. to convert the debentures into equity in accordance with the terms of the issue, if applicable.
11. to inform debenture trustee about any change in nature and conduct of business by company before such change.
12. to keep the debenture trustee informed of all orders, directions, notices, of court/Tribunal affecting or likely to affect the charged assets.
13. to inform debenture trustee of any major change in composition of its Board of Directors, which may amount to change in control as defined in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
14. to submit any such information, as required by the debenture trustee.
15. fee or commission of debenture trustees.
16. obligation to inform debenture trustee about any change in nature and conduct of business by the body corporate before such change.
17. obligation of the body corporate to forward a quarterly report to debenture trustees containing the following particulars:
(i) updated list of the names and addresses of the debenture holders;
(ii) details of interest due but unpaid and reasons thereof;
(iii) the number and nature of grievances received from debenture holders and resolved by the body corporate;
(iv) a statement that the assets of the body corporate which are available by way of security are sufficient to discharge the claims of the debenture holders as and when they become due.

7. Miscellaneous

a. Procedure for appointment and removal of trustee including appointment of new trustees.
b. Provision that the debenture trustee shall not relinquish from its assignment unless another debenture trustee has been appointed.

c. Procedure to remove debenture trustee by debenture holders providing for removal on a resolution passed by at least 75% of the total debenture holders of a body corporate.
d. Provisions for redressal of grievances of debenture holders.

***Note:** The debenture trustee may incorporate additional clauses, provided that the additional clauses do not dilute or contravene the provisions of the above clauses.]*

Duties of the debenture trustees

***15.** (1) It shall be the duty of every debenture trustee to—*
(i) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed;

Code of Conduct.

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

Schedule III

***1.** A Debenture Trustee shall make all efforts to protect the interest of debenture holders.*
***2.** A Debenture Trustee shall maintain high standards of integrity, dignity and fairness in the conduct of its business.*
***3.** A Debenture Trustee shall fulfill its obligations in a prompt, ethical and professional manner.*
***4.** A Debenture Trustee shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.*
***5.** A Debenture Trustee shall take all reasonable steps to establish the true and full identity of each of its clients, and of each client's financial situation and maintain record of the same.*

Issue I: Whether Noticee had violated Regulation 14, *15 (1) (i) and 16 read with Code of Conduct Schedule III clause (1), (2), (3), (4) and (5) of* DT Regulation?

15. I note that ITCL is an intermediary registered with SEBI as a Debenture Trustee bearing SEBI Registration No. IND000000578 acted as Debenture Trustee for the unlisted Non-Convertible Debenture (hereinafter referred to as "NCD") issued by LRN, Series B. The said issue opened on May 16, 2012 and closed on August 16, 2012.

16. I note that as per the Annual Report as on March 31, 2013, there was an outstanding of Rs. 27 crore and as per submission LRN had issued Series-B NCD to 4,178 debenture holders which is in contradiction to Section 67 of the Companies Act, 1956.

17. I note that ITCL has submitted that restriction specified under Section 67(3) was not applicable to LRN at the time of issuance of NCD. Also, RBI vide circulars dated June 27, 2013 and July 02, 2013 imposing certain restrictions on the issue of debt securities issued by NBFCs was not applicable to the current issue of LRN as at the time of the circulars ,issue was already closed.. It is to be noted that LRN was registered with Reserve Bank of India as Non-Banking Finance Company

18. First I would examine the applicability of Section 67(3) of the Companies Act, 1956, to issue of NCD by LRN in the instant case. The relevant provision of Section 67 of the Companies Act are reproduced below for reference:

"67. Construction of references to offering shares or debentures to the public, etc.
(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), to be construed as including a reference offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitation to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debentures holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances –
(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation ; or
(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation :

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more :

Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956.

(3A) Notwithstanding anything contained in sub-section (3), the Securities and Exchange Board of India shall, in consultation with the Reserve Bank of India, by notification in the Official Gazette, specify the guidelines in respect of offer or invitation made to the public by a public financial institution specified under section 4A or non-banking financial company referred to in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934)."

19. I note from the proviso of 67 of the Companies Act, 1956 that proviso of the Companies Act would be applicable to company making the offer to fifty or more persons and apparently, NBFC and PFI do not have any restriction on the number of allottees as opposed to a Company which is neither an NBFC nor a PFI, as long as the issue satisfies the provisions of Section 67(3) of the Companies Act, 1956. It is important to bear in mind that in respect of NBFCs and PFIs, though as discussed, these may be exempted from the limit of 49 persons, they still require to comply with the clauses (a) and (b) to Section 67(3) of the Companies Act, 1956. Therefore, in a case involving an NBFC or a PFI, in order to take a view that they did not make a public issue, it has to be proved that their offer or invitation did not result, directly or indirectly, in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation or such offer or invitation was a domestic concern of the persons making and receiving the offer or invitation.

20. The Hon'ble Supreme Court of India in the matter of Sahara India Real Estate Corporation Limited & Others Vs. SEBI and another (Civil Appeal Nos. 9813 and 9833 of 2011) (hereinafter referred to as the Sahara case") had observed as under:

Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section

67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. A public company can escape from the rigor of provisions, if the offer is made by companies mentioned under Section 67(3A), i.e. by public financial institutions specified under Section 4A or by non-banking financial companies referred to in Section 45I(f) of the Reserve Bank of India Act, 1934. Following situations, it is generally regarded, as not an offer made to public. ¬ Offer of securities made to less than 50 persons; ¬ Offer made only to the existing shareholders of the company (Right Issue); ¬ Offer made to a particular addressee and be accepted only persons to whom it is addressed; ¬ Offer or invitation being made and it is the domestic concern of those making and receiving the offer. 86. Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation.…"

21. I note that the ITCL in its submissions has contended that since LRN was a NBFC, the same exempts it from the applicability of Section 67(3) of the Companies Act, 1956. In this regard, as discussed above, the 'exemption' as available to an NBFC, is in terms of the second proviso to Section 67(3). In terms of Section 67(3)(a) and (b) of the Companies Act, 1956, for showing that an offer was not made to public, it is required to be proved that the offer or invitation did not result in the securities being available for subscription to a person who did not receive the offer or that the offer/ invitation was a domestic concern of the person making and receiving such offer. In terms of the first proviso, the above proof was not required if a company made offer to 50 or more persons. As the second proviso provided that nothing contained in the first proviso would apply to NBFCs or PFIs, such entities could make offer or invitation to 50 or more persons subject to the provisions contained in clauses (a) and (b) of Section 67(3) of the Companies Act, 1956. Accordingly, an NBFC may make an offer to more than 50 persons and has to prove that its offer did not result in the securities being available for subscription to a person who did not receive the offer or that the offer or invitation was a domestic concern of the person making and receiving such offer, in order to claim that such offer and allotment was done through a 'private placement'.

22. ITCL has failed to provide any documents that the offer made by LRN was to a particular addressee. It appears from the list of investors as provided by the ITCL that there is nothing on record to show that the subscription by the persons was on receipt of offer/ invitation or these were domestic concern. It is seen that the investors were from various locations across India.

23. I note that nothing is demonstrated by the LRN or ITCL to substantiate that said issue was a private issue and invitation for subscription was made only to specific / pre-determined persons or persons who are associated with LRN in a way so as to make the offer a domestic concern of the LRN making the offer and the offerree for determining whether an offer is in the nature of a private placement needs to be established on a case to case basis. LRN did not demonstrate that its offer was not open for subscription to public at large. On the contrary, ITCL on its own submission

has mentioned that there was website advertisement on the website of LRN wherein it was seeking public subscription for the said issue and that too after the closure of the said issue.

24. Hon'ble Supreme Court of India in its landmark judgment in *In Sahara India Real Estate Corporation Limited and Ors. V*s. *SEBI* on August 31, 2012 held that under sub-Secton (3) of Section 67 of the Companies Act, 1956, the "*Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged."*

25. In view of the foregoing, as a registered NBFC, LRN can be exempted from the requirements pertaining to a public offer only if LRN can prove that offer made to each of 4178 debenture holders who were allotted NCD in the instant case was not intended for general public. ITCL has not produced any documentary evidence to show the NCD offered by LRN was private placement and offered to identified persons. ITCL has informed to the concerned department of SEBI that it had repeatedly written on various counts to LRN about the large number of subscribers after it came to their notice, but from the letters submitted it does not reflect that ITCL has raised a concern about the large numbers of debenture holders in the issue. Therefore, contrary to what it has claimed in its reply and ITCL's contentions that LRN was exempt from complying with Section 67(3) of the Companies Act, 1956 on account of specific exemptions granted to NBFCs are not acceptable.

26. Fact that Section 67 (3A) provides that notwithstanding anything contained in Section 67(3), SEBI shall in consultation with RBI frame guidelines in respect of the offer/ invitation made to the public by a PFI/ NBFC cannot be a ground to hold that Section 67 is not applicable to PFIs/ NBFCs. What Section 67(3A) contemplates is that irrespective of the fact that under Section 67(3) permits NBFCs/ PFIs to send offer/invitation to more than 50 persons to whom the offer/ invitation is addressed without issuing prospectus, SEBI in consultation with RBI shall frame guidelines in that behalf. In other words, Section 67(3A) requires SEBI to frame guidelines in consultation with RBI in relation to the offer/ invitation made by NBFCs /PFIs. There can be no dispute that the guidelines framed by SEBI have to be in consonance with Section 67 of the 1956 Act. Fact that the guidelines were not framed by RBI/SEBI at the relevant time would not mean that Section 67 were also not applicable to NBFCs. Thus, the argument of the Noticee based on proviso to 67(3) of Companies Act, 1956 that Section 67 is not applicable to NBFCs cannot be accepted.

27. I observe that in the instant case, ITCL has stated that it was not aware Series-B NCD's were made to 4178 debenture holders until LRN filed its first Quarterly Compliance Report dated February 12, 2013 with them is not tenable. I observe from the letter dated September 09, 2016, ITCL had submitted to the concerned department of SEBI the list of 4178 debenture holders as disclosed to them as per first quarterly compliance report submitted for the quarter ended September 30, 2012. It can be seen that ITCL was well aware that LRN has issued NCD-Series B to 4178 debenture holders and not apparently only after the receipt of quarterly compliance report dated February 12, 2013. ITCL conducted scrutiny and discovered advertisement on the website of LRN and found that LRN was soliciting funds from general public to subscribe for Series B NCD and did not take immediate step to stop such fund raising and bring to the Notice of SEBI and other Regulators, I note after RBI issued the circular in the month of June 27, 2013 and July 2013 setting the guidelines for private placements to NBFCs, ITCL issued an advertisement on August 01, 2013 warning the investors and general public about LRN not authorized for raising any further amount under Series B. In view of the foregoing, I note that LRN

was soliciting subscription from general public after the closure of the issue and ITCL as a debenture trustee failed to make an efforts to protect the interest of debenture holders and fulfill its obligations in a prompt, ethical and professional manner. I also note that ITCL had failed to maintain high standards of integrity, dignity and fairness in the conduct of the business. In view of the aforesaid, I find that ITCL has violated Regulation 16 read with Code Conduct Schedule III of Clause (1), (2), (3) and (4)

28. In regard to allegation made in the SCN about the list submitted by LRN to ITCL at the quarter ended September 2012 it did not contain complete details of addresses of its clients (debenture holders). I note that the said requirement is for the clients of ITCL which is LRN in the current matter. Here clients does not mean the subscribers to the issue floated by the clients of Debenture trustee. Hence I note allegation that ITCL did not take steps to establish the true and full identity of its clients and of each clients financial position and maintain record of the same as specified under Regulation 16 read with Code of Conduct Schedule III of Clause (5) of DT Regulation does not stand establish.

29. ITCL has claimed that the term "issue" defined under DT Regulations *"issue means an offer of debentures by a body corporate, to the public, or the holders of securities of such body corporate and includes a private placement of debentures made by a body corporate, which seeks to list its debt securities on a recognized stock exchange"* and thus it is applicable only listed (public or private) placement of debentures. I do not accept the claim made by ITCL, it is the duty of the debenture trustee to exercise due diligence to ensure compliance by the issuer company with the provisions of the Companies Act, 1956 and the trust deed. I find that ITCL should have conducted due diligence and exercised professional judgment once it got to know that LRN has allotted debentures to 4178 investors in private placement beyond permissible limit as per Section 67 of Companies Act, 1956 and secondly, when it came to its notice that LRN was seeking subscription from public through website advertisement at large by keeping the issue open even after closure. I note if ITCL was not getting desired information from LRN, it could have inspected the books of LRN and satisfied itself, I observe as per the Debenture Trust Deed executed on May 14, 2012 between LRN and ITCL, ITCL had the right to inspect the registers of the company and take copies and extracts thereof,.

30. ITCL was made aware that allotment has been made to 4178 subscribers beyond permissible limit in September 2012 itself, ITCL did not instantly acted upon and took almost an year to issue public notice in this regard. Even vide circular dated June 27, 2013, RBI had placed certain restriction on the private issue floated by NBFCs, ITCL could have immediately taken action especially when it was made aware that LRN is seeking subscription in a closed issue through website advertisement.

31. I note that the Hon'ble SC in the matter of Sahara India Real Estate Corporation Limited & others (mentioned supra) has held that " *in terms of Section 55A(1)(b) of the Act , the provisions relating to issue of securities , in case of those public companies which intend to get their securities listed on any recognised stock exchange in india , shall be administrated by SEBI. The said section has to be harmoniously read with the provisions of Section 73 0f Companies Act,1956 , which mandates compulsory listing in case of all public issues. Thus the words 'intend to get their securities listed in section 55A(1)(b) of the Act is clearly synonymous with the words 'intend to offer their securities to public' as law mandates compulsory listing in case of public issues.. Therefore, the stated intention of companies to list or not to list is immaterial, if the offer is made to the public.*

32. In regard to violation of Regulation 14 of DT Regulations applicable during the relevant time, I find that Regulation 14 specifies about the contents of the Trust Deed to be executed between the body corporate and debenture trustee. I note that Debenture Trust Agreement has been executed between LRN and ITCL on May 14, 2012 broadly covering the Regulation 14 of DT Regulations. In view of the above, I drop the charges against ITCL for the violation of Regulation 14 of DT Regulations.

33. Therefore, in view of the above, I find that ITCL did not exercise due diligence to ensure compliance by LRN with the provisions of the Companies Act, 1956/ or the trust deed.. Hence, I note that ITCL has violated Regulation 15(1)(i) and Regulation 16 read with Code of Conduct Schedule III of Clause (1), (2), (3) and (4) of DT Regulations and liable for penalty.

Issue II Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992 on Noticee?

34. In view of the above observations, ITCL is liable for monetary penalty under Section 15HB of SEBI Act, 1992 for violations of its provisions of Regulation 15(1)(i) and Regulation 16 read with Code of Conduct Schedule III Clause (1), (2), (3) and (4) of DT Regulations. The provisions of Section 15HB of SEBI Act, 1992 are reproduced thereunder:

15HB Penalty for contravention where no separate penalty has been provided (old provision applicable)

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 may extend to one crore rupees.

While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the 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 a group of investors as a result of the default ;
c) the repetitive nature of the default.

35. 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 non compliance and not exercising due diligence.

36. In this context, the Hon'ble Supreme Court of India, in the matter of Chairman, *SEBI Vs Shriram Mutual Fund { [2006]} 5 SCC 361 } held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant……..."*

ORDER

37. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, in exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and 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.5,00,000 (Rupees Five Lakh only) on M/s Vistra ITCL (India) Limited having SEBI Registration No. IND000000578 in terms of the provisions of Section 15HB of the Securities and Exchange Board of India Act 1992 for violation of Regulation 15(1)(i) and Regulation 16 read with Code of Conduct Schedule III Clause (1), (2), (3) and (4) of DT Regulations. 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.

38. The Noticee mentioned above 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:

Account No. for remittance of penalties levied by Adjudication Officer

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

39. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manger (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 (Penalty)	
Bank Name and Account Number from which payment is remitted	
UTR No	

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

Date: October 26, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER