BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2021-22/14251]

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

Real Eco-Energy Limited (earlier known as Real News and Views Ltd.)

[PAN: AAACH3865P]

In the matter of

Accurate Securities and Registry Pvt Ltd.

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of M/s. Accurate Securities and Registry Private Limited (hereinafter referred to as "**Accurate/ASRPL"**) from December 17, 2018 to December 19, 2018, at its office 23, 3rd floor, Sarthik Complex, Nr. Fun Republic, Iscon Cross Road, Satellite, Ahmedabad - 380 015. The period covered in the inspection was from April 01, 2017 till December 17, 2018 (hereinafter referred to as **"Inspection Period"**).

2. Based on the findings of inspection conducted by SEBI and the response of ASRPL dated May 31, 2019, SEBI observed that Real Eco-Energy Limited (earlier known as Real News and Views Ltd.) (hereinafter referred to as "**Noticee"**) had not executed

any tripartite agreement among its erstwhile Share Transfer Agent (hereinafter referred to as "**STA"**) i.e., Link Intime India Pvt Ltd (hereinafter referred to as "**Link"**) and ASRPL and itself.

3. Accordingly, SEBI observed certain non-compliances, inter-alia of SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 (hereinafter referred to as **"LODR Regulations, 2015"**) and Code of conduct as specified in SEBI (Registrars To An Issue and Share Transfer Agents) Regulations, 1993 (hereinafter referred to as **"RTI/STA Regulations"**) against Noticee. Therefore, SEBI initiated adjudication proceedings against Noticee for violation of Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of Code of Conduct as specified in Schedule III of RTI/STA Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated September 08, 2020, Ms. Sangeeta Rathod was appointed as Adjudicating Officer (**AO**) under Section 19 read with Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act"**), read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of SEBI Act, the aforesaid alleged violations by Noticee. Subsequent to transfer of Ms. Sangeeta Rathod, Shri Prasanta Mahapatra was appointed as the AO in the said matter. Thereafter, the undersigned was appointed as the AO in the matter by SEBI vide its order dated December 04, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A show-cause notice no. EAD-10/ADJ/SM/DD/OW/16972/6/2021 dated July 29, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under Section 15HB of SEBI Act for the aforesaid violations alleged to have been committed by Noticee.

6. The SCN, *inter alia,* alleged the following:

   a. *During the course of inspection, it was submitted by ASRPL vide its letter dated December 19, 2018, that it had not received the previous records from the erstwhile STA such as share certificate lying undelivered, unpaid dividend data, physical share transfer, demat request forms, issuance of duplicate share certificate/conversion of shares/transposition of shares, transmission of shares, remat, split, consolidation, payment of dividend, bonus, shareholder address, no. of shareholders at the time of agreement, no. of physical shares, no. of shares in demat mode, dividend amount transferred to IEPF, share forfeiture, partly paid-up shares etc. and that no further efforts were made by them to obtain all such records from Noticee.*

   b. *It was observed that Noticee had not executed tripartite agreement between erstwhile RTAs and ASRPL. In view of the same it is alleged that Noticee has violated Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of Code of Conduct as specified in Schedule III of RTI/STA Regulations 1993.*

7. The SCN, issued to Noticee, was sent via Speed Post Acknowledgement Due ('**SPAD**') as well as through email dated July 29, 2021 and was duly served upon Noticee and Noticee was given fifteen (15) days' time to make its submission or file its reply in respect of the allegations made in the SCN. Noticee, vide email dated September 21, 2021, submitted its reply to the SCN. The relevant extracts of the submissions made by Noticee vide the aforementioned email is as given under:

   (a) There is no such violation in execution of tripartite agreement by our company as the company has executed the same at the time of changing the STA from Link Intime India Private Ltd to ASRPL on May 18, 2017. Therefore we deny the allegation of violation of Regulation 7(4) of LODR Regulations, 2015.

8. Thereafter, in the interest of natural justice, vide hearing notice dated September 24, 2021, served through email dated September 27, 2021 as well as through SPAD, an opportunity of personal hearing was provided to Noticee on October 21, 2021 through the online webex platform. The Authorized Representative of Noticee (hereinafter referred to as '**AR**'), Mr. Chintan K. Patel, Company Secretary and Compliance Officer of Noticee, attended the hearing on scheduled date and reiterated the contents of Noticee's earlier reply dated September 21, 2021 .

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have carefully perused the charges levelled against Noticee, replies/submissions made by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

   (a) Whether Noticee has violated the provisions of Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations?

   (b) If yes, then do the violations, if any, on the part of Noticee attract any monetary penalty under Section 15HB of the SEBI Act?

   (c) If yes, then what would be the quantum of monetary penalty that can be imposed upon Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act?

10. Before moving forward, it is pertinent to refer to the relevant provisions of LODR Regulations, 2015 and RTI/STA Regulations which are reproduced as under:-

    Relevant provisions of LODR Regulations, 2015

    Regulation 7(4): *In case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity, in the manner as specified by the Board from time to time: Provided that in case the existing* *share transfer facility is managed in-house, the agreement referred above shall be entered into between the listed entity and the new share transfer agent***.**

<u>Relevant provisions of RTI/STA Regulations</u>

SCHEDULE- III

Code of Conduct

Clause 20*:- A Registrar to an Issue and Share Transfer Agent shall take adequate and necessary steps to ensure that continuity in data and record keeping is maintained and that the data or records are not lost or destroyed. Further, it shall ensure that for electronic records and data, up-to-date back up is always available with it.*

<u>Issue No. I- whether Noticee has violated the provisions of Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations</u>

11. I note from records that ASRPL is a SEBI registered STA having registration no. INR000004173. From the submissions of Noticee, I note that Noticee, vide its board resolution dated May 30, 2016, had terminated the services of its existing STA, Link and appointed ASRPL as its new STA. From the letter dated December 19, 2018 submitted by ASRPL to SEBI, I observe that the effective date of change of STA was April 27, 2017. In the aforesaid letter submitted to SEBI, ASPRL has also stated that while taking over charge, it had not received the previous records such as share certificate lying undelivered, unpaid dividend data, physical share transfer, demat request forms, issuance of duplicate share certificate/conversion of shares/transposition of shares, transmission of shares, remat, split, consolidation, payment of dividend, bonus, shareholder address, no. of shareholders at the time of agreement, no. of physical shares, no. of shares in demat mode, dividend amount

transferred to IEPF, share forfeiture, partly paid-up shares etc from the erstwhile STAs of certain companies including that of Noticee. I observe that in the letter dated May 30, 2019 submitted to SEBI, ASRPL stated that at the time of inspection, Noticee had not entered into a tripartite agreement with ASRPL and its erstwhile STA, Link. Vide the aforementioned letter, ASRPL also informed SEBI that as a corrective measure, it had afterwards prepared and dispatched the tripartite agreement to the former STA and the same was under the process of signing.

12. I note that Regulation 13 of RTI/STA Regulations makes it obligatory on the part of every registrar to an issue (**RTI**) and STA holding a certificate to abide by the Code of Conduct as specified in Schedule III. Further, I note that <u>Clause 20 of Code of Conduct requires an STA</u> to take adequate and necessary steps to ensure that continuity in data and record keeping is maintained and that the data or records are not lost or destroyed. Therefore, I note from the wordings of aforesaid provisions that obligation under Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations is binding only on RTIs/STAs and is not applicable to issuer companies. Thus, I find that compliance of Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations is not applicable to Noticee, since it is not an STA. In view of the above observations, I find that allegation that Noticee violated Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations does not stand established.

13. I note that in terms of Regulation 7(4) of LODR Regulations, 2015, an obligation is cast on a listed entity to enter into a tripartite agreement among itself, its existing STA and its new STA on change/appointment of a new STA in the <u>manner as specified by SEBI from time to time</u>. In this regard, I note that in terms of Regulation 7(4) of LODR Regulations, 2015, SEBI, vide its letter MIRSD-3/SS/RTA/32265/2016 dated November 28, 2016 communicated to the Registrars Association of India, has framed a model tripartite agreement to be entered into between issuer company, new STA and its erstwhile STA. I note that clause 5 of the aforementioned model tripartite

agreement states that "In *terms of regulation 7(4) of Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015, the Issuer is required to enter into an agreement with the Existing STA and New STA* *at the time of change of the existing STA*." Therefore, in terms of Regulation 7(4) of LODR Regulations, 2015, Noticee, being a listed entity, was under obligation to enter into tripartite agreement at the time of change of STA, i.e., Link to ASRPL.

14. Clause 6 of the aforesaid model tripartite agreement, *inter alia*, states that "The *date of signing of this Agreement is the date of discontinuation of work by the existing STA and is also referred to as the cutoff date in this Agreement"*. Further, I note that clause 12 of the model tripartite agreement, *inter alia,* states that "The *responsibility of the new STA shall commence on receipt and verification and verification of records/date and documents as per Annexure –I".*

15. From the perusal of the model tripartite agreement and on the combined reading of above mentioned clauses built into the model tripartite agreement, I find that the primary objective of the tripartite agreements to be entered into by issuer company along with its new STA and its erstwhile STA is to ensure smooth transition of responsibility and accountability from the existing STA to the new STA and to ensure complete handing over of all records, data, etc which are in possession of the existing STA to the new STA of the issuer company, so that new STA can render its services unhindered.

16. In its submissions, Noticee has contended that it had executed the tripartite agreement as required under the said regulation and has also furnished a copy of tripartite agreement dated May 18, 2017 (hereinafter referred to as '**Agreement**') to substantiate its claim. I note that this submission of Noticee contradicts the contents of letter of ASRPL dated May 30, 2019 wherein, *inter alia*, ASRPL admitted to the findings of inspection that no tripartite agreement, as required under regulation 7(4) of

LODR Regulations, 2015, existed at the time of inspection i.e. December 2018 and stated that such agreement was executed only later (in May 2019).

17. Further, on examination of the aforesaid agreement submitted by Noticee, I note the following material defects in the agreement:

    a) Under clause 1 of the agreement, the number of shareholders/folios of Noticee is not filled in by the Noticee.
    b) Under clause 2 of the agreement, the date on which Noticee had entered into agreement with its erstwhile STA is not filled in by the Noticee.
    c) Under clause 4 of the agreement, parties to the tripartite agreement have not filled in date of entering into agreement by Noticee and ASRPL under Regulation 9A(1) of RTI/STA Regulations.
    d) The address of the signatories of parties to the agreement have been left blank.
    e) Though model tripartite agreement specified by SEBI vide letter MIRSD-3/SS/RTA/32265/2016 dated November 28, 2016 mandates that attestation by two witness, in this agreement, attestation has been done by only one witness.
    f) The name and date of the witness who attested the agreement has also been not filled in.

18. I note that material information like dates of entering into agreement by the Noticee and STAs, date of attestation to the agreement by the witness etc. has been left out from the agreement defeats the very intent and purpose of the tripartite agreement in addition to rendering the agreement incomplete. In view of the above, I find that the agreement entered into by Noticee, ASRPL and Link was not in the manner as specified by SEBI vide its letter no. MIRSD-3/SS/RTA/32265/2016 dated November 28, 2016, communicated to the Registrars Association of India, in terms of Regulation 7(4) of LODR Regulations, 2015. Therefore, the allegation that Noticee has violated Regulation 7(4) of LODR Regulations, 2015 stands established.

<u>Issue No. II- Does the violation attract monetary penalty under Section 15HB of SEBI Act</u>?

19. I note that the Hon’ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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.….”. ,*

20. In view of the judgment referred above and the fact that the Noticee has violated Regulation 7(4) of LODR Regulations,2015, I am of the view that a monetary penalty needs to be imposed upon the Noticee under Section 15HB of the SEBI Act, which reads as under:

    Section 15HB of SEBI Act

    “*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*”.

<u>Issue No. III: If so, what would be the monetary penalty that can be imposed?</u>

21. While determining the quantum of penalties under Section 15HB of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

    SEBI Act

    Factors to be taken into account by the adjudicating officer.

    Section 15J *- 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.

Explanation. — For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

22. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee or the consequent loss caused to investors as a result of the default. Further, the records do not show any repetitive default of this nature by the Noticee.

ORDER

23. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 1,00,000/-(Rupees One Lakh only) on Noticee i.e. Real Eco-Energy Limited (earlier known as Real News and Views Ltd.), under the provisions of Section 15HB of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

24. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e.,

www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

25. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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)	

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

27. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Real Eco-Energy Limited (earlier known as Real News and Views Ltd.) and also to SEBI.

Date: November 23, 2021
Place: Mumbai

SOMA MAJUMDER
ADJUDICATING OFFICER