BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2024-25/31090

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
Link Intime India Private Limited
(*PAN: AAACI4998N / SEBI Registration Number: INR000004058*)

In the matter of Link Intime India Private Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as 'SEBI') had conducted inspection of Registrar to an Issue and Share Transfer Agent (RTA), Link Intime India Private Limited (LIIPL) during February 2024 for the period February 05, 2023 to November 30, 2023 (hereinafter also referred to as 'Inspection Period' / 'IP').

2. Pursuant to the inspection, SEBI had initiated Adjudication Proceedings under Section 15 I of the SEBI Act, 1992 (hereinafter also referred as 'SEBI Act') in respect of Link Intime India Private Limited (hereinafter also referred to as 'Noticee' / 'RTA/ 'LIIPL' / 'You') in the subject matter for the alleged violations of following provisions:

   2.1. Clause 41 of Annexure-A of SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 and Clause 2 of SEBI circular no. SEBI/HO/MIRSD/MIRSD_RTAMB /P/CIR/2022/73 dated May 27, 2022 read with SEBI Master Circular for RTAs dated May 17, 2023.

   2.2. Clause 7 of Annexure A to SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 read with SEBI Master Circular for RTAs dated May 17, 2023.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 read with Section 15 I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as "*Adjudication Rules*"), the Competent Authority appointed the undersigned as Adjudicating Officer ("*AO*") vide order dated July 02, 2024 to inquire into and adjudicate under Section 15HB of the SEBI Act, 1992 the alleged violations by the Noticee. The said proceeding of appointment was communicated to the undersigned vide Communique dated July 03, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice No. SEBI/EAD5/P/OW/2024/22520/1 dated July 09, 2024 (hereinafter also referred to as 'SCN' / 'SCN dated July 09, 2024 in short) was issued to Noticee in terms of Section 15-I of the SEBI Act, 1992, Rule 4 of SEBI Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty be not imposed under Section 15HB of SEBI Act, 1992 for the aforesaid alleged violations. The SCN was duly served on the Noticee through Digitally Signed Email dated July 10, 2024 and Speed Post Acknowledgment Due (SPAD). In this regard, copy of the India Post Tracking Details and email delivery receipt have been placed in file.

5. In this regard, following was inter alia observed and alleged in respect of the Noticee:

"…

Finding I: Compliance with Cyber-security requirement:

The RTA has not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit. Further, it is observed from VAPT Revalidation Reports (Annexure - 9A) and VAPT Report Summary (Annexure - 9C) that such number of vulnerabilities were open even after 3 months from the VAPT Audit.

Technology committee have not reviewed the implementation of cyber security for quarters July-Sep 2023.

In view thereof, it is alleged that Noticee has violated the following:

- *Clause 41 of Annexure-A of SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 and Clause 2 of SEBI circular no. SEBI/HO/MIRSD/MIRSD_RTAMB /P/CIR/2022/73 dated May 27, 2022 read with SEBI Master Circular for RTAs dated May 17, 2023.*

- *Clause 7 of Annexure A to SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 read with SEBI Master Circular for RTAs dated May 17, 2023.*

…"

6. Noticee vide its letter dated July 19, 2024 sought inspection of documents. Vide email dated July 22, 2024, Noticee was given an opportunity of inspection of relied upon documents on July 26, 2024. On the scheduled date of inspection, Authorized Representatives (ARs) viz. Mr. Kavish Garach (Advocate) and Ms. Anushka Fuke (Advocate) of the Noticee availed the inspection of relied upon documents.

   Noticee submitted its reply to the SCN vide letter dated August 08, 2024. Key submissions of the Noticee as reply to the SCN are as under:

"…

I. *INTRODUCTION*

1. *We, Regstreet Law Advisors, write to you on behalf of and under instruction of our client, M/s Link Intime India Private Limited ("Company" / "Noticee" / "Our Client") in relation to a Show Cause Notice dated July 09, 2024. A duly authorized Letter of Authority / Vakalatnama from the Noticee authorizing 'Regstreet Law Advisors' to act, appear, plead, communicate and represent on behalf of the Noticee has been enclosed herewith as Annexure A.*

2. *A Show Cause Notice dated July 09, 2024, bearing reference no. SEBI/EAD5/P/OW/2024/22520/1 ("Show Cause Notice" or "SCN") was issued by the Ld. Adjudicating Officer, Securities and Exchange Board of India ("SEBI") to the Noticee, enclosed hereto as Annexure B.*

3. *Under the SCN, it has been alleged that the Noticee has violated Clause 7 and Clause 41 of Annexure-A of the SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 ("SEBI Circular dated September 08, 2017") and Clause 2 of the SEBI circular no. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/73 dated May 27, 2022 ("SEBI Circular dated May 27, 2022") read with SEBI Master Circular for RTAs dated May 17, 2023.*

4. *The SCN called upon the Noticee to show cause as to why an inquiry should not be held against it in terms of Rule 4(1) of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("Adjudication Rules"), and why penalty should not be imposed under Section 15HB of the SEBI Act, 1992.*

5. *At the outset, it is submitted that the SCN does not, in any manner, establish a coherent case of violation of law by the Noticee. No contravention of any provision of law as purported in the SCN is established. On the contrary, without dealing with the entire gamut of facts involved in the case, the SCN is a blind enforcement without nuance and without regard to either legislative stipulations or common law and is an attempt to create unnecessary and unwarranted hinderance for a registered intermediary. The same has been adequately demonstrated by the detailed submissions and explanations as set out hereinunder this preliminary reply to the SCN.*

6. *All the observations and allegations made under the SCN are herewith vehemently denied. Nothing stated herein shall be deemed to be an admission on the part of the Noticee for want of non-traverse or specific evidentiary corroboration.*

7. *The Noticee reserves the right to supplement this response with further submissions if necessary or if so advised.*

II. *FACTUAL BACKGROUND*

8. *The Noticee is a Registrar to Issue and Share Transfer Agent ("RTA") registered with SEBI bearing registration number INR000004058. The Noticee has been serving as an RTA for over three decades now, with more than one thousand five hundred clients comprising of over 10,80,,00,000 individual folios. It has a stellar reputation of integrity and commitment to its clients.*

9. *Noticee acts as an agent between the investors and the issuer companies for managing and maintaining records of investors' data. Noticee is one of the most trusted names in the corporate registry industry, with a credible and distinguished history of excellence.*

10. *SEBI conducted a comprehensive onsite inspection of the Noticee from February 05, 2024, to and February 09, 2024. The period of inspection was from February 05, 2023, to November 30, 2023 ("Inspection Period").*

11. *SEBI communicated its findings of the inspection to the Noticee vide an observation letter dated March 27, 2024, highlighting fifteen (15) alleged irregularities concerning the functions of the Noticee. The Noticee, through its letter dated April 12, 2024, duly responded to the aforesaid observation / findings of SEBI.*

12. *In this background, SEBI has issued the present SCN which sought to penalize the Noticee under Section 15HB of the SEBI Act, 1992.*

III. *CORRESPONDENCE WITH SEBI*

13. *At the outset, we would like to submit that the Noticee has extended its full support and co-operation to and has duly responded to all the information being sought by SEBI.*

14. *Details regarding the correspondence between the Noticee and SEBI have been captured summarily in the table below:*

Date	*Particulars*
February 05, 2024 to February 09, 2024	*Comprehensive onsite inspection of the Noticee conducted by SEBI.*
March 27, 2024	*SEBI communicates its findings of the inspection to the Noticee allegedly highlighting 15 (fifteen) irregularities concerning the functions of the Noticee.*
April 12, 2024	*Noticee in detail responds to the findings of SEBI's Inspection letter dated March 27, 2024.*
April 24, 2024	*SEBI's email to the Noticee stating "With reference to the trailing email, it is observed that in Response Letter (attached) you have given reference of Annexures. Kindly provide detailed reply in Response letter itself by tomorrow (10:00 AM)"*
April 25, 2024	*Response of the Noticee to SEBI's email dated April 24, 2024, providing reply incorporated in the response letter/excel sheet itself.*
May 02, 2024	*Noticee's email to SEBI providing the email sent to SEBI on 13 September 2023 in regard to VAPT.*
June 05, 2024	*Noticee's email to SEBI providing re-validated VAPT closure Report duly audited and certified by external auditors containing 62 items as per the Summary report. These reports clearly indicated the closure of 62 vulnerabilities as indicated by SEBI under the Show Cause Notice.*
June 07, 2024	*Noticee's email to SEBI providing re-validated VAPT closure Report duly audited and certified by external auditors containing one item as per the Summary report.*
July 09, 2024	*SEBI issues a Show Cause Notice to the Noticee.*
July 19, 2024	*The Noticee filed letter seeking inspection of documents.*
July 26, 2024	*Inspection of Documents at SEBI office*
August 05, 2024	*SEBI issues hearing notice scheduling the hearing for August 12, 2024*

IV. *SUMMARY OF ALLEGATIONS FROM THE SCN:*

15. *SEBI SCN pertains to Adjudication Proceedings initiated under Section 15-I of the SEBI Act, 1992 in respect of Noticee. The allegation in the SCN are as follows:*

   (a) Noticee has not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit and that it was observed from VAPT Revalidation Reports and VAPT Report Summary that such number of vulnerabilities were open even after 3 months from the VAPT Audit. Hence, the Noticee is alleged to be in non-compliance with Clause 41 of Annexure A of SEBI Circular dated September 08, 2017, read with Clause 2 of SEBI Circular dated May 27, 2022.

   (b) As per SEBI, in the minutes of meeting of Technology Committee dated August 10, 2023, there is no date mentioned on which the technology committee meeting was conducted and therefore the minutes submitted by the Noticee cannot be considered as evidence for Technology committee meeting for quarter July-September 2023. Hence, the Noticee is alleged to have violated Clause 7 of Annexure-A of SEBI Circular dated September 08, 2017, read with SEBI Master Circular for RTAs dated May 17, 2023.

V. *SUBMISSIONS ON MERITS*

16. *It is respectfully submitted that the alleged violations enumerated under the SCN against the Noticee are perverse in law as well as on facts. These allegations are not sustainable, and it is strongly refuted that the Noticee has contravened any provision of the SEBI Act, 1992, or any related rules, regulations, or circulars. The SCN is based without appreciating the volume of business, process undertaken and misapplication of law to the facts of the Noticee. The allegations in the SCN are negatived by the evidence on record.*

17. *The Overlooked Elements in the Show Cause Notice: It is submitted that the SCN does not consider the Noticee's response to*

SEBI inspection team providing detailed clarifications and explaining that there is no case of any violation. The SCN fails to consider absence of any 'interest of investors' or 'interest of securities market' that has been hurt, when applying any regulation or circular under the SEBI Act, 1992. On the contrary, the SCN is against the objects of these legislations in as much as any penalty on the Noticee in the absence of any violation having been made out would run contrary to the objection of 'promoting the development of' securities market'.

A. *NOTICEE HAS DULY CLOSED ALL VULNERABILITIES IMMEDIATELY AFTER DETECTION THROUGH VAPT AUDIT AND AS SUCH IS NOT IN VIOLATION OF SEBI CIRCULARS.*

18. *SEBI under the impugned SCN alleged that the Noticee had not closed 62 vulnerabilities within a period of 3 months from the VAPT Report as required under Clause 41 of Annexure A of SEBI Circular dated September 08, 2017, r/w Clause 2 of SEBI Circular dated May 27, 2022.*

19. *The Clause 41 of Annexure-A of SEBI circular on Cyber Security and Cyber Resilience framework for RTAs dated September 08, 2017, read with Clause 2 of Modification in Cyber Security and Cyber Resilience framework for RTAs dated May 27, 2022, states that –*

> *"41…Any gaps/vulnerabilities detected in VAPT shall be remedied on immediate basis and compliance of closure of finding during VAPT shall be submitted to SEBI within 3 months post the submission of final VAPT report"*

20. *Under the SCN (Para 5.1.2) and the SEBI observation letter dated March 27, 2024, it has been alleged that the Noticee has not closed the vulnerabilities immediately after detection through VAPT Audit, which are as follows:*

	Critical	*High*	*Medium*	*Low*
VAPT	*30*	*51*	*59*	*38*
ATR	*9*	*13*	*15*	*14*

The Noticee has rectified the alleged irregularity.

21. *At the outset, it is submitted that the Noticee has duly remedied and closed the gaps/vulnerabilities detected in VAPT. The same was also communicated to SEBI in the reply of the Noticee dated April 12, 2024, to the SEBI observation letter dated March 27, 2024 that all the vulnerabilities were addressed and acted upon within the stipulated time frame.*

22. *Noticee had duly communicated the VAPT reports which are Annexure 9A to the SCN vide email dated February 09, 2024, subsequent to which SEBI has alleged that these vulnerabilities were not closed.*

23. *It is submitted that vide response dated April 12, 2024, the Noticee had clearly communicated to SEBI that "We confirm that all the vulnerabilities mentioned here were addressed and acted upon within the stipulated time. However, we had not communicated the closure to SEBI within the stipulated time. We regret this omission and would be careful in future in communicating the same.". Despite the same, SEBI has alleged that there the Noticee has not closed 62 vulnerabilities.*

24. *In addition to the above, the VAPT closure Reports dated June 03, 2024 (Infra PT Retesting Report (VAPT) for Link Intime by Prime Infoserv LLP) and June 04, 2024 (Web Security & Wi-Fi Retesting Report (VAPT) for Link Intime by Prime Infoserv LLP) duly audited and certified by external auditors were submitted to the SEBI via Email dated June 05, 2024 (Annexure A). The reports clearly indicate closure all the 62 identified vulnerabilities by the Noticee. The relevant extracts of the the re-validated VAPT closure Reports are reproduced herein below:*

Report	*Date*	*Relevant extract*
Infra PT Retesting Report (VAPT) for Link Intime by Prime Infoserv LLP	*June 03, 2024*	*2.3 Findings* *…* *The security assessment revealed 30 Vulnerabilities in this Infra and after retesting 0 vulnerability found.*
Web Security & Wi-Fi Retesting Report (VAPT) for Link Intime by Prime Infoserv LLP	*June 04, 2024*	*2.3 Findings* *…* *The security assessment revealed 29 Vulnerabilities in this website & 3 Vulnerabilities in internal wi-fi and after retesting 0 vulnerability found.*

25. *In view of the above, it is evident that even before the issuance of the SCN, the alleged vulnerabilities had been resolved, and documentary evidence of their closure had been communicated to SEBI. Therefore, SEBI's allegation that the Noticee failed to close the 62 vulnerabilities and did not submit supporting documentation is unfounded and ought to be withdrawn.*

26. *Additionally, the Noticee under the email dated June 05, 2024, also voluntarily pointed out to SEBI that the summary report provided via email dated February 09, 2024 covered 62 vulnerabilities, whereas in actual there were 63 vulnerabilities requiring closure as per that summary report. Accordingly, the Noticee in true spirit of closure of vulnerabilities have taken up the missing item of the summary report for closure and provided the audit report of the same to SEBI via email dated June 07, 2024 (Annexure B).*

27. *Furthermore, the Ld. Adjudicating Officer is requested to consider the below:*

    (a) *Neither there is an allegation nor there is a finding that the Noticee was not compliant with any other provision or clauses of Annexure-A of SEBI circular on Cyber Security and Cyber Resilience framework for RTAs dated September 08, 2017, read with Clause 2 of Modification in Cyber Security and Cyber Resilience framework for RTAs dated May 27, 2022.*

    (b) *The allegation is limited to not intimating SEBI within a period of three (3) months in absence of proof of intimation and is not that the vulnerabilities were not closed within 3 months internally by the Noticee, which in fact were closed, as submitted under Noticee's response dated April 12, 2024.*

    (c) *In a delegated legislation, especially circular of recent times when an immediate compliance is obligated, a minor delay in fulfilling the requirement ought not automatically result in a penalty. Such delays, particularly when not accompanied by any intention to defraud or evade the obligation or any malafide cannot be considered penalizable by Ld. Adjudicating*

Officer. The absence of malafide or any motive to contravene the provision of a circular ought to be considered favorably before any meagre penalty is even contemplated.

(d) It is a settled law that power to impose penalty includes power to impose no penalty.

(e) Hon'ble Supreme Court of India and Securities Appellate Tribunal have consistently held that in the matters of recently issued circular imposing a monetary penalty is unwarranted. Kindly note that the cause of action / allegation pertains to Clause 2 of Modification in Cyber Security and Cyber Resilience framework for RTAs dated May 27, 2022 and the concerned VAPT reports is of Financial Year 2022-23. Therefore, any action to levy a penalty in this context would not be justified.

28. *In light of the foregoing, it is submitted that the Noticee has undertaken all necessary and proactive measures to address and rectify the identified vulnerabilities. Notwithstanding these efforts, SEBI has failed to acknowledge the closure of these vulnerabilities.*

29. *Without prejudice to the above, even if SEBI has alleged that such vulnerabilities were open even after a period of three months from the VAPT Audit, it is submitted that the same can at best be considered as a technical violation. The said breach (without admitting) is at best be a technical breach for which no penalty ought to be imposed in terms of the settled law of land laid down by the Hon'ble Securities Appellate Tribunal (SAT) in catena of cases as mentioned hereinbelow subsequently. It is not the case that the Noticee has failed to close the vulnerabilities.*

30. *It is submitted that not every infraction, particularly those that have been duly remedied / merely technical in nature, should be considered a violation warranting a penalty against an intermediary. Reliance in this regard is placed on various judgments of the Hon'ble Supreme Court of India / High Courts /Securities Appellate Tribunal, as described in other submissions hereinbelow.*

31. *It is to be noted that the Noticee had been observing the highest standards of integrity, fairness, and professionalism in its working. Noticee is a professionally managed company working as a Registrar and Transfer Agents for almost the last three decades now.*

32. *Without admitting any liability, the Noticee had been co-operating with SEBI and as soon SEBI had pointed out the alleged violations, steps were taken to rectify and the same was rectified much prior to the issuance of the SCN. Therefore, it could not be said that the violation still stands. If at all the Ld. Adjudicating Officer is of the opinion that there is an alleged violation, it is an error of omission and not error of commission.*

33. *In view of the aforesaid submissions, the allegation of contravening Clause 41 of Annexure A of SEBI Circular dated September 08, 2017, r/w Clause 2 of SEBI Circular dated May 27, 2022, is not justified.*

B. TECHNOLOGY COMMITTEE HAVE DULY REVIEWED THE IMPLEMENTATION OF CYBER SECURITY FOR THE QUARTERS APRIL-JUNE 2023, JULY-SEPTEMBER 2023, OCTOBER – DECEMBER 2023.

34. *With respect to the minutes of meeting submitted for Technology Committee Meeting dated 10 August 2023, it was observed by SEBI that there is no date mentioned on which the Technology Committee meeting was conducted. In view of the same, minutes submitted by the Noticee cannot be considered as evidence for Technology committee meeting for quarter July-Sep 2023.*

35. *The Clause 7 of Annexure-A of SEBI circular on Cyber Security and Cyber Resilience framework for RTAs dated September 08, 2017, states that –*

> *"The Board of the QRTAs shall constitute a Technology Committee comprising experts proficient in technology. This Technology Committee should on a quarterly basis review the implementation of the cyber security and cyber resilience policy approved by their Board, and such review should include review of their current IT and cyber security and cyber resilience capabilities, set goals for a target level of cyber resilience, and establish a plan to improve and strengthen cyber security and cyber resilience. The review shall be placed before the Board of the QRTAs for appropriate action."*

36. *Further it is clarified that the Technology Committee Meeting did take place as on June 26, 2023; August 10, 2023; and December 19, 2023, wherein Technology Committee had reviewed and took note of the Cyber Security Resilience framework policy. This is evidenced by the minutes of the meetings dated June 26, 2023; August 10, 2023; and December 19, 2023; relevant extract of which are marked and annexed herewith as 'Annexure C colly'. The relevant extract from the minutes, evidencing the dates of these meetings, are reproduced in the table below:*

Date of Meeting of Technology Committee	*Relevant Extracts*
June 26, 2023	*Minutes of the First Meeting of the Technology Committee of Link Intime India Private Limited held on Monday, June 26,2023 at 3.30 PM (India Time) - 12 Noon (UK Time) through Video Conferencing / Other Audio Visual Means.* *Committee Members Present: Mr. Arun Tiwari Mr. Atul Shah Mr. Garry Emery (Thru Video Conference) Mr. BN Ramakrishnan, Compliance Officer In attendance* *Mr. Arun Tiwari, was appointed as Chairman of the Committee and chaired the Meeting.* *The Chairman welcomed the members present to the Meeting.* *As the meeting was being held by VC, the Chairman checked with the committee members the quality of video; on confirming that the quality of video is good, chairman commenced the proceedings of the meeting.* *…* *Item No. 5:* *To review and taken on record the Cyber Security Resilience framework policy version 1.5. The Committee reviewed and took note of the Cyber Security Resilience framework policy version 15.*

August 10, 2023	*Minutes of the Second Meeting of the Technology Committee of Lnik Intime India Private Limited held on Thursday, August 10,2023 at 12.30 PM at C-101, 247 Park, LBS Marg, Vikhroli (West), Mumbai 400 083* *Committee Members Present: Mr. Arun Tiwari* *Mr. Atul Shah* *Mr. Garry Emery* *Mr. BN Ramakrishnan, Compliance Officer* *In attendance* *…* *Item No. 4* *To review and taken on record the Cyber Security Resilience framework policy version 1.5.* *The Committee reviewed and took note of the Cyber Security Resilience framework policy version 1.5.*
December 19, 2023	*Minutes of the Third Meeting of the Technology Committee of Link Intime India Private Limited held on Tuesday, December 19, 2023 at 3.30 PM through Video Conferencing / Other Audio Visual Means* *Committee Members Present: Mr. Atul Shah* *Mr. Garry Emery* *Mr. BN Ramakrishnan, Compliance Officer* *In attendance* *…* *Item No. 5:* *To review and taken on record the Cyber Security Resilience framework policy version 1.6.* *The Committee reviewed and took note of the Cyber Security Resilience framework policy version 1.6.* *Item No. 6:* *To review and taken on record the Cyber Security Resilience framework audit report for the half year ended30 September 2023.* *The Committee reviewed and took note of the Cyber Security Resilience framework dated 27 November 2023 issued by e-Protech Solutions Private Ltd., CISA.* *The Committee took note of the same.*

37. *The fact that the said meetings of the Technology Committee were held is further evident from the minutes of meeting of the Board of Directors dated September 14, 2023 and February 07, 2024 wherein the Board of the Noticee noted the minutes of the meeting of Technology Committee dated June 26, 2023; August 10, 2023; and December 19, 2023. The copies of the relevant extract of the minutes of the meeting Board of Directors are marked and annexed herewith as 'Annexure D colly'.*

38. *Entire allegation of SEBI is that merely because the minutes did not record the date of the meeting of the Technology committee, such meetings were never conducted. This interpretation is entirely belied by the record, as evidenced by the submissions made herein above. Furthermore, the fact that these Technology Committee meetings did take place is corroborated by an Audit Report from ePROTECT 360 Solutions Pvt. Ltd., which was provided to SEBI as Annexure 12 in response to SEBI's Findings and Observations following the inspection dated March 27, 2024 (Annexure E). The Audit Report confirms that the three quarterly meetings were held on June 26, 2023; August 10, 2023; and December 19, 2023, during which the Committee reviewed and took note of the Cyber Security Resilience Framework Policy. Relevant extract of the report is reproduced hereinbelow:*

> *"During our audit we have verified the Invitation of Meeting, Agenda, MoM and Participants list who attended the meeting and we found its accurate and effective. The Last 3 Quarter meeting conducted on 26th June 2023, 10th August 2023 and 19th December 2023 for respective Quarters wherein the Committee reviewed and took note of the Cyber Security Resilience framework policy"*
>
> *(emphasis supplied)*

39. *In the view of the above, it is evident that the Technology Committee meetings duly considered the Cyber Security Resilience framework of the Noticee.*

40. *Therefore, in light of the above, it is respectfully submitted that there is no violation of the Clause 7 of Annexure-A of SEBI circular dated September 08, 2017 by the Noticee.*

VI. *OTHER SUBMISSIONS*

41. *In view of the aforesaid facts, the Noticee's response to the allegations contained in the SCN as stated hereinabove, the Noticee's submissions are in the alternate and without prejudice to each other. It is respectfully submitted that, on consideration of these submissions alone, the Noticee is liable to be discharged from the instant proceedings.*

42. *It is respectfully submitted that the allegations enumerated under the SCN against the Noticee are perverse in law as well as on facts. The same are untenable and it is vehemently denied that the Noticee have violated any provision of the SEBI Act, 1992 or the regulations framed thereunder. The SCN is based only on conjectures and surmises.*

A. *ALLEGED LAPSES ARE TECHNICAL, VENIAL AND PROCEDURAL IN NATURE AND PURPOSE OF INSPECTION IS NOT PUNITIVE*

43. *It is our humble submission that the alleged non-compliances (without admitting), if any, laid out in the SCN are at best technical, venial and procedural in nature and hence no penalty should be imposed for the same.*

44. *In this regard, it is evident that SEBI has not found any non-compliances with respect to the more serious charges of Investor*

service/ Complaints, Conditions of grant of registration or Anti-money laundering guidelines, violation of which would not only affect the Noticee but investors at large.

45. *In this regard, reliance can be placed on Hon'ble Securities Appellate Tribunal judgment in matters with respect to market intermediaries. Reference in this regard may be made to the matter of M/s. DSE Financial Services Limited v. SEBI[1], which relies on the ratio propounded in Religare Securities Limited v. SEBI, and states that:*

> *"3…We have also observed that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. As per the observations made by the adjudicating officer himself, the violations committed by the appellant are mostly technical in nature; some of them are solitary instances and for others the appellant has mostly taken/initiated corrective measures. In view of this, we are of the view that the adjudicating officer was not justified in taking punitive action."*
>
> *(emphasis supplied)*

46. *Further, the alleged non-compliances are minor deviations / technical lapses at best as the Noticee had taken steps to rectify its alleged violations once the same were pointed out during the inspection without any delay whatsoever. Hence, the proposed measures in the SCN are disproportionate and on this ground alone, the SCN ought to be struck down.*

47. *It is pertinent to note that the Hon'ble Securities Appellate Tribunal in the matter of State Bank of India vs Securities and Exchange Board of India[2] set aside the penalty imposed by the Adjudicating Officer considering that the violations were technical. The Hon'ble SAT held:*

> *"8. Therefore, though admittedly there is a violation but in the face of excruciating factors in delaying full compliance and therefore leading to a technical violation need not always result in penalty. The judgement of the Hon'ble Supreme Court in the matter of Bhavesh Pabari (supra) is quite relevant that factors under Section 15J of the SEBI Act is not exhaustive and the adjudicating authorities can look beyond, wherever genuine reasons/factors exist.*
>
> *…*
>
> *11. Given the above facts and reasons, we do not find any justifiable reason to impose any monetary penalty in the present matters, as every technical violation need not be visited with monetary penalty. In these matters a warning is sufficient. Further, SEBI is at liberty to impose penalty for similar violations in future.."*

48. *It is submitted that the purpose of inspection of books and accounts under the SEBI Act is to ensure compliance of intermediaries with the SEBI Act and the rules and regulations made thereunder. The purpose of inspection is supervisory and advisory but not punitive, unless culpable.*

49. *In this regard, the Hon'ble Securities Appellate Tribunal in Religare Securities Limited v. SEBI[3] held as under:*

> *"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy / irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities / deficiencies to the intermediary at the time of inspection and making it compliant…"*
>
> *(emphasis supplied)*

50. *In fact, SEBI is empowered to register and regulate the working of intermediaries as well as call for information, undertake inspection, conduct inquiries and audit of Registrar to an Issue and Transfer Agents under the SEBI Act, 1992 as well as the RTA Regulations. SEBI routinely undertakes these functions and exercises its powers on various intermediaries registered with SEBI under Section 12 of the SEBI Act, 1992 including of Mutual Funds, Stockbrokers, Sub-brokers, Portfolio Managers, Merchant Bankers, Investment Advisors, Research Analysts, Underwriters, Credit Rating Agencies, etc.*

51. *Pursuant to such an inspection, SEBI has the power to take action including issuance of a letter for corrective action listing out Cases of non-compliance, and various Circulars / Guidelines issued thereunder from time to time, Cases of Deficiency, Cases of Advice or issues an Administrative Warning.*

52. *Therefore, the Ld. Adjudicating Officer, in line with the approach taken by other Adjudicating Officers in various other cases, who have disposed of proceedings with a mere warning to exercise caution in the future, should adopt a consistent standard. Taking a harsher measure in this case would be disproportionate and perverse, both in fact and in law.*

53. *In this context, the Hon'ble Securities Appellate Tribunal in UPSE Securities Limited v. SEBI[4] observed that:*

> *"5. Before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity. However, if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law."*
>
> *(Emphasis Supplied)*

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[1] 2012 SCC OnLine SAT 159
[2] SAT Order dated January 07, 2021 (Appeal No 304, 306 and 307/2020)
[3] SAT Order dated June 16, 2011 (Appeal No. 23/2011)
[4] 2011 SCC OnLine SAT 86.

54. *This view was followed by the Hon'ble SAT in ACML Capital Markets Limited v. SEBI[5] wherein it was reiterated that:*

> *"…the object of inspection of books of accounts and records of any intermediary is to monitor and identify any non-compliance with respect to process procedures and system prescribed through various provisions of the SEBI Act, Rules, Regulations and Circulars issued from time to time. The broker is required to corrective steps in the event any irregularity is pointed out during the course of inspection. In this regard, this Tribunal in Religare Securities Limited v. SEBI (Appeal No. 23 of 2011, decided on June 16, 2011) held that the purpose of carrying out inspection was not punitive and that the object was to make the intermediary comply with the procedural requirements with regard to the maintenance of records etc. The Tribunal held that every minor discrepancy or irregularity found during the course of inspection cannot be converted into a violation for imposition of monetary penalty unless there is a serious lapse which is found in course of inspection."*
>
> *(Emphasis Supplied)*

55. *Accordingly, the Noticee has taken all necessary steps within its power to remain compliant with the circulars. Therefore, it is submitted that, in keeping with the true intents and purposes of an inspection, appropriate and apposite steps have been taken by Noticee to obviate the issues identified.*

56. *In view of the above position, it is submitted that this is not a fit case for an imposition of penalty pursuant to alleged discrepancies found during the aforesaid inspections of the Noticee undertaken by SEBI. The Ld. Adjudicating Officer is requested to note that there is no incentive or motive for the Noticee to be engaging in alleged irregularities and there is no such finding by SEBI as well.*

57. *Further, it is reiterated that the purpose of inspection is not punitive. The Hon'ble Securities Appellate Tribunal had in the case of Samrat Holdings Ltd. v. SEBI[6] had observed that if a person proactively rectifies a mistake upon discovering new information, penalizing such person would not be justified for violation of law. The relevant extract is reproduced below:*

> *"On the contrary, as the acquisition was reported to the stock exchanges and thereby the transparency requirement was fully met with, it is difficult to reasonably conclude that the Appellant had deliberately held back reporting under regulation 3(4). There is no reason to disbelieve, in the absence of clinching evidence to show otherwise, the Appellant's version that failure was a genuine lapse, as is evident from its conduct of submitting the report suo moto. Belated reporting has neither resulted in any gain to the Appellant nor caused any loss to anybody. The Adjudicating Officer also endorsed the same view as is evident from his own words. In para 6.4.5.2 he stated as under:*
>
> *6.4.5.2: "Since this is a case of inter-se transfer, I find the acquisition by the acquirers would not have caused any loss to the other shareholders of the target company, nor the Acquirers would have made any undue gain".*
> *…*
> *Thus, the Adjudicating Officer's findings and the order-imposing penalty cannot stand together. The findings should serve as the basis for penalty. But in this his findings serve only to absolve the Appellant from the reach of penalty. There is nothing in the order supporting the Adjudicating Officer's decision imposing the penalty. In the light of the totality and circumstances of the case and the finding of the Adjudicating Officer thereon, and also in view of the Supreme Courts guidelines in the Hindustan Steel's case, imposition of monetary penalty on the Appellant, in my view is unwarranted."*
>
> *(emphasis supplied)*

B. SEBI HAS IMPOSED NO PENALTY OR MINIMUM PENALTY OR GIVEN WARNING IN RTA INSPECTION CASES IN THE PAST AND THERE IS NO REASON TO DISCRIMINATE AND BE NON-UNIFORM

58. *Without prejudice to the above, SEBI has, on several occasions, either exonerated Registrars to an Issue and Share Transfer Agents (RTAs) or adopted a lenient stance by imposing only a warning or the minimum penalty for alleged regulatory violations, even when faced with numerous and serious allegations. There is no justification for SEBI or the Learned Adjudicating Officer to adopt a discriminatory or distinct approach in a case that, at most, involves an error of omission rather than commission.*

59. *In the matter of 3i Infotech Limited order dated June 19, 2019 (WTM/GM/EFD/15/2019–20), after the personal hearing, the WTM warned the RTA to exercise due care and caution in conduct of its business but did not impose any penalty.*

60. *In the matter of ABS Consultants Private Limited (Order dated 01 February 2006), after the personal hearing, the WTM warned the RTA to be more careful in future in its dealings in the securities market and diligently adhere to the provisions of the SEBI Act 1992, the Regulations and the Rules made thereunder. The WTM did not impose any penalty upon the RTA in this case.*

61. *In the matter of Beetel Financial & Computer Services Private Limited (Order dated 03 August 2009), after the personal hearing, the WTM gave the benefit of doubt to the RTA and no penalty was imposed.*

62. *The Ld. Adjudicating Officer is requested to consider the orders issued by Whole-Time Members / co-ordinate adjudicating officers in similarly placed matters where inspection of intermediaries were conducted and numerous breaches were alleged, and yet they were exonerated or dealt with minimal penalty. The details of such instances are delineated below for comprehensive understanding and comparison:*

Sr No	Order Name	AO / WTM	Date	Provisions alleged to be violated	Penalty imposed
A.	Ms Link Intime India Pvt. Ltd.	Mr. Prashanta Mahapatra	20.05.2022	• Clauses 3 and 25 of the Code of Conduct read with Regulation 13 of the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations 1993 • Clause d (1) of Schedule VI read with Regulation 39(4) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Exonerated
B.	HDFC Limited - In-house RTA	Ms. Geetha G	30.03.2022	• Violation pertaining to Issuance of Duplicate shares • deviation from prescribed procedures in case of transfer of dividend	Exonerated
C.	Accurat e	Mr. G Mahaligam	02.09.2020	• regulation 7 read with regulation 9A(1)(d), regulation 22(a) and (b) of the RTA Regulations	Warning

[5] Order dated 29.06.2022 in Appeal No. 100 of 2020.

[6] 2001 SCC OnLine SAT 2.

Sr No	Order Name	AO / WTM	Date	Provisions alleged to be violated	Penalty imposed
	Securities And Registry Pvt Ltd			• Regulation 6A read with Schedule II of the SEBI(Intermediaries) Regulations,2008 (Intermediaries Regulations) • SEBI Circular CIR/MIRSD/7/2012	
D.	Integrated Enterprises India Limited	Mr. Vijayant Kumar Verma	29.11.2022	• Regulation 9A(1)(b) of RTI & STA Regulations read with Clause 1 of SEBI RRTI Circular: No.1 (94-95) dated October 11,1994. • SEBI RRTI Circular: No.1 (94-95) dated October 11,1994 read with Regulation 14(3) (c) and clause 2 of code of conduct stipulated under regulation 13 of RTI & STA Regulations • SEBI RRTI Circular: No.1 (94-95) dated October 11,1994 read with SEBI RTI Circular No.1(2000-2001) dated May 09, 2001 and CIR/MIRSD/8/2012 dated July 05, 2012 read with Clause 2 of Code of Conduct stipulated under Regulation 13 of RTI & STA Regulations. • SEBI Circulars No. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001, RTI Circular No.1(2000-2001) dated May 09, 2001 and CIR/MIRSD/8/2012 dated July 05, 2012 read with Clause 2 of Code of Conduct stipulated under Regulation 13 of RTI & STA Regulations. • Clause (B)(ii) of SEBI Circular No. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 read with clause 2 of Code of Conduct stipulated under regulation 13 of RTI & STA Regulations. • Adjudication order in the matter of Integrated Enterprises (India) Limited • RRTI Circular (99-2000) dated May 20, 1999 read with clause 2 of code of conduct stipulated under Regulation 13 of RTI & STA Regulations read with Regulation 54(5) of SEBI (Depositories and Participants) Regulations, 1996. • Circular No. NSDL/JS/016/2004 Dated May 10, 2004 read with NSDL Bye-law No.9.4.7 and CDSL Bye-law No.13.5.7 read withClause 5(c) of Code of Conduct stipulated under Regulation 13 of RTI & STA Regulations • Clause 3(e) of Listing Agreement read with clause 2 of code of conduct stipulated under Regulations 13 of RTI & STA Regulations.	INR 50,000
E.	MCS Share Transfer Agent Limited	Sahil Malil	04.01.2023	• Clauses 1, 2, 3,13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the RTA Regulations for failing to exercise due diligence and ensuring proper care and exercising independent professional judgment while processing the demat request of the Complainant	INR 1,00,000
F.	Maheshwari Datamatics Private Limited	Mr. Amit Kapoor	13.12.2022	• Section 14(3) of The Depository Act, 1996, • Provisions of Regulation 53A of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as "DP Regulations, 1996") r/w Regulation 71 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as "DP Regulations, 2018"), • Regulation 54(5) of DP Regulations, 1996 r/w Regulation 74(5) of DP Regulations, 2018 • Regulation 40 (3) and Regulation 39 (2) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "LODR Regulations"), • Regulation 14(3) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations 1993 (hereinafter referred to as "RTA Regulations"), • Clause 2 (vii) with respect to the Records and documents to be maintained by STA prescribed under RRTI Circular No. 1 (94-95) dated 11/10/1994, • Clause 1, 2, 3 & 5 of the Code of Conduct as specified under Regulation 13 of RTA Regulations, • SEBI RRTI Circular no. 1 (2000-2001) dated May 09, 2001, • SEBI circular no. CIR/MIRSD/8/2012 dated July 05, 2012, • SEBI Circular no. CIR/MIRSD/10/2013 dated October 28, 2013, • SEBI RRTI Circular No.1 (99-2000) dated May 20, 1999	INR 2,00,000
G.	M/s. Zuari Finserve Limited	Mr. Santosh Kumar Sharma	09.10.2023	• Regulation 9A(1) (b) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulation, 1993 read with Clause 23 of Code of Conduct specified in Schedule III of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993; Regulation 7(4) of SEBI (LODR Regulations 2015) in case of change or appointment of new STA by listed company; Clause 2,3 and 16 of Code of Conduct specified in Schedule III read with Regulation 13 of SEBI (RTI/STA) Regulation, 1993. • Clause (a) of Point 1 "Specific Activities" of Schedule 1 of SEB Circular "Instruction to Registrars to an Issue Share Transfer Agents" dated October 11, 1994. • Clause 25(a) of "Draft of Agreement between the STA and the Company" of Annexure B of Schedule II of SEBI Circular "Instruction to Registrars to an Issue / share Transfer Agents" dated October 11, 1994 • Clause 2.2 of SEBI CircularNo.SEBI/HO/MIRSD/MIRSD_ RTAMB/P/CIR/2021/655 dated November 03, 2021. • Point A (7) of table at Annexure A to SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/ P/CIR/2021/670dated November 26, 2021. • Point II (13 &14) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/ P/2018/73 dated April 20, 2018	INR 5,00,000
H.	Abhipra Capital Ltd.	Mr. Amar Navlani	24.06.2024	• Clause 12(ii) of Part II (Provisions with regard to Transfer/ Transmission • / Correction of Errors etc.)of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 • Clause 13 of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR • /P/2018/73 dated April 20, 2018 and Clauses 2, 3 and 16 of Code of Conduct (Schedule 3)of SEBI RTA Regulations, 1993. • Clauses 12(ii) of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/ CIR/P/2018/73 dated April 20, 2018. • Section 'NISM Certification' of 'Sec III (Compliance Certification)' of Annexure to SEBI Circular No. CIR/MIRSD/7/2012 dated July 05, 2012; Regulation 3(2), 4, 5, 6, 9(2) & (3) and 10(1) of SEBI Certification Regulations, 2007 read with SEBI Notification No. LAD-NRO/GN/ 2009-10/18/175577 dated September 04, 2009 and Clause 3, 16, 29, and 30 of Schedule III read with Regulation 13of SEBI RTA Regulations, 1993. • Clauses 13 and Clause 14 of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/ DOP1/CIR/P/2018/73 dated April 20, 2018 • Regulation 15A (1) of the SEBI RTA Regulations, 1993 and Clauses 2, 3 and 16 of Code of Conduct of Schedule III read with Regulation 13 of the SEBI RTA Regulations, 1993. • Regulation 9A(1)(b) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 and Draft Agreement in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994 • Clause C(2)(b) of Schedule VII read with Regulation 40(7) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015; Regulation 40(3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015; Clause 2 (III) of SEBI circular no. CIR/MIRSD/10/2013 dated October 28, 2013; SEBI circular no. SEBI/HO/MIRSD3 /CIR/P/2016/85 dated September 15, 2016 w.r.t. Standardization and Simplification of Procedures for Transmission of Securities; Clause 2, 3 and 16 of code of conduct specified in Schedule III read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 • Clause 2.5.2 of the SEBI circular no: SEBI/HO/MIRSD/ • MIRSD_RTAMB/ P/CIR/2021/655 dated November 03, 2021; Clause 13 of	INR 7,00,000

Sr No	Order Name	AO / WTM	Date	Provisions alleged to be violated	Penalty imposed
				Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/ DOP1/CIR/P/2018/73 dated April 20, 2018; Clauses 2, 3 and 16 of Code of Conduct (Schedule 3) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 • *SEBI circular no: SEBI/HO/MIRSD/MIRSD_ RTAMB/P/CIR/2021/655 dated November 03, 2021; Clauses 2, 3 and 16 of code of conduct specified in Schedule III read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993* • *Regulation 18(1) and (4) and Clauses 2, 3 and 16 of Code of Conduct of Schedule III read with Regulation 13 of the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993* • *Clause 4.2 of the SEBI circular no: SEBI/HO/MIRSD/ MIRSD_RTAMB/P/CIR/ 2021/655 dated November 03, 2021; Clauses 2, 3 and 16 of code of conduct specified in Schedule III read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993; Clause 20 of "GeneralNorms for Processing of Documents" of SEBI Circular -RTI Circular No. 1 (2000-2001) Dated May 09, 2001.*	

63. *It has been held consistently that SEBI as a regulator must adopt a consistent and predictable approach. Reliance is placed on the decision of the Hon'ble Supreme Court of India in the matter of Securities and Exchange Board of India v. Sunil Krishna Khaitan (CIVIL APPEAL NO. 8249 OF 2013- Para 52).*

64. *Further, the Hon'ble Supreme Court has held in Securities and Exchange Board of India v. R.T. Agro (P.) Ltd.[7] that SEBI was not justified in penalizing a Company by taking a 'hyper-technical view' of the law. The matter related to certain related party transactions.*

65. *As has been previously considered by other WTMs, QJAs or Adjudicating Officers in cases involving SEBI-registered intermediaries, it is essential to evaluate the facts and circumstances of a case holistically rather than from the hyper-technical perspective adopted by the SEBI inspection team.*

C. *NO PENALTY CAN BE IMPOSED ON NOTICEE FOR ANY ALLEGED VIOLATION.*

66. *Without prejudice to the above, even if it was found that the Noticee is in non-compliance of the clauses of the SEBI Circulars as laid out in the SCN, no penalty can be imposed.*

67. *It is also relevant to mention herein that, without prejudice the submissions that there has been no contravention on part of the Noticee as alleged or otherwise, the violations alleged in the SCN are neither repetitive nor has the Noticee made any gain or avoided any loss in course of the same.*

68. *It is a well settled law that power to impose penalty includes power to impose no penalty in the given facts and circumstances. It is not that every breach or error is culpable even though it is possible to construe the same as a contravention. In a case, where a Noticee demonstrates its bona fide and an authority is not able to demonstrate a Noticee's mala fide, at the very least, discretion needs to be applied to provide benefit of doubt to such a Noticee. The case of Noticee is squarely covered in this undisputed, settled principle.*

69. *The Noticee also respectfully submits that imposition of any penalty whatsoever is totally unjustified in the given facts and that the case of the Noticee requires serious consideration. The Noticee respectfully submits that any imposition of penalty would be completely contrary to canons of securities laws and jurisprudence. Further any imposition would irreparably prejudice the Noticee's reputation in the industry which has been built on the basis of integrity and excellence in rendering services to its clients. The Noticee is neither guilty of conduct which is contumacious or dishonest, nor has the Noticee acted in conscious disregard of law or in defiance of law. The violations alleged in the SCN are neither repetitive nor has the Noticee made any gain or avoided any loss in course of the same.*

70. *The Noticee has not defrauded any investor or client company it services and has always adhered to the business ethics of the industry. It is also relevant to mention herein that, without prejudice the submissions that there has been no contravention on part of the Noticee as alleged or otherwise, the violations alleged in the SCN are neither repetitive nor has the Noticee made any gain or avoided any loss in course of the same.*

71. *Section 15J Factors: Section 15J of the SEBI Act specifies the factors that SEBI must consider when determining the amount of penalty to be levied, which include the amount of gain or unfair advantage resulting from the default, the loss caused to an investor or group of investors, and the repetitive nature of the default. Even if it is assumed that there is a violation, the same could only mean to be merely a technical violation for which no penalty is warranted. That failure to perform a statutory obligation was a matter of discretion upon the authority while imposing penalty and that penalty cannot be imposed merely because it was lawful to do so.*

Statutory provisions	Inapplicability of the same to the Noticee
15J(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;	*There is no finding or allegation by SEBI that the Noticee has made any disproportionate gain or had any unfair advantage.*
15J(b) the amount of loss caused to an investor or group of investors as a result of the default;	*There is no finding or allegation by SEBI that the actions of the Noticee caused any loss to an investor or group of investors.*
15J(c) the repetitive nature of the default.	*There is no finding or allegation by SEBI that the alleged default was repetitive in nature.*

72. *It is submitted that the judgment of the Hon'ble Supreme Court in the case of SEBI vs. Shriram Mutual Fund[8], is blindly applied by various Adjudicating Officers for imposition of monetary penalty by nitpicking few lines from the judgment stating '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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not'.*

73. *However, if correctly interpreted, the said judgment only holds that mens rea is not an essential requirement of all contraventions*

[7] Order dated April 25, 2022 in CIVIL APPEAL NO. 2957 OF 2022
[8] (2006) 5 SCC 361

of statutory obligations, and not that each contravention, no matter how trivial or irrelevant or innocent, has to be penalized. In fact, the subsequent judgments of the Hon'ble Supreme Court have clearly held that every infraction does not merit a penalty as apparently assumed by SEBI including in inspection cases. In fact, the Hon'ble Supreme Court in its subsequent judgment in Bharjatiya Steel Industries v Commissioner, Sales Tax, Uttar Pradesh[9], expressly referred to the judgment in the matter of SEBI vs. Shriram Mutual Fund (supra) and held that the concerned authority always has to exercise his discretion as to whether to levy a penalty or not, and that for the exercise of such discretion, existence of mens rea becomes a relevant factor. Thus, every contravention of statutory provisions, irrespective of how trivial or venial the breach is, does not merit levy of a penalty

74. *Further, reliance is placed on the decision of the Hon'ble Supreme Court in decision in SEBI v. Bhavesh Pabari,[10] where the Hon'ble Court has held the Adjudicating Officers of SEBI to have sufficient discretion to impose penalties or exonerate entities by applying factors beyond Section 15J (a)(b)(c).*

75. *Likewise, in the matter of P.G. Electroplast and others v. SEBI (supra)[11] the Hon'ble SAT while setting aside the monetary penalty imposed by the AO held:*

> *"18…Even if a minimum penalty is prescribed, the authority after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the act."*

76. *It is also pertinent to note the observations of the Hon'ble SAT in Piramal Enterprises Limited v. SEBI[12] which has observed as under:*

> *"25. Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures."*
>
> *(Emphasis Supplied)*

77. *It is further submitted that the Noticee has an unblemished record. Therefore, any penalty no matter how small, shall have an adverse impact on the Noticee. It is also pertinent to note the same judgment of Piramal Enterprises Limited (supra) also held as below:*

> *"...The imposition of penalty, even though meagre will leave an indelible mark and leave a blot on their spotless image."*
>
> *(Emphasis Supplied)*

78. *Thus, it is humbly submitted that in the present case, not only has Noticee been in compliance with SEBI Rules, Regulations and circulars but also that the present SCN has failed to establish any of the alleged violations. In light of the same and Noticee adherence to SEBI Act and regulations made therein, it is humbly urged that the Adjudicating Officer should dispose off the SCN in respect of the Noticee without levying any penalty.*

D. VIOLATIONS OF PRINCIPLES OF NATURAL JUSTICE

79. *The Noticee requested SEBI to facilitate the inspection of and furnish copies of documents integral to the ongoing matter.*

80. *On July 19, 2024, the Noticee made a request to SEBI seeking inspection of originals of documents which was made through an Inspection Letter dated July 19, 2024. While SEBI granted the inspection opportunity on July 26, 2024, it failed to provide a majority of the requested documents. The copy of Inspection Letter dated July 19, 2024, and minutes of the proceedings of the inspection of documents on July 26, 2024, are attached herewith as 'Annexure G Colly'.*

81. *It is submitted that it is crucial for the Noticee to have access to the documents relied upon by and in possession of SEBI in the SCN to defend itself against the allegations levelled in the SCN.*

82. *Noticee had sought inspection of all relevant documents, but SEBI only provided a limited set of documents i.e Inspection Report, observation letter of SEBI dated March 27, 2024 and reply to observation letter dated April 12, 2024. SEBI ought to have granted inspection of all relevant documents and its failure to do so in violation of the principles of natural justice has clearly impeded the Noticee's ability to submit a comprehensive reply to the SCN.*

83. *The Inspection letter dated July 19, 2024, outlined a comprehensive list of documents requested during the inspection conducted on July 26, 2024. Unfortunately, the majority of these documents have not been provided which were as below:*

…..

84. *In view of the aforesaid, it is submitted that this blatant disregard for the principles of natural justice and fair inquiry has hindered the Noticee's ability to adequately defend itself. In this regard, the Noticee relies on the following judgements:*

    (a) Supreme Court of India in the matter of T. Takano and Anr. v. SEBI (2022) 8 SCC 162 providing the test of disclosure and reasoning to be provided for nondisclosure. The Hon'ble Supreme Court held that 'The following principles emerge from the above discussion: (i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and (ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority';

    (b) Supreme Court of India in the matter of Reliance Industries v. SEBI (2022) 10 SCC 181 requiring SEBI to act in a transparent and fair manner and it was held that '…The approach of SEBI, in failing to disclose the documents also raises concerns of transparency and fair trial. Opaqueness only propagates prejudice and partiality…' and '…another

[9] (2008) 11 SCC 617
[10] 2019 SCC OnLine SC 294.
[11] 2019 SCC OnLine SAT 148.
[12] 2019 SCC OnLine SAT 134.

disconcerting aspect of this case that comes to the fore is SEBI's attempt to cherry-pick the documents it proposes to disclose. … Such cherry-picking by SEBI only derogates the commitment to a fair trial…';

(c) *Bombay High Court in the matter of Ashok Dayabhai Shah And Ors v. SEBI And Ors (Writ Petition No. 530 Of 2023 order dated December 01, 2023) (para 25) wherein the Bombay High Court found SEBI's resistance as 'obstinate stand taken by the SEBI in not furnishing the documents' and observed that there was 'persistent non-compliance of such orders passed by the Court'. The Bombay High Court further held 'Such approach of the SEBI, in our opinion, would cause a dent to the confidence….';*

(d) *Securities Appellate Tribunal in the matter of Mukesh D. Ambani v. SEBI (Appeal No. 88 of 2021 order dated December 04, 2023) (paragraph 116) wherein the SAT held 'Non supply of the documents was violative of the principles of natural justice. We are also of the opinion that prejudice caused because of non-disclosure of the relevant material was writ large'; and*

(e) *Securities Appellate Tribunal in National Stock Exchange of India Ltd. v. SEBI (SAT Appeal No. 445 of 2022 dated December 14, 2023) set aside the order of SEBI in one of the appeals on the ground that inspection of documents was denied stating that 'This method of adjudication is totally arbitrary and violative of the principles of natural justice. On this short ground, the impugned order cannot be sustained'.*

It is mandatory for SEBI to provide file noting / formation of opinion

85. *It is submitted that SEBI, without providing any rationale, has dismissed / rejected the request for obtaining file noting(s) or the opinion formed by the competent authority regarding the current proceedings, which blatantly violates the principles of natural justice and fairness. This denial has caused significant prejudice to the Noticee in as much as:*

(a) *The Noticee has been deprived of access to crucial information regarding the opinion formed by the Competent Authority on the necessity of appointing an adjudicating officer to conduct an inquiry in the prescribed manner.*

(b) *Furthermore, this prejudice is compounded by the fact that the Noticee remains unaware of the identity of the Competent Authority who evaluated the inspection report and determined that the minor instances noted therein could be construed as 'contraventions' or 'failures to comply' under Section 15HB of the SEBI Act, 1992.*

(c) *Furthermore, it remains uncertain whether an independent assessment was conducted to prevent conflicts of interest between the inspection wing and the enforcement wing.*

86. *It is well-settled that SEBI is required to give file noting(s) containing the reasons for formation of opinion to initiate action against any person / entity by competent authority and reliance in this regard is placed on the judgment of the Hon'ble Gauhati High Court in the judgment of Sunita Agarwal v. Securities and Exchange Board of India and Another.*

87. *There have been cases where the Hon'ble SAT had to pass strictures against WTMs and referring the matter to the Finance Minister of India. In the case of Adventz Finance Private Ltd. v. SEBI and Anr, SEBI was directed to furnish internal notations/file notations upon an appeal by a noticee. Despite requests from the noticee, SEBI disregarded their pleas, and such requests were dismissed by the Assistant General Manager (AGM)/Manager without providing a reasoned order from the Whole-Time Member (WTM). SEBI defended these rejections before SAT on the ground that file notings are internal and not relevant for the noticees. SAT, noting the severity of the issue, referred the matter to the Hon'ble Finance Minister of India (FM).*

88. *In addition to the above, in the Mukesh D. Ambani v. SEBI (supra), SEBI had provided internal noting / file noting and the same is evident from the following observation of the SAT:*

> *"26. It was also urged, that the show cause notice and the impugned order was passed in the teeth of the internal noting of the respondent in 2010 wherein the Chairman had posed a question as to what was the nature of evidence against Mr. Mukesh Ambani"*

(emphasis supplied)

89. *Therefore, SEBI ought to provide the aforesaid file notings / opinion formed as sought under the Inspection Letter. The Noticee submits that the failure to provide the same constitutes a violation of the principles of natural justice.*

…..
"
.

7. Having regard to the principles of Natural Justice, vide Hearing Notice dated August 05, 2024, an opportunity of personal hearing was provided to the Noticee on August 12, 2024.

8. On the Scheduled date of hearing, Noticee appeared through its Authorised Representatives (ARs) viz. Mr. Sumit Agrawal (Advocate), Mr. Kavish Garach (Advocate), Ms. Anushka Fuke (Advocate), Mr. B.N. Ramakrishnan (Chief

Compliance Officer of Noticee) and Mr. Nipun Mudaliar (Senior Legal Counsel of Noticee) for the hearing opted to be held in person. During the hearing, the ARs for Noticee relied upon and reiterated the submissions made by Noticee vide letter dated August 08, 2024. Further, the ARs inter alia submitted that there were no further/additional submissions to be made and the submissions made vide letter dated August 08, 2024 be taken as final and complete submissions in the matter.

D. CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are as following:

Issue No. I:	Whether the Noticee has violated the provisions of SEBI Circulars, as alleged?
Issue No. II:	If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of SEBI Act, 1992?
Issue No. III:	If yes, what should be the monetary penalty that can be imposed upon the Noticee?

10. I note that the Noticee as part of its submissions has raised certain preliminary technical contentions. Accordingly, it would be pertinent to first deal with the same before proceeding to deal with the instant case on merits, which are being dealt with as hereunder:

10.1. I note that Noticee in its submissions as reply to the SCN had inter alia cited the Hon'ble Securities Appellate Tribunal ('SAT') order dated 04.07.2012 in the matter of ***UPSE Securities Limited v. SEBI*** and placed reliance on the following text

> *"5. Before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock*

exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. ***Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings.*** *The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity. However, if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law."*

Further, Noticee on the same point also relied upon Hon'ble Securities Appellate Tribunal order in the matter of State Bank of India vs Securities and Exchange Board of India, Religare Securities Limited v. SEBI and ACML Capital Markets Limited v. SEBI, M/s. DSE Financial Services Limited v. SEBI and Samrat Holdings Ltd. v. SEBI.

10.2. In this regard, in my opinion each case is peculiar in its facts and circumstances based on which the violations are ascertained. Whether adjudication proceedings are to be initiated in a case would depend on the facts and circumstances of each case. I also note that, initiation of Adjudication proceedings under the appropriate provisions of SEBI Act is a prerogative of SEBI depending upon the outcome of such exercise viz., Inspection and findings thereof. It would also be relevant to state that the subject matter of instant proceedings are as per the Communique of appointment of AO, duly approved by the Competent Authority, copy of which had been provided to the Noticee as part of SCN itself.

I also note from the text of Hon'ble SAT in the matter of Religare Securities Limited v. SEBI dated 16.06.2011 as relied upon by the Noticee itself that Hon'ble SAT had inter alia held that "… This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent…".

10.3. Further in this regard, I also note that the alleged violations in respect of the Noticee are of extant applicable provisions of law as are otherwise applicable to the entire category of intermediary viz., Registrar to an Issue and Share Transfer Agent in the instant case, and not just about minor procedural aspects confined to Noticee only. I also note that the alleged violations in respect of the Noticee in the instant proceedings inter alia pertain to crucial aspects regarding RTA has not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit and Technology committee of Noticee had not reviewed the implementation of cyber security for quarters July-Sep 2023. I note that the provisions relating to securities laws, including circulars issued by the regulator, are mandated inter alia with the objective of orderly functioning of the securities market and its constituents and for protection of the interest of the investors and therefore, in particular considering that such provisions of law are applicable to the entire class of intermediary which the regulator is duty bound to enforce. Accordingly, the contentions of the Noticee in this regard are devoid of merit and cannot be accepted.

10.4. I note that Noticee as part of its submissions has inter alia also contended that *"Noticee had sought inspection of all relevant documents, but SEBI only provided a limited set of documents… SEBI ought to have granted inspection of all relevant documents and its failure to do so in violation of the principles of natural justice has clearly impeded the Noticee's ability to submit a comprehensive reply to the SCN."* In this regard, Noticee has relied upon the judgement of Hon'ble Supreme Court of India in the matter of *T. Takano and Anr. v. SEBI*, *Reliance Industries v. SEBI*, judgement of Hon'ble High Court in the matter of *Ashok Dayabhai Shah And Ors v. SEBI And Ors*, order of Hon'ble SAT in the matter of *Mukesh D. Ambani v. SEBI* and *National Stock Exchange of India Ltd. v. SEBI.*

10.5. Further, Noticee has contended that "SEBI, without providing any rationale, has dismissed / rejected the request for obtaining file noting(s) or the opinion formed by the competent authority regarding the current proceedings". In this regard, Noticee has relied upon on the judgment of the Hon'ble Gauhati High Court in the judgment of Sunita Agarwal v. Securities and Exchange Board of India and Another, hon'ble SAT order in the matter of Adventz Finance Private Ltd. v. SEBI and Anr and Mukesh D. Ambani v. SEBI.

10.6. In this regard, I would like to note that the documents relied upon including Inspection Report along with its annexures in the current proceedings had been provided to the Noticee. Further, on perusal of minutes of inspection, I note that all the documents relied upon during the proceedings were provided to the ARs of the Noticee for the inspection.

10.7. Further, w.r.t certain requests by Noticee during the inspection, I note that the request of the Noticee was not specific and /or vague /roving in nature in so the request was made inter alia stating, "*All the documents received, communications made by SEBI with any person in respect of the present proceedings, not provided along with the SCN, if any"* and "*Any adverse material available on record or any documents with SEBI evidencing anything in relation to the allegations against the Noticee"* and *"Any statement recorded by SEBI during the inspection."* I note that the relied upon documents relevant to the current proceedings had been provided to the ARs of the Noticee for the inspection. Further in this regards as regards contentions of the Noticee relating to opinion to appoint inspecting authority, approving action after considering inspection report, order dated July 02, 2024, appointing the Ld. Adjudicating Officer etc., I note from material available on record that vide email dated December 08, 2023 addressed to the Noticee whereby SEBI inter alia attaching copies of inspection notice and pre inspection questionnaire had sought information from the Noticee which was acknowledged by the Noticee vide its email dated December 14, 2023. Further in this regard, I also note that Noticee had been provided with the copy of the communique of appointment of the adjudicating officer along with SCN itself.

In this regard, reference is also drawn to judgment of Hon'ble Supreme Court in the matter of Kavi Arora vs. Securities and Exchange Board of India (14.09.2022 -SC): MANU/SC/1163/2022), wherein it was held that:

> "*49. It is well settled that the documents which are not relied upon by the Authority need not be supplied*.."

In view thereof, Noticee's contention in this regard are devoid of merit and hence cannot be accepted.

10.8. I also note that Noticee has contented that *"the SCN fails to consider absence of any 'interest of investors' or 'interest of securities market' that has been hurt, when applying any regulation or circular under the SEBI Act, 1992*. In this regard, I note that considering that regulated entities are under obligation to ensure compliance with the circulars issued by a regulatory body, the said contention of the Noticee is out of context and at best can be considered as mitigating factor.

10.9. Further, Noticee as part of its reply to the SCN had inter alia contended that *"…. the SCN does not consider the Noticee's response to SEBI inspection team providing detailed clarifications and explaining that there is no case of any violation …".* In this regard, I note from material available on record that pursuant to Inspection, SEBI sought comments of Noticee on the findings of inspection vide SEBI letter dated March 27, 2024 and considered response of Noticee and instant proceedings are outcome thereafter.

In view thereof, Noticee's contention in this regard are devoid of merit and hence cannot be accepted.

11. I now proceed to deal with the matter having regard to the submissions of the Noticee on merit.

Issue No. I: Whether the Noticee has violated the provisions of SEBI Circulars, as alleged?

12. I note that with regard to Compliance with Cyber-security requirement it was inter alia observed and alleged that:

i. **The RTA had not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit. Further, it is observed from VAPT Revalidation Reports and VAPT Report Summary that such number of vulnerabilities were open even after 3 months from the VAPT Audit and accordingly it was alleged that Noticee had violated the provisions of Clause 41 of Annexure-A of SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 and Clause 2 of SEBI circular no. SEBI/HO/MIRSD/MIRSD_RTAMB /P/CIR/2022/73 dated May 27, 2022 read with SEBI Master Circular for RTAs dated May 17, 2023.**

ii. **The Technology Committee had not reviewed the implementation of cyber security for quarters July-Sep 2023 and accordingly it was alleged that the Noticee had violated provisions of Clause 7 of Annexure A to SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 read with SEBI Master Circular for RTAs dated May 17, 2023.**

The above are being sequentially dealt with as herein under:

12.1. **RTA had not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit. Further, it is observed from VAPT Revalidation Reports and VAPT Report Summary that such number of vulnerabilities were open even after 3 months from the VAPT Audit.**

12.1.1. In this regard relevant text of provisions alleged to have been violated is reproduced below:

"…
Clause 41 of Annexure-A of SEBI Circular No. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017:

41. Remedial actions should be immediately taken to address gaps that are identified during vulnerability assessment and penetration testing.

…"

Clause 2 of SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB /P/CIR/2022/73 dated May 27, 2022:

"…
In partial modification to Annexure A of SEBI circular dated September 08, 2017, the paragraph-…41…shall be read as under:
…
41. Any gaps/vulnerabilities detected shall be remedied on immediate basis and compliance of closure of findings identified during VAPT shall be submitted to SEBI within 3 months post the submission of final VAPT report.
…
"

12.1.2. In this regard it was inter alia observed by SEBI that Noticee had not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit within 3 months mandated as per Clause 41 of Annexure-A of SEBI circular on Cyber Security and Cyber Resilience framework for RTAs dated September 08, 2017 read with Clause 2 of Modification in Cyber Security and Cyber Resilience framework for RTAs dated May 27, 2022 which states inter alia mandates that " *Any gaps/vulnerabilities detected in VAPT shall be remedied on a immediate basis and compliance of closure of finding during VAPT shall be submitted to SEBI within 3 months post the submission of final VAPT report*".

Further in this regard I note from material available on record that the following vulnerabilities were found out in the VAPT reports during the period February, 2023 to April 2023.

	Critical	High	Medium	Low
VAPT	30	51	59	38
ATR	9	13	15	14

12.1.3. Further, I note from material available on record that SEBI had inter alia observed that VAPT Revalidation Reports and VAPT Report Summary that said alleged vulnerabilities were open even after 3 months from the VAPT Audit.

12.1.4. In this regard, I note that the details of aforesaid allegation w.r.t vulnerabilities along with relevant documents including said VAPT

Revalidation Reports and VAPT Report Summary were provided to Noticee as part of SCN.

12.1.5. In this regard, to put simply, from plain reading of the provisions alleged to have been violated, I note that broadly speaking the same inter alia mandate two obligations on part of the concerned intermediaries viz., firstly that any gaps /vulnerabilities detected shall be remedied on immediate basis and secondly that compliance of closure of findings identified during VAPT shall be submitted to SEBI within 3 months post the submission of final VAPT reports.

12.1.6. In this regard, I note from material available on record that the alleged vulnerabilities in the instant matter were observed in VAPT Reports during period viz., February 2023 to April 2023 however, as per the Noticee's submission vide Para 24 of its reply letter dated August 08, 2024 itself, the VAPT closure reports in this regard itself were dated June 03, 2024 and June 04, 2024 and closure of such vulnerabilities were communicated to SEBI vide its email dated April 05, 2024, which is one year post detection of the vulnerabilities observed in VAPT Reports during February - April 2023.

In this regard, I also note that Noticee as part of its submissions as reply to the SCN has under Para 23 of its letter dated August 08, 2024 inter alia submitted that, *' … we had not communicated the closure to SEBI within the stipulated time. We regret this omission and would be careful in future in communicating the same … '*.

12.1.7. Further in this regard, as regards gaps /vulnerabilities detected shall be remedied on immediate basis, I note that the submission of the Noticee as part of its reply dated August 08, 2024 that allegation is limited to, not intimating SEBI within a period of three months, is apparently misconstrued in so far as the allegation inter alia was that Noticee had not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit which the Noticee has failed to demonstrate, with relevant documents, to the contrary. Further in this regard I note that the submissions of the Noticee are vague and evasive in nature in so far as while Noticee as part of its submissions as reply to the SCN has under Para 21 of its letter dated August 08, 2024 inter alia contended that, *' … Noticee has duly remedied and closed the gaps/vulnerabilities detected in VAPT … ',* the allegation in this regard is about Noticee not having closed the vulnerabilities immediately after detection.

12.1.8. In this regard, from plain reading of SEBI circular dated September 08, 2017, I note that the requirement inter alia was not just about closure but about closure of gaps /vulnerabilities, '*on immediate basis*', which the Noticee has failed to confirm and evidently demonstrate along with relevant details and documents in support thereof. This is further buttressed from the submissions of the Noticee vide Para 24 of its reply dated August 08, 2024 wherein the Noticee has inter alia itself stated, *' … the VAPT closure Reports dated June 03, 2024 (Infra PT Retesting Report (VAPT) for Link Intime by Prime Infoserv LLP) and June 04, 2024 (Web Security & Wi-Fi Retesting Report (VAPT) for Link Intime by Prime Infoserv LLP) duly audited and certified by external auditors were submitted to the SEBI via Email dated June 05, 2024 …. .',.* In this regard, it has already been brought out in the foregoing that the VAPT closure reports were dated June 03, 2024 and June 04, 2024 and same were communicated to SEBI by the Noticee vide its email dated April 05, 2024, i.e., one year later to the vulnerabilities detected in the VAPT Reports.

Further in this regard, considering that the vulnerabilities in the instant matter were observed in VAPT Reports during period viz., February 2023 to April 2023 and the inspection by SEBI was during February 2024, I note that the submissions of the Noticee are in nature of admission in so far as Noticee as part of its submissions under Para 32 of its reply dated August 08, 2024 has inter alia submitted, *' … as soon SEBI had pointed out the alleged violations, steps were taken to rectify and the same was rectified much prior to the issuance of the SCN …*'. As regards contention of the Noticee that even before the issuance of the SCN, the alleged vulnerabilities had been resolved, in my opinion the contention of the Noticee in this regard is devoid of merit considering that the alleged violations in the instant matter emanate from alleged non-compliance of the provisions of SEBI Circulars by the Noticee as stipulated.

12.1.9. I note that Noticee as part of its submissions has inter alia contented that *"SEBI has not found any non-compliances with respect to the more serious charges of Investor service/ Complaints, Conditions of grant of registration or Anti-money laundering guidelines, violation of which would not only affect the Noticee but investors at large."*

In this regard, I note that alleged violation in the instant matter is wrt the Noticee not having closed 62 vulnerabilities (9 critical and 17 high) on immediate basis after detection through VAPT Audit. Therefore, Noticee's submissions in this regard are out of context.

12.1.10. I note that Noticee has not demonstrated with details along with documents that the alleged vulnerabilities were closed immediately as required by SEBI circular dated September 08, 2017 viz., date of closure of alleged vulnerabilities and process of such closure. Further, Noticee has not explained the reasons causing delay in communicating to SEBI of compliance of closure of findings identified during VAPT within 3 months post the submission of final VAPT reports.

12.1.11. **In view thereof, the allegation that the Noticee had not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit and that such number of vulnerabilities were open even after 3 months from the VAPT Audit, stands established. Accordingly, I hold that Noticee had violated provisions of Clause 41 of Annexure-A of SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 and Clause 2 of SEBI circular no. SEBI/HO/MIRSD/MIRSD_RTAMB /P/CIR/2022/73 dated May 27, 2022 read with SEBI Master Circular for RTAs dated May 17, 2023.**

12.2. **Technology committee had not reviewed the implementation of cyber security for quarters July-Sep 2023**

12.2.1. With regard to the allegation that technology committee have not reviewed the implementation of cyber security for quarters July-September 2023, Noticee in its response dated April 12, 2024 to SEBI earlier to the findings of the Inspection stated that they had already provided extracts from the Minutes of the Technology Committee Meetings held on June 26, 2023, August 10, 2023 and December 19, 2023 wherein the Committee had reviewed and took note of the Cyber Security Resilience framework policy, however, SEBI observed that there was no date mentioned on which the technology committee meeting was conducted hence the response of the Noticee was not considered by SEBI.

12.2.2. In this regard the text of provisions which are inter alia alleged to have been violated are reproduced below:

Clause 7 of Annexure-A of SEBI circular on Cyber Security and Cyber Resilience framework for RTAs dated Sep 08, 2017

"

…

….. Technology Committee should on a quarterly basis review the implementation of the cyber security and cyber resilience policy approved by their Board, and such review should include review of their current IT and cyber security and cyber resilience capabilities, set goals for a target level of cyber resilience, and establish a plan to improve and strengthen cyber security and cyber resilience. The review shall be placed before the Board of the QRTAs for appropriate action.

…

".

12.2.3. In this regard I note that Noticee as part of its reply to the SCN has submitted minutes dated June 26, 2023; August 10, 2023; and December

19, 2023 of the meetings of its Technology Committee. Further, Noticee has submitted the copy of extract of minutes of meeting of the Board of Directors dated September 14, 2023 and February 07, 2024 wherein the Board of the Noticee noted the minutes of the meeting of Technology Committee dated June 26, 2023; August 10, 2023; and December 19, 2023. I also note that Noticee in order to support its submissions has further submitted a letter dated April 03, 2024 from ePROTECT 360 Solutions Pvt. Ltd., which inter alia reads, ' … *The last 3 Quarter meeting conducted on 26th June 2023, 10th August 2023 and 19th December 2023 for respective Quarters wherein the Committee reviewed and took note of the Cyber Security Resilience framework policy. …*'.

12.2.4. In this regard having regard to the submissions of the Noticee inter alia providing copies of minutes of meeting of its Board of Directors dated September 14, 2023 and February 07, 2024 wherein the Board of the Noticee noted the minutes of the meeting of Technology Committee dated June 26, 2023; August 10, 2023; and December 19, 2023, I am inclined to allow benefit of doubt to the Noticee.

Accordingly, I hold that the allegation in respect of the Noticee in this regard, that the Technology committee had not reviewed the implementation of cyber security for quarters July-Sep 2023, does not stand established.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of SEBI Act, 1992?

13. It has been established in the foregoing paragraphs that Noticee had violated provisions of Clause 41 of Annexure-A of SEBI circular no. SEBI/HO/MIRSD/CIR/P/2017/100 dated September 08, 2017 and Clause 2 of

SEBI circular no. SEBI/HO/MIRSD/MIRSD_RTAMB /P/CIR/2022/73 dated May 27, 2022 read with SEBI Master Circular for RTAs dated May 17, 2023.

14. I note that Noticee relying on various earlier orders like in respect of *Link Intime India Pvt. Ltd., HDFC Limited - In-house RTA, Accurate Securities And Registry Pvt Ltd, Integrated Enterprises India Limited, MCS Share Transfer Agent Limited, Maheshwari Datamatics Private Limited, M/s. Zuari Finserve Limited, Abhipra Capital Ltd.,* has as part of its submissions inter alia contended that in earlier orders by Whole-Time Members / co-ordinate adjudicating officers in similarly placed matters where inspection of intermediaries were conducted and numerous breaches were alleged, yet they were exonerated or dealt with minimal penalty.

15. I also note that the Noticee as part of its reply has inter alia contented that, *" … the judgment of the Hon'ble Supreme Court in the case of SEBI vs. Shriram Mutual Fund, is blindly applied …. the Hon'ble Supreme Court in its subsequent judgment in Bharjatiya Steel Industries v Commissioner, Sales Tax, Uttar Pradesh, expressly referred to the judgment in the matter of SEBI vs. Shriram Mutual Fund (supra) and held that the concerned authority always has to exercise his discretion as to whether to levy a penalty or not, and that for the exercise of such discretion, existence of mens rea becomes a relevant factor. Thus, every contravention of statutory provisions, irrespective of how trivial or venial the breach is, does not merit levy of a penalty*".

In this regard, I note that in the judgement relating to Bharjatiya Steel Industries vs Commissioner, Sales Tax, U.P, the Hon'ble Supreme Court of India had inter alia also observed that *"Furthermore, the question as to whether mens rea is an essential ingredient or not will depend upon the nature of the right of the parties and the purpose for which penalty is sought to be imposed.".* In my view, in the Shriram Mutual Fund case referred supra, the Hon'ble Supreme Court while interpreting the provisions of the SEBI Act, 1992 had made it abundantly clear that as soon as contravention of the statutory obligation as contemplated by the Act and the Regulation is established then the penalty has to follow and only the quantum of penalty was discretionary. In this regard, it would be relevant to draw reference to the relevant part of the order viz., "… imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and Regulations.". Accordingly the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

16. I note that Noticee as part of its submissions has cited orders of WTMs /Adjudicating Officers of SEBI indicating exoneration or minimal penalty. In this regard I note that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. I note that Noticee has merely cited and mentioned about the Orders, however, the Noticee has neither demonstrated as to how the cited orders were applicable in the instant matter nor demonstrated as to what are the relied upon findings in the respective orders which have a bearing on the alleged violations against Noticee in instant matter.

In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit. Further in this regard, I note that the alleged violations by the Noticee were of the extant applicable provisions of law that were otherwise applicable to that entire class of the intermediary and not just about minor procedural aspects specific to the Noticee only, besides being related to Cyber Security and Cyber Resilience framework, importance of which cannot be undermined. Accordingly the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

17. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia 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 .... "*

18. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992, which reads as under:

Securities and Exchange Board of India Act, 1992

[62][CHAPTER VIA
PENALTIES AND ADJUDICATION

"….

Penalty for contravention where no separate penalty has been provided.
15HB. 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 [104][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]
…."

(Note: for detailed/ complete text of the provisions, relevant Acts etc., may please be referred.)

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

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

SEBI Act

"…

Factors to be taken into account while adjudging quantum of penalty.

***15J.** While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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.

…".

20. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to an investor or group of investors as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violation committed

by the Noticee are repetitive in nature. However, I cannot ignore that Noticee being a SEBI registered intermediary had failed to comply with the extant applicable provisions of the SEBI Circulars related to Cyber Security and Cyber Resilience framework, importance of which cannot be undermined, as brought out and dealt with in the foregoing and which SEBI is duty bound to enforce compliance of. Such non-compliance accordingly needs to be dealt with suitable penalty.

E. ORDER

21. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 15HB of the SEBI Act, 1992. In my view, the said penalty will be commensurate with the violation committed by the Noticee in this case.

22. The 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

23. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

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

DATE: December 30, 2024	**AMAR NAVLANI**
PLACE: MUMBAI	**ADJUDICATING OFICER**