BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/SBM/KL/2022-23/16885]

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
M/s Eicher Motors Limited
(PAN: AAACE3882D)

3rd Floor – Select Citywalk
A-3, District Centre, Saket, New Delhi
Pin - 110 017

FACTS OF THE CASE

1. There were news items that appeared on January 08, 2014, in 'Business Standard' and in 'Economic Times' regarding investigation and subsequent arrest made by the Economic Offence Wing ('**EOW**') of the Mumbai Police in the matter of alleged fraudulent dematerialization and selling of shares of various companies held by dormant shareholders by using forged documents and by creating fake addresses of the shareholders. As per the news articles, the modus operandi adopted by the alleged fraudsters was to identify dormant accounts of the investors/shareholders holding physical shares of various companies and then open fraudulent demat accounts in their name using forged documents/fake address and later on, fraudulently transferring/dematerializing the shares held by the genuine shareholders and selling the same in the market subsequently to reap illegal gains. The news articles also mentioned about the role of three SEBI registered Registrar and Share Transfer Agents in the alleged fraudulent transfer/dematerialization of shares, including the role of MCS Limited (hereinafter referred to as **'MCS'/ 'RTA/STA'**).

2. In this regard, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') called for the details and documents from MCS, which were submitted by it to the EOW. Upon perusal of the said documents, it was observed that the same were pertaining to two issuer companies for which MCS had acted as the RTA/STA viz. Eicher Motors Limited (hereinafter referred to as '**Eicher**'/ '**Noticee**'/'**The Company'**) and Global

Securities Limited. Accordingly, SEBI conducted specific purpose inspection of the records/documents regarding the processes/procedure followed by MCS while executing the requests from the investors requesting/making the share transfer requests, issue of duplicate shares, dematerialization of shares etc. w.r.t the cases/companies forming part of the EOW investigations. In this regard, it is alleged that out of 22 such requests received by MCS, in 6 instances pertaining to Eicher, neither signature records were available with MCS nor any advertisement was issued in any widely circulated newspaper before the issuance/processing of such duplicate share certificate requests as required under the provisions of Clause 23 of General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001 by Eicher.

3. Thereafter, SEBI received a complaint dated June 28, 2015 on behalf of one Mr. Manoj Dharamdas Shah ('the Complainant'/'Manoj'), who claimed to be a bonafide existing shareholder of Eicher, a listed company on BSE and NSE. The said complainant, *inter alia*, alleged that the Issuer Company i.e. the Noticee and its Registrar and Share Transfer Agent (RTA/STA) viz. MCS Ltd. had cheated him by changing his address and signature in their records, by issuing duplicate share certificates for 100 shares of Eicher belonging to him and thereafter illegally transferring the said shares in the name of one Mr. Vijay Ratnakar Humbre. In this regard, SEBI undertook the examination and, *inter-alia,* observed /alleged the following:
   a. no advertisement was issued by the Noticee in respect of the aforesaid issuance of 100 duplicate shares of Mr. Manoj Dharamdas Shah even though the value of the shares was more than Rs 10,000, as required under the provisions of Clause 23 (b) of the General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001.
   b. the aforesaid duplicate share certificate request was processed by the Noticee without obtaining a proper indemnity (an error was observed in the name of the complainant's father i.e. the complainant's father name was mis-spelt), which is one of the requirements as mentioned under Clause 23 (a) of the General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001.
   c. further, by failing to obtain a proper indemnity, as described above, the Noticee had also allegedly violated the provisions of Clause 3 (e) of the erstwhile Equity

Listing Agreement (hereinafter referred to as '**Listing Agreement**'), Regulation 39 (2) of SEBI (Listing Obligations and Disclosure Requirements), 2015 (hereinafter referred to as '**LODR Regulations**') r/w Regulation 103 (2) of the LODR Regulations.

4. Further, another complaint was also received against Eicher/MCS by SEBI on the similar lines from one Ms Adesh Kaur (hereinafter also referred to as ' Ms. Adesh') wherein it was mentioned that 903 shares of Eicher which were held in her name since 1994-95 were fraudulently transferred to an account of some impersonator who had managed to forge her signature and got the address changed from Sangrur (i.e original address of Ms. Adesh Kaur) to Mumbai and thereafter managed to get the duplicate share certificates issued in the fraudster's name in lieu of the 903 shares on the changed address. In this regard, it is observed that Ms Adesh Kaur had also lodged a complaint with SEBI through the SCORES platform (in October 2016). In her complaint, Ms Adesh Kaur had alleged that the above change of address from Sangrur to Mumbai and the issue of duplicate certificate was done /processed by Eicher and its Share Transfer Agent (STA) i.e MCS without following the extant rules, regulations and procedures prescribed by SEBI and also without exercising proper due diligence.

5. In this context, it is also noted that Ms Adesh Kaur had filed a petition before the National Company Law Tribunal (hereinafter referred to as **'NCLT'**) on December 02, 2016 wherein, she had stated that she held 903 equity shares of Eicher since 1994-95. It was stated by Ms Adesh Kaur that some impersonator had forged her signature and got the address changed from Sangrur to Mumbai and thereafter got the aforesaid duplicate share certificates issued on the changed address. Later, the impersonator transferred the said duplicate shares to one Mr. Vikas Tara Singh. It was noted that Vikas Tara Singh had subsequently dematerilised the shares and sold the same in the market. In this regard, NCLT referred the matter to SEBI to conduct an examination. Upon examination by SEBI, it is alleged that due procedures that have been outlined in the RRTI Circular dated May 09, 2001 were not followed by Eicher in as much as the concerned stock exchanges were not informed about the requests received for issuance of the duplicate certificates and no advertisement was issued by Eicher in respect of the aforesaid request for issuance /processing of duplicate shares of Ms. Adesh Kaur and Mr Manoj even though the value of such shares exceeded Rs. 10,000/-. In view of the

above, it is alleged that the Noticee failed to conduct due diligence while processing the aforesaid issuance of duplicate shares and hence violated the provisions of Clause 23 of the General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001. It is further alleged that Noticee has also failed to follow the procedures mentioned in the erstwhile Listing Agreement and the LODR Regulations, as aforesaid.

6. Further, it is noted that, in the instant matter, WTM SEBI had also passed the following Orders under the provisions of Sections 11 (1) and 11 B of the SEBI Act, 1992 against Eicher and MCS. The said Orders were passed in the matter of the complaint filed by Mr Manoj Dharamdas Shah:
    a. Order dated October 27, 2016
    b. Order dated March 23, 2021

7. In view of the aforementioned findings/observations made against the Noticee in the matter of complaints of Mr. Manoj Dharmdas Shah and Ms. Adesh Kaur, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

8. The undersigned has been appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated February 15, 2017 under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**), to inquire into and adjudge under the provisions of section 15HB of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticee. Thereafter, pursuant to the transfer of the undersigned to another department of SEBI, Dr. Anitha Anoop was appointed as the Adjudicating Officer in the matter vide order dated March 18, 2019. Subsequently, due to the transfer of Dr. Anitha Anoop, the undersigned was again appointed as the Adjudicating Officer in the matter vide communique dated November 3, 2020.

SHOW CAUSE NOTICE REPLY AND PERSONAL HEARING

9. Show Cause Notice (' **first SCN**') ref no. SEBI/HO/EAD/5261/2017 dated March 09, 2017 followed by a supplementary Show Cause Notice (**'supplementary SCN'**) dated April 26, 2017 were issued to the Noticee in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticee and why penalty be not imposed on it under the provisions of section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee, details of which have been mentioned above at para 3 of this order. Briefly, the first SCN and the supplementary SCN, *inter-alia,* alleged the following: -

   <u>*SCN dated March 09, 2017*</u>

   a. *Two News items had appeared on Jan. 08, 2014, one in Economic Times and the other in Business Standard. Two more articles appeared in Business Standard on Jan. 21, 2014 and on Feb. 26, 2014. The articles pertained to some investigation and subsequent arrests by the Economic Offence Wing (EOW) of Mumbai Police in the issue of alleged dematerialization and selling of shares of the Company, which were held in dormant accounts, using forged documents. One of the entities involved in the matter was MCS.*
   b. *MCS was called to SEBI office and was enquired regarding the content of news articles. Thereafter, specific purpose inspection of MCS, to look into the issues involved and for checking the systems in its offices was carried out on May 12, 2014.*
   c. *The inspection pertained to alleged dematerialization and selling shares of the Company, which were held in dormant accounts, using forged documents. A total of 22 requests for duplicate, transfer and demat entertained by MCS were inspected, and it was found that in 6 cases where investor requested for issuance of duplicate shares of the Company, the signature record was not available with MCS and neither was any advertisement issued in any widely circulated newspaper. Brief details of the 6 requests is given below-*
   d. *Thereafter, SEBI received a complaint, dated June 28, 2015, from Mr. Manoj Dharamdas Shah (hereinafter referred to as 'Complainant'), who claims to be a bonafide existing shareholder of Noticee. The Complainant claimed that he was a shareholder of the Company since 1991. On January 06, 2015, he applied for dematerialization of his shares to MCS. On January 19, 2015, his Demat request was rejected stating 'Duplicate Share Certificate already issued'. On further inquiry, it was found that the signature and address of the Complainant were changed, in March 2007, by way of a forged request. Thereafter, duplicate share certificate was issued, on October 27, 2007, on the basis of another*

request and later on his shares were transferred in the name of one Vijay Ratnakar Humbre on December 04, 2007.

e. *MCS, in their e-mail dated July 22, 2015, informed SEBI that during March 2007, MCS had received request for change of address as well as signature and subsequently, request for duplicate share certificate along with various documents was received during September 2007 in which signatures of Complainant were tallying with the specimen signature in their records. After processing of these documents, same was sent to the Company for approval. On receipt of approval, duplicate share certificate was issued and dispatched to Complainant's address. The shares were subsequently transferred to Vijay R Humbre who later dematted the same.*

f. *It is alleged that the core share transfer records of the investors, including their specimen signature cards, were maintained by the Company and not available with MCS. It has been observed from the replies of the Company and MCS that no newspaper advertisement was published by the Company before issuance of Duplicate Certificate in the name of Complainant. It was also observed, during inspection of MCS, that in remaining 6 cases also, advertisement/publication was not done, by the Company, before issuance of Duplicate Certificates.*

g. *As per the Clause 23 of the General Norms for processing of documents under RTI Circular No. 1 (2000-2001) dated May 09, 2001, it is mandatory for Company/Share Transfer Agent to issue an advertisement in a widely circulated newspaper if the value of shares is greater than Rs. 10,000. It is, however, observed that no advertisement was issued in all 7 cases mentioned above even though the value of shares in each matter was more than Rs. 10,000.*

h. *Further, it has been observed that the duplicate certificate request, made in 2007, was processed even though Complainant's father's name was written as 'Dayalal Shah' in the Affidavit, Indemnity and FIR Copy submitted during the request made for issuance of duplicate share certificate, whereas his father’s name was captured as 'Dharamlal Shah' in the Permanent Record of the Company. When enquired, Mr. Manhar Kapoor, Chief Compliance Officer of Noticee, had admitted that there seemed to be an error in not comparing the father's name.*

i. *Thus, it is alleged that the Noticee has failed to obtain proper indemnity with respect to the Complainant’s request for issuance of Duplicate share certificate, which is one of the requirements mentioned under Clause 23 of the General Norms for processing of documents under RTI Circular No. 1 (2000-2001) dated May 09, 2001. It is, therefore, alleged that the Noticee has violated the provision of Clause 23 of the General Norms for processing of documents under RTI Circular No. 1 (2000-2001) dated May 09, 2001.*

SCN dated April 26, 2017

The following additional observations/allegations have been made in the supplementary SCN:

(a) A petition was filed by Ms. Adesh Kaur, a shareholder of Eicher Moters Ltd before National Company Law Tribunal (hereinafter referred to as "NCLT"). While disposing of the matter, NCLT in its Order dated November 24, 2016, observed that the petition of Ms Adesh Kaur may be treated as a complaint by SEBI in the SCORES and the complaint may be examined and disposed of accordingly. Upon examination of the petition/complaint of Ms Adesh Kaur, the following observations are made :

(b) Ms Adesh Kaur has claimed that she was holding 903 equity shares of Eicher Motors Ltd (EML or Noticee) since 1994 - 95, vide her registered folio No. 31308. She claimed that she was holding the original share certificates in this regard. It was alleged by Ms Kaur that some impersonator had allegedly forged her signature and sent a request for change of address to MCS Ltd. (hereinafter referred to as "MCS"), the Registrar and Share Transfer Agent (RTA) of the Noticee during the relevant period of time i.e in the year 2012. It was alleged that based on the request made by the impersonator, MCS had vide its letter dated May 02, 2012 informed that the address was changed from the Original address, which was of Sangrur, Punjab to the new address, which was of Mumbai.

(c) Thereafter, another letter dated July 20, 2012, was allegedly sent by the impersonator to MCS, requesting for issue of duplicate share certificate for the 903 shares of EML. MCS, vide its letter dated September 08, 2012, informed the alleged impersonator that the documents for issuance of duplicate share certificates had been received. Subsequently, it was alleged in the petition that the duplicate certificates for 903 shares of EML were also issued to the alleged impersonator in the same month.

(d) Thereafter, allegedly, a share transfer deed with the forged signature of Ms Adesh Kaur (as seller) was received by MCS for registering the share transfer in the name of one Shri Vikas Tara Singh (who was mentioned in the TD as the buyer). It was observed from the petition/complaint that the share transfer request was approved and the alleged impersonator transferred the said duplicate shares to one Mr. Vikas Tara Singh. It is further observed that a Demat request was subsequently received from Shri Vikas Tara Singh in the same month i.e in December 2012.

(e) It is alleged in the petition that Ms Adesh Kaur in her letter dated January 16, 2013 addressed to EML had sought details regarding dividend declared by EML and in this regard had also attached the counterfoil of the dividend warrant received on July

05, 2006. In the said letter, Ms Kaur had also sought to know from EML the procedure regarding opening of the demat account in her name. It is observed that vide the said letter dated January 16, 2013, Ms Kaur had also mentioned about the change of her communication address to EML.

(f) *Further, on February 18, 2013, it is observed that Ms Kaur had sought information from the Noticee regarding the formalities/procedures to be completed for issuance of duplicate share certificate in her name (as she claimed to have misplaced the original share certificate w.r.t 903 shares of EML which was held in her name). In response to the same, the Noticee vide its e-mails dated February 18, 2013 and February 26.2013, informed Ms Kaur that the duplicate certificate in respect of the 903 shares of EML were already issued on September 28, 2012. It was also informed to Ms Kaur that the 903 shares which were held in her name have been transferred to Mr. Vikas Tara Singh on December 10, 2012 on the basis of valid transfer documents and subsequently, these shares were also dematerialized in favour of Mr Vikas Tara Singh on January 04, 2013.*

(g) *Further, it was observed during the course of the meeting that the Noticee had not issued any advertisement in widely circulated newspapers before issuing the duplicate share certificate in lieu of the original certificate (for the aforementioned 903 shares of EML, the value of which was approximately Rs 17.52 lakhs). As per the requirement specified in Clause 23 of the General Norms for processing of documents under RTI Circular No. 1 (2000-2001) dated May 09, 2001, it is mandatory for Company/Share Transfer Agent to issue an advertisement in a widely circulated newspaper if the value of shares is greater than Rs. 10,000 before issuance of duplicate share certificate. It is, however, observed that no such advertisement was issued by the Noticee in the case mentioned above even though the value of shares was more than Rs. 10,000/-.*

(h) *Therefore, it is alleged that the Noticee has violated the provisions of Clause 23 of the General Norms for processing of documents under RTI Circular No. 1 (2000-2001) dated May 09, 2001.*

10. In the interest of natural justice, ample opportunities of hearing were provided to the Noticee during the course of the adjudication proceedings. The details in this regard are given in the table below:

Sl no.	Date of hearing	Mode of hearing	Authorized representatives (ARs) who attended the hearing on behalf of the Noticee

1.	July 03, 2017	Physical hearing	1. Mr. Neeraj Matta, Advocate 2. Mr. Rajesh Ranjan, Advocate
2.	November 30, 2017	Physical hearing	1. Mr. Neeraj Matta, Advocate 2. Mr. Rajesh Ranjan, Advocate
3.	October 31, 2018	Physical hearing	1. Mr. Neeraj Matta, Advocate 2. Mr. Rajesh Ranjan, Advocate
4.	March 04, 2020	Physical hearing	1. Mr. Rajesh Ranjan, Advocate 2. Mr. Anoop Dawar, Advocate
5.	December 07, 2021	Virtual Hearing	1. Mr. Rajesh Ranjan, Advocate 2. Mr. Anoop Dawar, Advocate
6.	May 06, 2022	Virtual Hearing	1. Mr. Rajesh Ranjan, Advocate 2. Mr. Anoop Dawar, Advocate

It is observed that, in the context of the present proceeding, Noticee was persistently seeking opportunities of personal hearing in the matter after making its initial submissions to the SCN. The multiple opportunities of hearings that took place in the matter were mainly on account of the insistence of the Noticee for hearing and also due to other reasons such as change of AO, hearings sought post rejection of the settlement applications etc. In this regard, the various communications that were exchanged between SEBI and the Noticee is also on record. In fact, in the present matter, it is noted that after the appointment of the undersigned as the AO vide communique dated November 03, 2020, the Noticee specifically requested for opportunity of physical hearing (citing reasons like adjudication matter involves referring to bulky documents/records in order to present the case in the correct perspective etc). Accordingly, acceding to the request of the Noticee, the Noticee was provided with an opportunity of hearing (physical hearing) on April 22, 2022. However, vide its email dated April 21, 2022, Noticee stated that due to a pre-fixed hearing before the Hon'ble High Court at Nainital, its advocate would not be in a position to attend the hearing granted to the Noticee on April, 22, 2022 and requested for reschedulment of the hearing to the first week of May 2022. Accordingly, Noticee was provided with a final opportunity of hearing through WEBEX on May 06, 2022. Pursuant to the hearing, the Noticee also filed written submissions in the matter and the excerpts from the various submissions made by the Noticee vide letters dated July 13, 2020 and January 07, 2022 are as follows:

Reply of Noticee vide letter dated January 07, 2022

It was informed to Ld. Adjudicating Officer that the first notice dated March 09, 2017 was issued to the Company on a complaint by Mr. Manoj Dharamdas Shah. However, the said complainant withdrew its complaint vide his letter dated July 23, 2019. It was further informed to the Ld, Adjudicating Officer that a supplementary notice in the matter was issued by SEB' on April 27, 2017 on a complaint of Mrs Adesh Kaur in NCLT, New Delhi Bench. The matter was under consideration by Hon'ble Supreme Court when Adjudicating Officer last heard the matter
Hon'ble Supreme Court passed its order dated July 3, 2018 directing the Company to rectify the register of members. Further applications were filed with the Hon'ble Supreme Court and in compliance with the order 9030 shares were transferred to Mrs. Adesh Kaur's Account on May 4 and May 5, 2021 and her complaint also stands closed.
Therefore, you would appreciate that both the notices initiated on the complaints of investors stand resolved. In view of these resolutions, the Company was directed by Ld. Adjudicating Officer to place on record the settlement letters/ No Objection letters from these two complainants.

The Company has always kept the interests of its investors paramount and have always been endeavouring to achieve the same. There has been no finding by any authority against the Company. Even the allegations against the Company by Mrs Adesh Kaur in her Petition were not upheld by Hon'ble Supreme Court. It is absolutely clear from our replies/ additional submissions made before the learned Adjudicating Officer and from the findings of SEBl's own investigations, that it was MCS Limited, which had not followed the guidelines issued by SEBI and was involved in fraudulent activities. This has also been conclusively found by Hon'ble Supreme Court in the matter of Mrs, Adesh Kaur, wherein it has not observed anything against the Company.

From the above the Ld. Adjudicating Officer-can observe that even Hon'ble Supreme Court has endorsed SEBI's findings against MCS Limited, erstwhile share transfer agent has played a fraud in the matter. Therefore, in view of these observations, the Company cannot be held liable for criminal and fraudulent acts of share transfer agent.

Reply dated July 13, 2020
The share transfer agent appointed by a company is an entity registered with SEBI. SEBI has prescribed very strict standards for any entity to be registered as a share transfer agent including the criteria of "fit and proper person". Share transfer agent acts as an interface between company and its investors and in accordance with SEBI laws; it has to work independently for the benefits of investor and the companies. It is responsible for undertaking the entire process of transfer or transmission of shares and related activities independently in

accordance with SEBI regulations. Contractual as well as statutory provisions do not give any power to a company to interfere with the roles and responsibilities statutorily mandated by SEBI for share transfer agents.

Notices were issued to the Company presuming that the General norms for processing of documents as prescribed under RTI Circular No. 1(2000-2001) dated May 09, 2001 ("RTI Circular"), STA and the Company were jointly responsible for carrying out the share transfer and related work. However, SEBI guidelines at no place overlap the activities of share transfer agent and the Company. In fact, if the intent of law would have been to overlap the activities of share transfer agent and the Company, the basic premise of independency of share transfer agent would have been compromised. The intent of law was always to have an independent share transfer agent, who could work without any influence from the Company. The use of the symbol "/" in RTI circular mean 'either of the RTA or the Company' and does not mean 'both RTA and Company' or the company 'exclusively'. Our representatives also highlighted that various judicial pronouncement and SEBI circulars/ notifications support this contention of the Company. These have already been submitted by us in our earlier replies and shall be referred again in these submissions at the appropriate places.

It is submitted that the reference in the RTI Circular No.l dated 09.05.2001 to 'RTA/Company' in various clauses is not license to SEBI to punish the STA or the Company as its will. It is submitted that the term 'RTA/Company' has been inducted in the said circular as a well-thought out term to punish the RTA or the Company 'as the case may be' and not alternatively or on an automatic joint basis.

Further the Notices only rely on an investigation against STA by SEBI, which is based on some news Articles. Few of the documents based on which these investigations were carried out were only shared with the Company after an inspection of these documents was sought by the Company.

Various laws including SEBI regulations, guidelines, circulars, Companies Act, 2013 etc. lay down that how the relationship between a share transfer agent and company shall be independent without any interference or control of the company and how their respective roles shall be governed.

It is pertinent to mention that the even the contractual relationship between a share transfer agent and the company defining the roles and responsibilities is mandated by SEBI laws and has to be strictly followed by the company and share transfer agent.

Further these regulations also provide for a code of conduct for share transfer agent and it has to appoint a compliance officer for monitoring the compliance by share transfer agent of the Act, *rules and regulations, notifications, guidelines, instructions etc. issued by the SEBI or the Central Government and for redressal of investors' grievances. This compliance officer shall immediately and independently report to SEBI any non-compliance by share transfer agent of any of SEBI laws.*

The scheme of these regulations suggests that SEBI has provided sufficient checks and balances to ensure compliance with applicable statutory provisions by share transfer agents. The regulation clearly stipulate that immediately after appointment, share transfer agent shall be the entity who will maintain the records of holders of securities issued by a company and shall deal with all matters connected with the transfer and redemption of its securities independently.

First notice issued by SEBI to the Company was entirely based on complaint by Mr. Manoj D Shah. In other cases mentioned in the notice, share transfer agent of the Company had all the documents based on which duplicate shares were issued and also no complaint was received from any of the investors. Entire Notice highlighted the violation of SEBI laws in issue of duplicate share certificates by STA.

Without prejudice to the contentions raised by the Company in earlier replies and these submissions, the Company wish to inform you that Mr. Manoj D Shah has withdrawn his complaint and has issued a no objection certificate in this regard. In view of the said no objection certificate given by Mr. Manoj D Shah, there is no complaint against the Company. A copy of his No Objection Certificate is enclosed herewith and marked as Annexure - 2.

Complaint by Mrs. Adesh Kaur

We wish to inform you that in the matter of Adesh Kaur vs Eicher Motors Ltd & ors., (wherein SEBI was also one of the Respondent) Hon'ble Supreme Court had vide its order dated 3rd July, 2018 directed the rectification of register of members of the Company to include the name of Mrs. Adesh Kaur as shareholder.

In view of the submissions made above and conclusions drawn by SEBI against MCS Limited, SEBI view in other cases and opinion of SAT in many pronouncements and observation of Hon'ble Supreme Court establish without any doubt that STA was solely responsible for ensuring compliances with the applicable SEBI circulars and guidelines. SEBI is holding the Company responsible for same violations for which it has carried out detailed investigations against STA and held it guilty also. Therefore, present proceedings which propose to hold the Company liable for the wrongs of STA are against the SEBI Laws and also in direct conflict with the judgment of the Hon'ble Securities Appellate Tribunal because the Company cannot be held responsible for the actions of the STA and should also not even interfere in the working *of the STA.*

Hon'ble Supreme Court in Adesh Kaur matter specifically observed that MCS Limited was perpetrator of fraud; SEBI investigations also have concluded that MCS Limited has violated various provisions of SEBI laws. It is well settled principle of law that for criminal acts vicarious liability cannot be invoked. Further STA cannot be treated as an agent of the Company since by nature of its appointment; it was supposed to function independently without any interference from the Company.

In view of the submissions made herein along with earlier replies submitted by the Company, we request you to drop the present proceedings against the Company.

11. In the context of the current proceedings, it is also observed that Noticee had opted for settlement of the proceedings under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, and SEBI (Settlement Proceedings) Regulations, 2018, on multiple occasions. The details along with the status of such settlement applications filed by the Noticee is mentioned below:

Sl no.	Details of the settlement application filed	Status of the application
1.	Application dated February 02, 2018	Rejected in terms of Regulation 5 (2) (e) of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, and informed to the Noticee by the concerned department of SEBI vide letter dated May 24, 2018.
2.	Application ref no. 3921/2019	Application withdrawn by the Noticee vide letter dated October 09, 2019.
3.	Application dated February 02, 2022	Rejected in terms of Regulation 4 (1) of SEBI (Settlement Proceedings) Regulations, 2018, and informed to the Noticee by the concerned department of SEBI vide letter dated March 10, 2022.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully perused the allegations levelled against the Noticee in the SCN, the replies of the Noticee and also the documents/evidence available on record.

The issues that arise for consideration in the present case are: -

I. Whether the Noticee has violated the provisions of Clause 23 of the General Norms for processing of documents prescribed under RRTI Circular no. 1 (2000-2001) dated May 09, 2001, procedures prescribed under Clause 3 (e) of Listing Agreement and Regulation 39 (2) of LODR Regulations r/w Regulation 103 (2) of LODR Regulations?

II. If yes, whether the violation would attract monetary penalty on the Noticee under the provisions of section 15HB of the SEBI Act?

III. If yes, what should be the quantum of monetary penalty?

13. Before moving forward, the relevant provisions as mentioned above, allegedly violated by the Noticee are mentioned as under:

Clause 23 of General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001

*23. The **Company**/ STA shall necessarily obtain the following documents duly executed by the claimant, prior to issue of duplicate shares to him:*

a. Indemnity for issue of duplicate Share Certificate/s in the name of the person, in whose name the duplicates are being issued that he has not sold/disposed of the involved shares or acted in any manner by which any interest of third party would have been created, as per the applicable Annexure as detailed here under –

Annexure 8 – Indemnity by registered holder

Annexure 8A – General purpose indemnity

Annexure 9 – Indemnity by unregistered transferee/holder in due course

Annexure 10 – Affidavit by transferee

Annexure 11 – Indemnity by transferee for issue of duplicates without producing transfer deeds

Annexure 12 – Letter from buyer under provisions of Section 108 of Companies Act, 1956.

b. Final Court order for issue of duplicate shares required in case of a third party stop transfer ('third party' does not include genuine bonafide transferee).

***Company**/ STA to:*

i. inform all the Stock Exchanges where the shares are traded regarding the loss of shares in lieu of which duplicate shares are being issued, if not already informed

***ii. issue an advertisement in a widely circulated newspaper if the value of the shares is greater than Rs 10,000.** In case the **Company**/ STA issues duplicate share certificate based on any other documents, then the Company/ STA shall be solely responsible for the issue of such duplicate share certificates.*

Clause 3 (e) of Listing Agreement

Listing Agreement

3. The Company agrees —

a. …..

b. ….

c. …..

d. ….

e. to issue new certificates in replacement of those which are lost within six weeks of notification of loss and receipt of proper indemnity.

Regulation 39 (2) of LODR Regulations

39. Issuance of Certificates or Receipts/Letters/Advices for securities and dealing with unclaimed securities-

(1)…..

(2) The listed entity shall issue certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable within a period of thirty days from the date of such lodgement.

Regulation 103 (2) of LODR Regulations

103. Repeal and Savings

(1)……

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

ISSUE I :- Whether the Noticee has violated the provisions of Clause 23 of the General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001, procedures prescribed under Clause 3 (e) of Listing Agreement and Regulation 39 (2) r/w Regulation 103 (2) of LODR Regulations?

ISSUE II: - If yes, whether the violation would attract monetary penalty on the Noticee under the provisions of section 15HB of the SEBI Act?

14. The allegations levelled against the Noticee in the first SCN and the supplementary SCN is summarized as under:

(a) In respect of six cases of issuance of duplicate share certificates observed during MCS's inspection by SEBI on May 12, 2014, as referred to in the SCN, the signature records were not available with MCS, which was the RTA during the period. It is alleged that the signature records were not handed over to MCS by the company.

(b) Eicher had failed to exercise due skill, care and diligence while issuing duplicate share certificate in case of Mr. Manoj D. Shah. Eicher had approved such issuance even though the shareholder's father's name was incorrectly mentioned in the FIR copy, the affidavit and the indemnity bond and the said documents were also not proper.

(c) Even though the value of shares in case of Mr Manoj D. Shah, Ms Adesh Kaur and each of six other cases cited in the SCN exceeded Rs.10,000, no advertisement was issued in the widely circulated newspapers by Eicher. The same was in contravention of Clause 23 of the General Norms for Processing of Documents as prescribed under RRTI Circular no. 1 (2000-2001) dated May 09, 2001, which requires "issue of advertisement in widely circulated newspaper when value of shares is greater than ₹10,000".

(d) As per Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015), where the investor has complained about issuing of duplicate share certificate(s) by the company on the basis of allegedly forged /stolen documents furnished by a third party, the company shall verify and satisfy itself of the claim of the investor, within 15 days of receipt of the claim and take steps including invoking of indemnity bond to issue shares and corresponding benefits to the rightful owner in terms of section 84 of the Companies Act read with Rule 3 of the Companies (Issue of Share Certificates) Rules, 1960. However, except for filing a criminal complaint in the matter, Eicher had not done anything to satisfy itself of the claim of the complainant

in the matter and had not invoked the indemnity bond to issue shares and corresponding benefits to the rightful owner.

(e) Eicher had not issued new share certificate to the Complainant, Mr Manoj D. Shah and Ms Adesh Kaur, in replacement of that which was lost, within six weeks of notification of loss, as required under the provisions of Clause 3(e) of the Listing Agreement.

(f) Eicher failed to conduct due diligence while processing the issuance of duplicate shares of 903 equity shares of one Ms. Adesh Kaur and hence violated the provisions of Clause 23 of General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001.

15. After perusing the allegations levelled against the Noticee in the first SCN and the supplementary SCN, the various submissions made by the Noticee in the matter and the relevant material made available on record, I now proceed to deal with the abovementioned allegations levelled against the Noticee in the first SCN and the supplementary SCN, one by one, and record my findings in the following paras of the order.

16. As regards the complaint filed by Mr Manoj D Shah, as already stated, WTM - SEBI had passed Orders dated October 27, 2016 and March 23, 2021 under the provisions of sections 11 (1) and 11 B of the SEBI Act against the Noticee. While assessing the role of the Noticee in respect of the above complaint of Mr Manoj D Shah in the context of the aforementioned proceeding u/s 11 (1) and 11 B of the SEBI Act, WTM- SEBI in his order dated March 23, 2021 had observed that Mr Manoj D Shah had withdrawn his complaint filed against Eicher during the course of the aforesaid proceeding and vide his letter dated July 23, 2019 which was addressed by him to SEBI, the complainant i.e Manoj D Shah had categorically stated that he has withdrawn his complaint against Eicher w.r.t the fraudulent issue of duplicate certificate in respect of the 100 shares of Eicher owned by him. In this context, the relevant observations made by WTM-SEBI in his Order dated March 23, 2021 is reproduced as under:

"..19. While I have taken note of the abovementioned defaults by the Noticee, I further note that the Complainant in this case has withdrawn his complaint against the company. I note from the letter dated July 23, 2019 of Mr. Manoj D. Shah addressed

to SEBI, a copy of which has been submitted by the Noticee, that he has stated therein inter alia the following:

"I had made complaints to your good office in respect of 100 shares owned by me in the Company. I wish to bring to your kind attention that now I do not hold any investment in the Company or have any other claim against the Company. Therefore, I am not inclined towards pursuing the Complaints any further. In view of the above, I hereby withdraw my complaints as I have no grievance or claim against the Company."

20. I note that the SEBI Order dated October 27, 2016 against the Noticee was limited to directing the Noticee to immediately reinstate the disputed shares to the Complainant in lieu of proper indemnity of the Complainant and submit an order compliance report within a month. The said order did not contain any other direction against the Noticee. Since the current proceedings have been initiated pursuant to setting aside of the said order and the cause of action sought to be addressed in the said order no longer survives because of withdrawal of complaint by the Complainant, the issue of grant of any relief to the Complainant has become infructuous. Having regard to the same, I am not inclined to pursue the matter any further against the Noticee for the abovementioned defaults. However, I hereby warn the Noticee to exercise due care and caution and ensure adherence to all applicable norms in matters pertaining to issuance of duplicate shares henceforth. In view of the same, I hereby dispose of the current proceedings without any directions…"

17. Therefore, in view of the above finding/observations/conclusions of WTM SEBI, as aforesaid, and on the basis of my independent assessment of the facts /finding in the matter of the complaint of Mr Manoj D Shah, I am also of the view that the cause of action sought to be addressed in the matter of the complaint of Mr Manoj D Shah and the role/conduct of the Noticee, as alleged in the first SCN dated March 09, 2017 no longer survives because of the withdrawal of the complaint by Mr Manoj D Shah against the Noticee, as aforesaid. In view of the same, I am not inclined to pursue the matter further w.r.t the role /conduct of the Noticee while handling the complaint of Mr Manoj D Shah as alleged in the SCN dated March 09, 2017.

18. In this context, on the allegation levelled against the Noticee in the first SCN that Eicher had not transferred the signature records to its RTI/STA i.e MCS, WTM-SEBI in

his order dated March 23, 2021 had inter alia observed the following:

"..As regards the charges regarding non-availability of signature records in respect of six cases of issuance of duplicate share certificates observed during MCS's inspection by SEBI on May 12, 2014, as referred to in the SCN, I note that the Noticee has submitted that out of the six cases mentioned in the SCN, signature records of five shareholders (in signature software) were handed over by MCS to new STA, M/s Link Intime India Pvt. Ltd. in September, 2015. In this regard, I further note that before passing the SEBI Order dated October 27, 2016, SEBI had accepted the explanation submitted by the Noticee in this regard and no action was proposed to be taken by SEBI. Hence, I am inclined to drop the said allegation against the Noticee.."

19. I will now deal with the role /conduct of the Noticee while handling the complaint of Ms Adesh Kaur alleged vide Supplementary SCN dated April 26, 2017. The complainant i.e Ms Adesh Kaur (based at Sangrur) held 903 shares of Eicher in physical form vide registered folio no. 31308. When Ms Adesh Kaur had lodged the complaint with Eicher in January 2013, she held the original share certificates w.r.t 903 shares. It is observed that on account of the illness of her in-laws, Ms Adesh Kaur (complainant) had to travel frequently to Dehradun to look after them and therefore, she did not remember where the physical share certificates in respect of the 903 shares of Eicher were kept. Since the complainant i.e Ms Adesh Kaur had the counter foils of the dividend receipt, she enquired from Eicher about the formalities/procedure for opening the demat account and also for the transfer of her correspondence address to New Delhi. In response, Eicher had informed Ms Adesh Kaur (complainant) about the fact that her address had already been changed to one at Mumbai (as per the records of Eicher) and later, Eicher had also issued duplicate certificates to the impersonator who subsequently sold the shares to another person viz. Vikas Tara Singh who also subsequently sold the shares in the market. Thereafter, upon noticing the fraud, Eicher filed a Police complaint. As regards the allegations pertaining to the failure on the part of the Noticee in exercising due skill, care and diligence while processing the duplicate share certificate request made in the name of Ms Adesh Kaur by the impersonator, I find that Noticee has failed to issue the newspaper advertisements in widely circulated newspapers in case of Ms. Adesh Kaur and 6 other cases referred to in the SCN. In all these cases, the value of the shares for which duplicate share certificate request was received by the Noticee exceeded Rs 10,000/- and therefore, the Noticee was duty

bound as per law to make the newspaper advertisements, as aforesaid. I also find that Noticee has failed to inform all the stock exchanges (where the shares of Eicher were traded) regarding the loss of shares in lieu of which duplicate share certificate requests were received by it. From the records, it is noted that the genuine investor i.e Ms Adesh Kaur had lodged complaint with the Noticee informing it about the duplicate certificates issued by the company in respect of her folio on the basis of forged/stolen documents. In this regard, I note that, in terms of Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015), where the investor has complained about issuing of duplicate share certificate(s) by the company on the basis of allegedly forged /stolen documents furnished by a third party, the company shall verify and satisfy itself of the claim of the investor, within 15 days of the receipt of the claim and take steps including invoking of indemnity bond to issue shares and corresponding benefits to the rightful owner in terms of section 84 of the Companies Act read with Rule 3 of the Companies (Issue of Share Certificates) Rules, 1960. The above circular is applicable in respect of all companies/organizations (i.e. entities) whose securities are listed on the stock exchanges and are held in physical form. However, it is an admitted fact that apart from filing a criminal complaint in the matter, Eicher had not done anything to satisfy itself of the claim of the complainant i.e Ms Adesh Kaur in the matter and had also not invoked the indemnity bond to issue the shares and corresponding benefits to the rightful owner. In the instant matter, it is on record that Ms Adesh Kaur was finally compensated by Eicher only after the Hon'ble SC passed an appropriate direction vide its Order dated July 3, 2018 in the matter wherein Eicher was directed to rectify its register, insofar as the physical share certificates are concerned, and the concerned depository to rectify the demat records in accordance with the Order i.e the Order of Hon'ble SC dated July 3, 2018.

20. The Noticee has also admitted to the fact that it had not issued the newspaper advertisements in widely circulated newspapers before processing the duplicate share certificate request received from the impersonator in the name of Ms Adesh Kaur and also in respect of 6 other cases. The Noticee has vehemently sought to shift the entire responsibility in this regard on its RTA/STA i.e MCS Ltd. The Noticee's main contention is that when a company appoints a SEBI registered RTA/STA in accordance with the SEBI guidelines, the said RTA/STA acts as an interface between the company and its

shareholders and it is the RTA/STA who is responsible and accountable for undertaking the entire process of transfer or transmission of shares and the related or ancillary activities. According to the Noticee, since it had appointed MCS, a SEBI registered RTA, it cannot be held responsible for any procedural lapses in such functions performed by the RTA/STA. Further, Noticee also contended that the RTA/STA viz. MCS did not raise any invoice in lieu of the required paper advertisements while issuing the duplicate shares of the 6 cases as mentioned in the SCN and also in the cases of Mr. Manoj D Shah and Ms. Adesh Kaur and shifted the faults and procedural lapses entirely on to its RTA/STA i.e MCS.

21. The above contention /argument of the Noticee is without any merit. The SEBI guidelines /circulars issued in this regard provide that the Company is liable for all acts of its Agents and the company cannot absolve/shirk its responsibility towards their shareholders. The guidelines/circulars issued by SEBI unequivocally make the listed company liable for the acts of their RTA/STA. As regards the allegations pertaining to failure in exercising due skill, care and diligence while processing the duplicate share certificate requests received from the impersonators (against the holdings of the genuine shareholders viz Mr. Manoj D. Shah, Ms. Adesh Kaur) and also the failure to issue newspaper advertisements in case of Mr. Manoj D. Shah, Ms. Adesh Kaur and 6 other cases referred to in the SCN, the Noticee has admitted to the fact that no newspaper advertisements were issued by it before processing the duplicate share certificate requests in the abovementioned 8 cases (including Mr Manoj D Shah and Ms Adesh Kaur). The Noticee has time and again sought to shift the entire responsibility in this regard on its RTA/STA, MCS Ltd. According to the Noticee, since it had appointed MCS, a SEBI registered RTA, it cannot be held responsible for any procedural lapses in such functions performed by the RTA/STA. Further, Noticee also contended that the RTA/STA viz. MCS did not raise any invoice in lieu of the required paper advertisements while issuing / processing the duplicate shares of the 6 cases as mentioned in the SCN and also in the cases of Mr. Manoj D Shah and Ms. Adesh Kaur and shifted the blame and procedural lapses entirely on to its RTA/STA. In this context, it is pertinently noted that Noticee was not able to produce the specific payment details made by it to MCS specifically for the purpose of issuing such advertisements in widely circulated newspapers and/or was not in a position to show any evidence viz. correspondence/instruction issued by it to MCS to make such advertisements. The same were sought from the Noticee during the course of the proceedings and the

Noticee only chose to make a bald statement mentioning that MCS had not raised any invoice for the same. During the course of inspection of MCS, it was vehemently denied by MCS that it had received any instruction from the Noticee for issuing such advertisements.

22. In the context of the complaint of Ms Adesh Kaur, a brief background w.r.t chronology of the events, in respect of the allegations made against the Noticee in the SCN pertaining to the processing of the duplicate certificate requests received from the impersonator (in the matter of shares held by Ms. Adesh Kaur), is given below:

Period	**Event**
April 2012	Address change request made by the impersonator from Sangrur to Mumbai
July 2012	Request by the impersonator for issuance of duplicate shares along with supporting documents submitted, including signature attestation by Ms. Adesh Kaur (forged)
September 2012	Duplicate shares issued to impersonator with name as Ms. Adesh Kaur (at Mumbai address) 1st Floor, Plot No 31, Timber Terrace , KAS Marg, Matunga Mumbai 400 019
December 2012	Shares sold by impersonator to one Mr. Vikas Tara Singh
December 2012	Demat request form received from Mr. Vikas Tara Singh
January 2013	Letter written by Ms. Adesh Kaur (original investor) to company seeking details of her shareholding/dividend received etc.
February 2013	Email sent to Ms. Adesh Kaur by MCS informing her that duplicate shares have already been issued to her and thereafter transferred to Mr. Vikas Tara Singh at her request.

i. Pursuant to the above, Ms. Adesh Kaur lodged a complaint with SEBI (SCORES). Thereafter, she also filed a petition before the National Company Law Tribunal ('Hon'ble NCLT'), wherein, she has stated that some impersonator forged her signature and got the address changed from Sangrur to Mumbai and thereafter got the aforesaid duplicate shares issued on the changed address (mentioned in the table above). Later, the impersonator transferred the said duplicate shares to one Mr. Vikas Tara Singh. In this regard, NCLT in its Order dated March 20, 2017 held that the issuer company (i.e the Noticee) in this regard cannot shirk responsibility and liability in ensuring due diligence and procedures to be followed while issuing the duplicate shares. The Hon'ble NCLT had held that Eicher has to make good the loss to the petitioner i.e Ms Adesh Kaur. In this regard, the relevant findings/observations of Hon'ble NCLT vide its Order dated March 20, 2017 are mentioned as under:

"..*9. The petitioner has further been able to satisfy this Bench that as per the guidelines of SEBI (Registrar to an issue and Share Transfer Agents) Regulations 1993, there was no diligence exercised by Respondent No. 2 at the time of recording the change of address and issuance of duplicate shares. The documents purportedly filed for this purpose appear forged on the very face of it.*

10. The SEBI guidelines provide that a Company is liable for all acts of its Agents and cannot shirk the responsibility towards their shareholders. It mandates that under such circumstances the Respondent Company has to make good the loss by purchasing shares from the open market and transferring the same to the aggrieved shareholder.

11. The objection of Respondent No. 1 that the case in hand cannot be adjudicated by the Tribunal is a frivolous attempt to escape any liability and or grant relief to the petitioner. This Bench fails to understand why the petitioner should resort to a Civil Court in order to prove her title. Apart from her oral testimony and her original share certificates, there is little else to be adduced in evidence even in a Civil Suit. She has her original certificates in hand. The Respondents are aware of the fraudulent acts perpetuated on her and have even initiated criminal proceedings. There is no reason for the petitioner to be deprived of her assets for the outcome of the criminal investigation or wait for the criminals to be brought to book. Her documents and her entitlement are not denied to by the Respondents. Under such circumstances, vague denial to escape any liability and to suggest that the petitioner initiates a Civil Suit is viewed as an attempt not to redress the grievance which has primarily arisen out of the fraud played by the employees of the Respondent Company or their Agents. Apart from guidelines of Respondent No. 3 that unequivocally make the Respondent 7 Company liable for the acts of their Register cum Share Transfer Agents, the law on the point is clear that the Principals are liable for the acts of their agents.

12. With respect to Respondent No. 8, Mr. Vikas Tara Singh, the present registered holder, steps for service of notice were duly taken and he has chosen not to be present. It is does not need any specific observation, but the shares transferred to him, being stolen property cannot vest in him any title, muchless a perfect one.

13. Given the facts of this case, this Bench is of the opinion that the petitioner is entitled to *rectification of the Register of Shareholders maintained by the Respondent No. 1 Company in Folio No. 031308 registering her as the rightful owner of 903 shares, details of which are provided hereunder:*

Folio no.	***Certificate No.***	***Distinctive Numbers***		***No. of equity shares***
		From	***To***	
031308	*058178*	*10591370*	*10591469*	*100*
031308	*058179*	*10591470*	*10591569*	*100*
031308	*058180*	*10591570*	*10591669*	*100*
031308	*058181*	*10591670*	*10591769*	*100*
031308	*058182*	*10591770*	*10591772*	*3*
Total number of shares allotted				*403*

Folio no.	***Certificate No.***	***Distinctive Numbers***		***Transfer Number****	***No. of equity shares***
		From	***To***		
031308	*098712*	*19404859*	*19404958*	*73683*	*100*
031308	*098713*	*19404959*	*19405058*	*73681*	*100*
031308	*098714*	*19405059*	*19405158*	*73682*	*100*
031308	*098715*	*19405159*	*19405258*	*73684*	*100*
031308	*098716*	*19405289*	*19405358*	*73685*	*100*
Total number of shares					*500*

14. The original of these certificates, in the physical form, are still in possession of the petitioner. The petitioner may take adequate steps to get the same demated after due confirmation of the rectification of the Register having been carried out.
15. The petitioner would also be entitled to all dividends declared on the aforesaid shares which have not been passed on to her. She would also be entitled to any bonus shares or other benefits that may have accrued on these shares..."

ii. Further, Noticee preferred an appeal against the above order of NCLT before the Hon'ble National Company Law Appellate Tribunal (Hon'ble NCLAT), wherein, the Hon'ble NCLAT allowed the petition, in favour of the Noticee and set aside the NCLT Order dated March 20, 2017.

iii. Aggrieved by the above order of Hon'ble NCLAT, the complainant i.e. Ms Adesh Kaur preferred an appeal before the Hon'ble Supreme Court (Hon'ble SC) and

Hon’ble SC vide order dated July 03, 2018 set aside the above Order of Hon’ble NCLAT and upheld the findings of Hon’ble NCLT and directed Eicher to rectify its register, insofar as the physical certificates are concerned, and the concerned depository to rectify the demat records in accordance with its order and restoring the shares in the account of Ms Adesh Kaur. Hon’ble SC vide its Order dated July 3, 2018 held that

“...We are of the view that the Tribunal was absolutely correct in not relegating the appellant to any further proceedings inasmuch this is an open and shut case of fraud in which the appellant has been the victim, and Respondent No. 2 the perpetrator.

Equally, it is clear that the due procedure that has been outlined in paragraph 23 of the RTI Circular dated 09.05.2001 has not been followed. When the duplicate shares were issued, stock exchanges were not informed and neither was an advertisement in a widely circulated newspaper issued as the value of the shares were far greater than Rs. 10,000/-.

We are, therefore, of the view that the Appellate Tribunal in relegating the appellant to a further proceeding was not correct. We, therefore, set-aside the Appellate Tribunal’s order and reinstate that of the Tribunal dated 20.03.2017. It goes without saying that if respondent No. 8 does not happen to be on the register at all, then there would be no difficulty whatsoever in restoring the appellant back to its original position. Even if respondent No. 8 has been entered on the Register, his name will have to be deleted in view of the fact that the transfer to him has been declared to be void in law.

We, therefore, direct the Company to rectify its register, insofar as the physical share certificates are concerned, and the concerned depository to rectify the demat records in accordance with this order.
The appeals are allowed in the aforesaid terms.”

23. The summary of the observations/directions made in the aforementioned judgements of the Hon’ble National Company Law Tribunal, Hon’ble National Company Law Appellate Tribunal and Hon’ble Supreme Court in respect of the complaint/appeal made/filed by Ms. Adesh Kaur are briefly discussed in the table below:

In the matter of	**Summary of the judgements**
Adesh Kaur vs. Eicher Motors and Ors (2018) 207 com cas 144 {Hon'ble **National Company Law Tribunal (NCLT) judgement }**	Hon'ble NCLT held that the share certificates and her oral testimony prove that the petitioner (Ms. Adesh Kaur) is a shareholder and nothing else is required. It further held that as per SEBI (RTA) Regulations, 1993, there was no due diligence done at the time of recording the change in address and issue of duplicate share certificates. SEBI guidelines provide that the company is liable for the acts of its agents and thus the company cannot shrink their responsibility towards shareholders. It mandates that under such circumstances **the company has to make good the loss to the petitioner (emphasis supplied).** Accordingly, the tribunal allowed the petition for rectification of register and also held the petitioner would get all the benefits and entitlements with respect to those shares.
Eicher Motors Limited v Adesh Kaur and Ors (2018) {National Company Law Appellate Tribunal (Hon'ble **NCLAT) judgement**}	The appeal filed by Eicher against the Hon'ble NCLT Order was allowed. Hon'ble NCLAT held that as it was observed from the records it was evident that certain procedures were not followed and duplicate share certificates were already issued. Police complaint was already filed and pending for forgery and impersonation and matter was also before SEBI. Thus the order for rectification cannot be ordered on the sole ground that the original shareholder is in possession of original share certificates. - *The order is reversed by Hon'ble SC.*
Adesh Kaur vs. Eicher Motors Ltd and Ors (2018), SC/July, 2018/CA, 2013 (Civil appeals no.s 19426 and 19427 of 2017) (**Hon'ble Supreme Court judgement**) dated July 03, 2018	Hon'ble SC upheld the order of NCLT and set aside the order of NCLAT. Hon'ble SC held that NCLT was correct in deciding the matter and not relegating the appellant to any further proceedings as this is an open and shut case of fraud and could be tried by NCLT. Hon'ble SC further observed that the procedure contemplated under RTI circular dated May 09, 2001 for issuance of duplicate shares was not followed. When duplicate shares were issued, stock exchanges were neither informed nor was any newspaper advertisement issued. **Thus, the company was directed to rectify its registry and add the name of the**

	original shareholder who was defrauded (emphasis supplied).

24. From the perusal of the aforesaid judgements of Hon'ble National Company Law Tribunal, and Hon'ble Supreme Court as above, it is pertinent to mention the following observations:
    a. Eicher is vitally responsible for the acts of MCS and that the Principals are liable for the acts of their agents.
    b. The lack of due diligence on the part of Eicher while processing the duplicate certificate requests have been brought out.
    c. Hon'ble NCLT directed Eicher to make good the loss by purchasing the shares from open market and transferring the same to the aggrieved shareholder.
    d. Hon'ble SC also upholding the order of Hon'ble NCLT directed Eicher to rectify its register in so far as its physical shares are concerned

25. Thus, the above judgments and observations/directions made therein has reiterated that the issuer company is primarily responsible along with its agents (RTA/STA) in ensuring that due diligence and prescribed procedures are followed while issuing/processing the request for duplicate shares in order to prevent fraud and loss to the investors. Further, the responsibility of the Noticee in ensuring the due diligence and procedures to be followed while issuing/processing the duplicate shares as an issuer company is also unequivocally upheld by the Hon'ble SC and the Hon'ble NCLT, as can be observed from the above judgments. From the above findings/observations, it is clear that Eicher not only failed to issue the necessary newspaper advertisements of wide circulation at the time of receipt/processing of the duplicate certificate requests but also failed to inform the concerned stock exchanges and instead were continuously shifting the blame on its RTA/STA i.e. MCS in the said matter. Therefore, the contentions of the Noticee citing various other orders/judgments viz. in the matter of Knack Corporate, Parsoli corporation etc and submitting that its RTA/STA is the entity which is solely responsible for the alleged fraud cannot be accepted. In view of the same, the contentions of the Noticee by shifting the blame on its RTA/STA i.e MCS in the aforesaid matter is totally misplaced.

26. The Noticee has further contended that SEBI Circular no. 1 (2000-2001) dated May 09,

2001 which provides for the uniform procedures or practices adopted by companies and their registrars to issue/share transfer agents for handling and processing of transfer documents etc, had envisaged its applicability on the listed companies which were involved in the in-house processing of share transfers and related work as well as on the RTAs since some listed entities had by then outsourced the transfer related work to third parties. Therefore, while detailing the norms for processing of the documents and share transfers, the circular has deliberately used the phrase 'Company/STA' signifying company or transfer agent, as the case may be. In the event any company is carrying out the stipulated work in-house, these norms for processing have to be followed by the company but in case it has appointed a share transfer agent, the norms are to be followed by such transfer agent. The Noticee contended that, since it had appointed a SEBI registered RTA i.e MCS, it was MCS who was obligated to comply with the provisions of the above mentioned Circular.

27. I have considered the abovementioned submissions/contentions of the Noticee and have also examined the provisions of the said SEBI Circular no. 1 (2000-2001) dated May 09, 2001 which prescribes general norms for processing of documents, processing of transfers and objections etc. I note that the said Circular at multiple places refers to the phrase “The Company/STA” while prescribing how various functions relating to processing of documents have to be discharged. However, I do not agree with the Noticee’s submission/contention that the said phrase has been used to squarely mean “company or transfer agent, as the case may be”. In my considered view, the company, being the issuer of the securities, has the primary responsibility in respect of all issues concerning the transfer of shares and the RTA/STA merely acts as its agent to whom such functions can be outsourced. The said view is supported by the following points:

(a) Rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1960, which was applicable at the relevant time, provided that “No duplicate share, certificate shall be issued in lieu of those that are lost or destroyed without the prior consent of the Board or without payment of such fees, if any, not exceeding Rs. 2 and on such reasonable terms if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence as the Board thinks fit.” The said provision clearly mentions about company’s responsibilities in case of issuance of duplicate shares.

(b) Further, Regulation 9A(b) of the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (RTA and STA Regulations) provides for execution of an agreement between the company and the STA allocating the duties and responsibilities between the STA and the company. SEBI has also issued RRTI Circular: No.1 (94-95), dated 11-10-1994 which inter-alia provides for an agreement to be mandatorily executed between the company and the STA. The said Circular notes that "While the RTI / STA and the Issuer / body corporate may suitably modify the agreement depending upon the circumstances of each case, they should as far as possible, observe the spirit behind the various clauses contained in the model agreements. While doing so, it must also be ensured that neither party should reserve for itself any rights which would have the effect of diminishing in any way its liabilities and obligations under the Companies Act, 1956 and SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993." Thus, I note that any agreement between the Company and the RTA/STA cannot dilute the liability and obligations of a company under the Companies Act, 1956. Further, Clause 14 of the Model Draft Agreement between the RTA/STA and the Company, as provided in Annexure B of the said Circular dated 11-10-1994 clearly indicates that "Company is primarily responsible for the work of share transfer work assigned to STA."

28. From the abovementioned observations, it is amply clear that, in matters pertaining to transfer of shares and issuance of duplicate share certificates, the legal provisions put the primary responsibility on the Company i.e. Eicher in the instant matter. It therefore logically follows that the phrase "Company/STA" used in the said SEBI Circular dated May 09, 2001 implies a joint responsibility of the issuer company and its RTA/STA in ensuring that all the due procedures are followed.

29. The Noticee has repeatedly contended that since it had appointed a SEBI registered RTA/STA, which is regulated by SEBI and is governed by the provisions of the RTA/STA Regulations and other guidelines, it cannot be held responsible for the lapses in respect of any procedural matters. However, I disagree with the said proposition of the Noticee. While the provisions of the RTA/STA Regulations and various Circulars issued by SEBI regulate the functioning of an RTA/STA, the same do

not dilute the responsibility of the company in any manner. The mere fact that an RTA /STA is registered with and regulated by SEBI does not lessen the liabilities and obligations of a company in any manner. The company being the principal entity in respect of the issuance of shares, remains jointly responsible with the RTA /STA (its Agent) for any lapse. This is more so in such cases where the procedures are pertaining to transfer of shares, issuance of duplicate certificates, transmission etc which necessarily involve both the RTA/STA and the company.

30. In the given case of Ms Adesh Kaur, the Noticee has admitted that the details pertaining to the request for issuance of duplicate shares, after being processed at the MCS's end, were forwarded to the Noticee for approval and such approval was accorded by the Shares Committee of the Company. In my view, a company has to exercise due diligence and care while considering any proposal received from its RTA /STA, irrespective of whether the RTA/STA has given its approval or not. This exercise should not be carried out in a perfunctory manner by the Company. The fact that the Shares Committee of the Company approved the issuance of the duplicate share certificate to the impersonator (in case of Ms Adesh Kaur) by ignoring the regulatory requirement of making a newspaper advertisement in widely circulated newspapers, not informing the concerned stock exchanges etc shows that the Company did not exercise reasonable skill, care and diligence in the said matter. Further, since it had failed to ensure the issuance of newspaper advertisements in the six other cases also apart from Ms Adesh Kaur, as mentioned in the SCN, the Noticee cannot escape the liability for contravention of Clause 23 of General Norms for Processing of Documents as prescribed under RRTI Circular no. 1 (2000-2001) dated May 09, 2001. As already stated, it is also a matter on record that Noticee had failed to inform all the stock exchanges where the shares of Eicher were traded regarding the loss of shares in lieu of which the duplicate share certificate requests were processed by it.

31. In the instant matter, it is also to be noted that Ms Adesh Kaur had mentioned to Eicher about the fraudulent transfer of 903 shares of the company from her folio in 2013, the value of which was approx. Rs 17.52 lakhs during the relevant time. The Noticee took steps to compensate the investor i.e Ms Adesh Kaur by rectifying its register of members and transferred 9030 shares of the company to the demat account of Ms Adesh Kaur on May 4 and 5, 2021. It is noted that the said compensation was made by

Eicher only after the specific direction was issued by Hon'ble SC vide its order dated July 3, 2018 wherein Hon'ble SC directed Eicher to rectify its register, insofar as the physical share certificates are concerned, and the concerned depository to rectify the demat records in accordance with the said order of Hon'ble SC. It can be seen that although the direction of Hon'ble SC was issued in July 2018, the compensation made by Eicher to Ms Adesh Kaur took place in 2021 i.e almost after 3 years. In view of the above observations, I conclude that Noticee has violated the provisions of Clause 23 of the General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001.

32. It is further observed that Noticee has allegedly violated the provisions of Clause 3(e) of the erstwhile Equity Listing Agreement (hereinafter referred to as '**Listing Agreement**'), which it had signed with both BSE and NSE, which require it to issue new certificates in replacement of those which are lost within six weeks of the notification of loss and receipt of proper indemnity. The relevant provision is being reproduced below-

Listing Agreement

3. The Company agrees —

f. …..

g. ….

h. …..

i. ….

j. to issue new certificates in replacement of those which are lost within six weeks of notification of loss and receipt of proper indemnity.

33. It is also noted that the provisions of Clause 3(e) of the Equity Listing agreement has been incorporated in the LODR Regulations as Regulation 39(2), which mentions that the listed entity shall issue certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or <u>issuance of new certificates</u> or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable within a period of thirty days from the date of such lodgment. The text of abovementioned provision is as under-

39. Issuance of Certificates or Receipts/Letters/Advices for securities and

dealing with unclaimed securities-

(1)…………..

(2) The listed entity shall issue certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable within a period of thirty days from the date of such lodgment.

34. Furthermore, the provisions of Regulation 103(2) of LODR mentions that anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations. By virtue of this provision, the violation of Clause 3(e) of the listing agreement by the Noticee shall deemed to be the violation of Regulation 39(2) of LODR by the Noticee. The text of Regulation 103(2) of LODR is as under-

103. Repeal and Savings

(1) ……

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

35. Therefore, from the above observations, I hold that the time limit as prescribed under Clause 3(e) of the Listing Agreement and Regulation 39 (2) of the LODR Regulations in the matter of issuance of duplicate shares /new certificates has not been adhered to by the Noticee. In view of the above, the allegation of violation of Clause 3(e) of the Listing Agreement and Regulation 39 (2) of LODR Regulations r/w Regulation 103 (2) of LODR Regulations by the Noticee stand established as the Noticee failed to comply

with the time frame prescribed under the provisions of Regulation 39 (2) of LODR Regulations.

36. Therefore, in the facts and circumstances of this case, I am of the view that such defaults committed by the Noticee attract the liability to pay penalty as prescribed under Section 15HB of the SEBI Act, which provides as follows: -

SEBI Act

PENALTIES AND ADJUDICATION

15HB. Penalty for contravention where no separate penalty has been provided- *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

ISSUE 3: If yes, what should be the quantum of monetary penalty?

37. For the purpose of adjudication of the penalty, it is relevant to mention that under section 15 I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J of the SEBI Act, which reads as under: -

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

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

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

c) the repetitive nature of the default.

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

38. In the instant matter, the investor i.e Ms Adesh Kaur received the shares into her demat account only in May 2021 despite the directions of Hon'ble SC vide its Order dated July 3, 2018. The investor was put to loss as a result of the complete failure on the part of the Noticee to exercise the expected level of due diligence and professionalism while processing the request for issue of duplicate certificate from the impersonators. By bypassing the requirements specified in the aforementioned provisions of law and also by aimlessly shifting the responsibility on its agent for the lapses, the interest of the investor has suffered. Clearly, the Noticee has failed in its obligation to exercise due diligence, skill and promptitude while handling the complaint/grievance of Ms Adesh Kaur. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} –wherein the Hon'ble Supreme Court of India held that "...In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."

ORDER

39. Considering all the facts and circumstances of the case and in exercise of the powers conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) on the Noticee under section 15HB of the SEBI Act for the violation of the provisions of Clause 23 of General Norms for processing of documents under RRTI Circular no. 1 (2000-2001) dated May 09, 2001, Clause 3 (e) of Listing Agreement r/w Regulation 39 (2) of the LODR Regulations r/w Regulation 103 (2) of LODR Regulations. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

40. The Noticee shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- *Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link

https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

41. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-VI, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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

42. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Eicher Motors Limited and also to the Securities and Exchange Board of India.

Date: June 01, 2022 **Suresh B Menon**

Place: Mumbai **ADJUDICATING OFFICER**