BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NH/YK/2024-25/31191]

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

In respect of:

Noticee	PAN	Registration Number
Link Intime India Private Limited	AAACI4998N	INR000004058

In the matter of TSR Consultants Private Limited

FACTS OF THE CASE

1. TSR Consultants Private Limited (hereinafter referred to as "**TSR**") was registered with the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a Registrars to an Issue and Share Transfer Agents (hereinafter referred to as "**RTA**"). TSR has been amalgamated with Link Intime India Private Limited (hereinafter referred to as "**Noticee/Link Intime**"). The amalgamation was approved by the Hon'ble National Company Law Tribunal (hereinafter referred to as **"NCLT"**) vide Order dated December 18, 2023. SEBI had undertaken inspection of the TSR for the period September 01, 2022 to November 30, 2023 (hereinafter referred to as "**Inspection period/IP**") from February 12, 2024 to February 16, 2024.

2. Post the culmination of the aforesaid inspection, an inspection report (hereinafter referred to as '**IR'**) was prepared. The findings of the said inspection were communicated to TSR by SEBI vide letter dated March 22, 2024. In response to the findings in the inspection report, a reply vide letter dated April 04, 2024 was submitted. After the receipt of the reply to the Inspection Report, a Post Inspection Analysis report (hereinafter referred to as '**PIA'**) was prepared.

3. Based on the findings of Inspection conducted by SEBI and the response dated April 04, 2024 submitted to SEBI, certain non-compliances of SEBI Circulars were alleged. A summary of charges and violations alleged to have been committed by TSR are given in the table below:

Table 1

Charges (summarized)	**Alleged Violations**
TSR failed to close 62 vulnerabilities immediately after detection through VAPT Audit.	Clause 41 of Annexure A to SEBI Circular No. SEBI/HO/MIRSD/CIR/P/2017/0000000100 dated September 08, 2017 (hereinafter referred to as **"SEBI Circular dated September 08, 2017")** read with Clause 2 of SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/73 dated May 27, 2022 (hereinafter referred to as **"SEBI Circular dated May 27, 2022"**).
The Technology committee of TSR have not reviewed the implementation of cyber security for the quarters April-June 2023, July-Sep 2023 and Oct-Dec 2023.	Clause 7 of Annexure A to SEBI Circular dated September 08, 2017.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI had appointed the undersigned as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated June 06, 2024 under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with 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 the Section 15HB of the SEBI Act for the

aforementioned violations of the provisions of law alleged to have been committed by the TSR. Pursuant to the amalgamation of TSR with the Noticee, vide communique dated September 25, 2024, the undersigned was informed about the continuance of Adjudication proceedings against the Noticee for the violations allegedly committed by TSR prior to amalgamation.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref no. SEBI/EAD-2/NH/YK/19550/2024 dated June 12, 2024 (hereinafter referred to as **"SCN"**) was served upon TSR in terms of Rule 4 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 TSR and why penalty, if any, not be imposed on it in terms of the provisions of the Section 15HB of the SEBI Act for the violations alleged to have been committed by the TSR.

6. The SCN dated June 12, 2024, *inter alia*, alleged the following:

"

6.1. Failed to close vulnerabilities immediately after detection

- *It was observed from IR that Para 41 of SEBI Circular dated September 08, 2017 on Cyber Security and Cyber Resilience framework for RTAs read with modification in Cyber Security and Cyber Resilience framework for RTAs vide SEBI Circular dated May 27, 2022, inter alia, states as under:*
  "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."

- *However, it was alleged in the IR that the TSR did not close 62 vulnerabilities (Critical – 9, High – 17, Medium – 18 and Low – 18) within three months. Therefore, it was alleged that the TSR has not complied with the aforementioned Clause.*

- *It was observed that the aforesaid finding was communicated to the TSR by SEBI vide letter dated March 22, 2024. The TSR vide letter dated April 04, 2024, had, inter alia, stated as under in respect of the aforesaid finding in the IR:*
  "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."

- *In this regard, it was alleged in the PIA report that the TSR has not closed 62 vulnerabilities (including 9 critical and 17 high) immediately after detection through VAPT Audit. It was further alleged in the PIA report that although the TSR has submitted in its reply that all vulnerabilities were addressed and acted upon within stipulated timeline, the TSR has failed to produce supporting document(s) evidencing closure of any of the aforesaid 62 vulnerabilities till date. It was further alleged in the PIA that from the VAPT revalidation reports, it was observed that such number of vulnerabilities were open even after three months from the VAPT Audit.*

- *In view of the above, it is alleged that the TSR has violated the provisions of Clause 41 of Annexure A to SEBI Circular dated September 08, 2017 read with Clause 2 of SEBI Circular dated May 27, 2022.*

6.2. <u>Implementation of cyber security not reviewed by technology committee</u>

- *It was observed from IR that Para 7 of SEBI Circular dated September 08, 2017 on Cyber Security and Cyber Resilience framework for RTAs, inter alia, states as under:*
  "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."

- *However, it was alleged in the IR that from Cyber Security Audit Report, it was observed that technology committee have not reviewed the implementation of cyber security for the quarters April-June 2023, July-Sep 2023 and Oct-Dec 2023.*

- *It was observed that the aforesaid finding was communicated to the TSR by SEBI vide letter dated March 22, 2024. The TSR vide letter dated April 04, 2024, had, inter alia, stated as under in respect of the aforesaid finding in the IR:*

  "During inspection, we had already provided extracts from the Minutes of the Technology Committee Meetings held on 26 June 2023, 10 August 2023 and 19 December 2023 wherein the Committee had reviewed and took note of the Cyber Security Resilience framework policy. Attached please find extracts of the Technology Committee Meeting Minutes provided earlier and letter from our auditors e-Protect 360 Solutions Private Ltd., confirming the same."

- *In this regard, it was observed in the PIA report that as per Cyber Audit Report dated November 27, 2023 submitted by the TSR, the auditor has, inter alia, stated "Last Technology committee meeting was held on 03 Feb 2023". However, the same Auditor vide letter dated April 03, 2024 as submitted by the TSR has stated "Quarterly Technology review meeting were conducted on 26 June 2023, 10 August 2023 and 19 December 2023". It was alleged in the PIA report that the letter dated April 03, 2024 is in contradiction to the previous submission of the auditor.*

- *It was further observed in the PIA report that the extract of minutes of the technology committee meeting as submitted by the TSR did not mention the date on which the technology committee meeting was conducted. In view of the same, it was alleged in the PIA that the extract of minutes submitted by the TSR cannot*

be considered as evidence for technology committee meeting on 26 June 2023, 10 August 2023 and 19 December 2023.

- *In view of the above, it is alleged that the TSR has violated the provisions of Clause 7 of Annexure A to SEBI Circular dated September 08, 2017"*

7. The SCN dated June 12, 2024, along with annexures was served upon the TSR in the following manner as mentioned below:

Table 2

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[1]	Remarks
1.	Through E-mail.	*cr.... ….co.in; cg.... ….co.in; rs.... ….co.in; nn.... ….co.in;*	Digitally Signed SCN duly delivered on June 12, 2024. Acknowledgement of receipt of SCN through e-mail is available on record.
2.	Through Hand Delivery	*C-…….Mumbai – 400 083*	Delivered on June 14, 2024. Acknowledgement of receipt of SCN through hand delivery is available on record.

8. Subsequent to the service of the SCN, the reply of the Link Intime to the SCN was received vide email dated June 26, 2024, which, *inter alia*, states as under:
"3. TSR Consultants Private Limited (formerly known as TSR Darashaw Consultants Private Limited) has been amalgamated with Link Intime India Private Limited under the Scheme of Amalgamation per Section 230 to 232 of the Companies Act, 2013. The Noticee, along with Universal Capital Services Limited and SKDC Consultants Limited (Transferor Companies), amalgamated into Link Intime India Private Limited (Transferee Company) effective July 01, 2022 (appointed date).

[1] *E-mail ID and address excised for the sake of confidentiality.*

7. Subsequently, The NCLT Mumbai approved the said scheme of arrangement in an order dated December 18, 2023, under paragraph 16, stating that "The Transferor Companies will be dissolved, without winding-up.

8. Therefore, by virtue of Companies Act, 2013 and the judicial order of NCLT, the Noticee stands dissolved. Accordingly, as on the date of issuance of the SCN, the Noticee stood amalgamated, dissolved and non-existent."

9. Taking note of the above, vide communique dated September 25, 2024, the undersigned was informed about the continuance of Adjudication proceedings against the Link Intime India Private Limited for the violations allegedly committed by TSR prior to amalgamation. Therefore, Supplementary Show Cause Notice (hereinafter referred to as **"SSCN"**) bearing ref. No. SEBI/EAD-2/NH/YK/32392/2024 dated October 14, 2024, was issued in continuation to the SCN dated June 12, 2024. The SSCN dated October 14, 2024*, inter alia*, modified paragraph nos. 1 and 5 of the SCN dated June 12, 2024 as under:

"Modified paragraph 1 of the SCN dated June 12, 2024

1. *TSR Consultants Private Limited (hereinafter referred to as "TSR") was registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") as a Registrars to an Issue and Share Transfer Agents (hereinafter referred to as "RTA") since April 03, 2020. The registration number of the TSR was INR000004009. TSR has been amalgamated with Link Intime India Private Limited (hereinafter referred to as "Noticee") vide National Company Law Tribunal (hereinafter referred to as "NCLT") Order dated December 18, 2023. SEBI had undertaken inspection of the TSR for the period September 01, 2022 to November 30, 2023 (hereinafter referred to as "Inspection period/IP") from February 12, 2024 to February 16, 2024, i.e., post amalgamation of the TSR with the Noticee. The Noticee has been registered with the SEBI as a RTA since May 06, 2014. The registration number of the Noticee is INR000004058.*

Modified paragraph 5 of the SCN dated June 12, 2024

5. *In view of the above, SEBI initiated adjudication proceedings and appointed the undersigned as the Adjudicating Officer vide communique dated June 06, 2024, under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules"), to inquire into and adjudge under Section 15HB of the SEBI Act for the aforementioned violations alleged to be committed by the TSR. Pursuant to the amalgamation of TSR with the Noticee, vide communique dated September 25, 2024, the undersigned was informed about the continuance of Adjudication proceedings against the Noticee for the violations committed by TSR prior to amalgamation."*

10. The SSCN dated September 25, 2024, along with annexures was served upon the Noticee in the following manner as mentioned below:

Table 3

Sr. No.	Mode of Delivery of SSCN	Addresses/ E-mail IDs[2]	Remarks
1.	Through E-mail.	*cr.... ….co.in; bn.... ….co.in;*	Digitally Signed SSCN duly delivered on October 14, 2024. Acknowledgement of receipt of SSCN through e-mail is available on record.
2.	Through Hand Delivery	*C-…….Mumbai – 400 083*	Delivered on October 15, 2024. Acknowledgement of receipt of SSCN through hand delivery is available on record.

11. Vide e-mail dated October 28, 2024, the Authorised Representatives, viz. Regstreet Law Advisors (hereinafter referred to as **"ARs"**) of the Noticee, *inter alia*, made the submissions against the SCN dated June 12, 2024, and SSCN dated October 14,

[2] *E-mail ID and address excised for the sake of confidentiality.*

2024, which are discussed in the subsequent paragraphs under different headings for ease of discussion. Thereafter, in the interest of natural justice, an opportunity of hearing was granted to the Noticee on January 02, 2025, vide hearing notice dated December 12, 2024, which was subsequently rescheduled to January 06, 2025. On the scheduled date of the personal hearing, *i.e*., January 06, 2025, the Noticee appeared through its ARs, who reiterated the submissions made by the Noticee vide letter dated October 28, 2024, and June 26, 2024. Further, ARs also requested for additional time to make further submissions in the matter which was acceded to, and the Noticee was advised to file its additional submissions, if any, at the latest by January 15, 2025. The Noticee, vide e-mail dated January 10, 2025, had submitted its additional submissions, which are discussed in the subsequent paragraphs under different headings for ease of discussion.

CONSIDERATION OF ISSUES

12. I have carefully perused the charges levelled against the Noticee in the SCN read with SSCN, its replies and the material/documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. Whether TSR has violated provisions of securities law by not complying with regulatory provisions regarding:

a. Closure of vulnerabilities immediately after detection and submission of compliance of closure of findings identified during VAPT to SEBI within three months.

b. Review of implementation of cyber security by technology committee.

II. If the answer to Issue I is affirmative, whether Noticee can be held liable for the violations committed by TSR prior to its amalgamation with the Noticee?

III. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of SEBI Act?

IV. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors stipulated in section 15J of the SEBI Act?

13. Before proceeding further, it is pertinent to refer the relevant provisions of law, allegedly violated by the Noticee. The same are reproduced hereunder:

*"**SEBI Circular dated September 08, 2017***

Annexure A

7. 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.

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

SEBI Circular dated May 27, 2022[3]"

14. **<u>Issue I - Whether TSR has violated provisions of securities law by not complying with regulatory provisions regarding:</u>**

14.1. **Closure of vulnerabilities immediately after detection and submission of compliance of closure of findings identified during VAPT to SEBI within three months.**

14.1.1. It was alleged in the SCN that the TSR had not closed 62 vulnerabilities (9 critical and 17 high) immediately after detection through VAPT Audit. It was further alleged

[3] *The text of SEBI Circular dated May 27, 2022 is available at the below mentioned link:* https://www.sebi.gov.in/legal/circulars/may-2022/modification-in-cyber-security-and-cyber-resilience-framework-of-qualified-registrars-to-an-issue-and-share-transfer-agents-qrtas-_59283.html

that such number of vulnerabilities were open even after three months from the VAPT Audit.

14.1.2. In response to the above allegations, the Noticee in its replies has, *inter alia*, stated:

"*It is submitted that vide response dated April 04, 2024, the Noticee under the SCN 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.*

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 G). It is reiterated that TSR Consultants did not have a separate system and therefore, the vulnerabilities identified totaling 62, as observed by SEBI in both the SCN related to TSR Consultants and the SCN issued to the Noticee on July 09, 2024, are one and the same. The Noticee vide email dated June 07, 2024 to SEBI inspection team categorically stated that "We would like to inform you that since the same observation was there in the findings of the inspection carried out of TSR Consultants Private Limited also, the closure reports submitted vide our below email on June 5,2024 and this email may be considered for both Link Intime India Private Limited and TSR Consultants Private Limited" A copy of the email dated June 07, 2024 is enclosed herewith as 'Annexure H'.

Further, these VAPT closure Reports dated June 03, 2024 and June 04, 2024 clearly indicate closure all the 62 identified vulnerabilities by the Noticee. The relevant extracts of 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.*

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.

Additionally, the Noticee vide 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. A copy of the VAPT closure Report dated June 07, 2024 is enclosed herewith as 'Annexure I'."

14.1.3. From the aforesaid, it is noted that the Noticee in its replies has reiterated the submissions made to SEBI inspection team against the findings of inspection communicated to TSR. The Noticee in its replies has submitted that they have addressed all the vulnerabilities within the stipulated time. The Noticee has submitted the copies of VAPT closure reports dated June 03, 2024, June 04, 2024, and June 07, 2024, to substantiate its claims of closure of vulnerabilities.

14.1.4. In this regard, from the material available on record, I note that the VAPT reports in which the 62 vulnerabilities were found to be open pertain to the period ranging from February, 2023 to April, 2023. Copies of these VAPT reports were provided to the Noticee along with the SCN and SSCN. The Noticee in its replies has not disputed the findings of these reports. Further, from the perusal of VAPT closure reports dated June 03, 2024, June 04, 2024, and June 07, 2024, as submitted by the Noticee, it is noted that these reports, *inter alia*, state that, *"This analysis is based on the technologies and known threats as of the date of this report."* Hence, these reports confirm that no such vulnerabilities were open as on the date of these reports viz. June 03, 2024, June 04, 2024, and June 07, 2024 which are after more than one year from the date of VAPT reports pertaining to the period ranging from February, 2023 to April, 2023, in which the 62 vulnerabilities were found to be open. In this regard, I would like to refer to the provisions of Clause 41 of Annexure A to SEBI Circular dated September 08, 2017 read with Clause 2 of SEBI Circular dated May 27, 2022, which, *inter alia*, states that *"Any gaps/vulnerabilities detected shall be remedied on immediate basis".* Hence, the submission of the Noticee in this regard cannot be accepted since the Noticee has not submitted any supporting evidence to substantiate its claims of immediate closure of vulnerabilities.

14.1.5. Now, coming to the second leg of the requirement of SEBI Circulars, *i.e.,* communication of closure of findings identified during VAPT to SEBI within three months. In this regard, it is noted that the Noticee in its reply has admitted that the closure of findings was not communicated to SEBI within stipulated time. The Noticee further submitted that the VAPT closure reports were submitted to SEBI inspection team vide e-mail dated June 07, 2024. The Noticee has provided a copy of e-mail dated June 07, 2024 to substantiate its claim. In this regard, I would again like to refer to the provisions of Clause 41 of Annexure A to SEBI Circular dated September 08, 2017 read with Clause 2 of SEBI Circular dated May 27, 2022, which, *inter alia*, states as under:

"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." (Emphasis Supplied)

14.1.6. From the perusal of the aforesaid Circulars, it is noted that the Circulars explicitly specified that the closure of findings identified during VAPT has to be communicated to SEBI within three months. However, in the instant case, the Noticee has claimed that the closure reports were submitted to SEBI on June 07, 2024, i.e., after more than one year from the date of VAPT reports for the period ranging from February, 2023 to April, 2023 in which the 62 vulnerabilities were found to be open. Further, the Noticee has not explained the reason of delay in communicating compliance of closure of findings identified during VAPT to SEBI. Hence, it is established that the Noticee was not in compliance with the aforesaid circular.

14.1.7. The Noticee in its replies has, *inter alia*, further stated:

"Neither there is an allegation nor there is a finding that the Noticee / TSR Consultants were 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."

14.1.8. In this regard, I note that alleged violation in the instant matter is specific to Clause 41 of Annexure A to SEBI Circular dated September 08, 2017 read with Clause 2 of SEBI Circular dated May 27, 2022. Hence, the submissions of the Noticee regarding compliance with other provisions of these Circulars does not merit any consideration.

14.1.9. The Noticee in its replies has, *inter alia*, further stated:

"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 TSR Consultant's response dated April 04, 2024."

14.1.10. In this regard, I note that the SCN dated June 12, 2024, and SSCN dated October 14, 2024, *inter alia*, alleged that, *"the Noticee has not closed 62 vulnerabilities (including 9 critical and 17 high) immediately after detection through VAPT Audit."* Hence, the allegation in the instant matter is not limited to intimation of closure of vulnerabilities to SEBI as claimed by the Noticee but also regarding immediate closure of 62 vulnerabilities identified during VAPT audit. Further, as discussed in preceding paragraphs, the Noticee has failed to submit any supporting evidence to substantiate its claims of immediate closure of vulnerabilities as required by the Circulars. Therefore, submission of the Noticee in this regard is misplaced.

14.1.11. The Noticee in its replies has, *inter alia*, further stated:

"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."

14.1.12. In this regard, I would like to refer to the provisions of Clause 41 of Annexure A to SEBI Circular dated September 08, 2017, which, *inter alia*, states as under:

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

I would also like to refer to the relevant provisions of Clause 2 of SEBI Circular dated May 27, 2022, which, *inter alia*, states as under:

"2. In partial modification to Annexure A of SEBI circular dated September 08, 2017, the paragraph-11, 40, 41 and 42 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."

From the perusal of the aforesaid Circulars, it is noted that the requirement to take immediate remedial action to address gaps identified during VAPT was in place since 2017. Only the additional requirement to submit compliance of closure of findings identified during VAPT to SEBI within three months was introduced vide circular dated May 27, 2022. Moreover, as discussed in preceding paragraphs, VAPT reports in which the 62 vulnerabilities were found to be open pertain to the period ranging from February, 2023 to April, 2023, i.e., after nine months from the applicability of SEBI Circular dated May 27, 2022. Hence, the submission of the Noticee in this regard is misplaced.

14.1.13. In view of the aforesaid discussions, it is established that TSR had violated the provisions of Clause 41 of Annexure A to SEBI Circular dated September 08, 2017 read with Clause 2 of SEBI Circular dated May 27, 2022.

14.2. **Review of implementation of cyber security by technology committee.**

14.2.1. It was alleged in the SCN that the technology committee of TSR has not reviewed the implementation of cyber security for the quarters April-June 2023, July-Sep 2023, and Oct-Dec 2023.

14.2.2. In response to the above allegations, the Noticee in its replies has, *inter alia*, stated:

"…..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 J colly'.

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 wherein the Board of the Noticee noted the minutes of the meeting of Technology Committee dated June 26, 2023 and August 10, 2023. A copy of minutes of meeting of Board of Directors dated September 14, 2023 are marked and annexed hereto as Annexure K. It may further be noted that the minutes of Technology Committee meeting dated December 19, 2023 could not have been placed before any Board of Directors Meeting as the TSR Consultants stood amalgamated vide NCLT order dated December 18, 2023 and submitted to ROC on December 22, 2023.

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 dated April 03, 2024 from ePROTECT 360 Solutions Pvt. Ltd., which was provided to SEBI as Annexure B in response to SEBI's Findings and Observations following the inspection dated March 22, 2024 (Annexure L). 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."

14.2.3. From the aforesaid, it is noted that the Noticee in its replies has submitted that the Technology Committee Meeting did take place on June 26, 2023, August 10, 2023, and December 19, 2023. The Noticee has submitted the copies of relevant extracts of minutes of technology committee meetings dated June 26, 2023, August 10, 2023, and December 19, 2023, copies of relevant extracts of minutes of board meeting dated September 14, 2023, wherein the minutes of technology committee meetings dated June 26, 2023, and August 10, 2023, were noted, and

a copy of audit report dated April 03, 2024, from ePROTECT 360 Solutions Pvt. Ltd.

14.2.4. From the perusal of the copy of audit report dated April 03, 2024, from ePROTECT 360 Solutions Pvt. Ltd. as submitted by the Noticee, it is noted that the said audit report was addressed to Link Intime and not the TSR. However, from the material on record, it is noted that a copy of audit report dated April 03, 2024, from ePROTECT 360 Solutions Pvt. Ltd. addressed to TSR was provided as part of reply made to SEBI inspection team against the findings of inspection communicated to them which, *inter alia*, states as under:

"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."

From the material on record, I further note that the same auditor, ePROTECT 360 Solutions Pvt. Ltd., in its cyber security audit report of TSR dated November 27, 2023, *inter alia*, states as under:

"*It is observed that the Last committee meeting held on 03 Feb 2023"*

From the aforesaid, it is noted that the findings of the auditor in both the audit reports were contradictory. It is further noted that the reason for contradiction in the findings of auditor was neither mentioned in the audit report dated April 03, 2024 nor the Noticee in its replies has submitted any reason for the same. However, considering the other supporting documents as submitted by the Noticee, i.e., relevant extracts of minutes of meeting of technology committee and relevant extracts of minutes of board meeting wherein the minutes of technology committee meeting were noted, I am inclined to give benefit of doubt to the Noticee. Accordingly, alleged violation of the provisions of Clause 7 of Annexure A to SEBI Circular dated September 08, 2017, does not stand established.

14.3. It is noted that the Noticee in its replies has raised some issues pertaining to the issuance of SSCN and the principles of natural justice. The same has been dealt with in the following paragraphs.

Issuance of Supplementary Show Cause Notice

14.3.1. The Noticee in its replies has, *inter alia*, stated as under:

"At the outset, it is submitted that issuance of the instant SSCN is completely without jurisdiction and void in the eyes of law. The authority to issue a Supplementary Show Cause Notice does not derive from inherent or implied powers but must be explicitly conferred by statute.

The SEBI Act, 1992 does not have any provision that empowers SEBI for the issuance of a Supplementary Show Cause Notice, and the Legislature has deliberately omitted to confer such authority upon the adjudicating officer of SEBI. The Legislature, through the Finance Act, 2018, amended the Customs Act, 1962, introducing Section 28(7A) and Section 124, thereby specifically empowering the relevant authority / proper officer to issue a Supplementary Show Cause Notice. The same Finance Act, 2018, amended the SEBI Act and the SCRA, yet the Legislature, in its wisdom, explicitly omitted conferring the power upon SEBI to issue a Supplementary Show Cause Notice. Therefore, the Learned Adjudicating Officer lacks the authority to issue the present SSCN.

In addition to the above, even under the Works of Defence Act, 1903, Section 17, specifically empowers the Collector to issue supplementary notices. Section 17 states: "The collector shall cause supplementary notice to be given, as nearly as may be...". Similarly, the erstwhile Income Tax Act, 1869 also included Section 23, which specifically empowered the Collector to issue a fresh notice."

14.3.2. The Noticee has also placed reliance on the orders of Hon'ble Supreme Court in the matter of Ganga Yamuna Gramin Bank v. Devi Sahai {(2009) 11 SCC 266}, Shiv Shakti Coop. Housing Society v. Swaraj Developers & Ors (AIR 2003 SC

2434), and SEBI v. Saikala Associates Ltd. (Civil Appeal No. 3696 of 2005 dated April 21, 2009).

14.3.3. All the submissions of the Noticee in this regard including case laws have been considered. It is noted that the provisions of Customs Act, 1962, Income Tax Act, 1969, and Works of Defence Act, 1903, as cited by the Noticee have no direct relevance to the provisions of securities laws alleged to have been violated in this proceeding. Further, there is no such provision in securities laws restricting issuance of supplementary SCN. It is further noted that issuance of a show cause notice or supplementary show cause notice is an inbuilt requirement in any quasi-judicial proceedings as a part of Principles of Natural Justice and the same need not be required to be specifically provided for or mentioned in the legislation, rules, regulations or bye-laws etc. to entitle issuance of Supplementary SCN during enforcement proceedings.

14.3.4. In this regard, I would like to refer to the order of the Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India vs. PACL India Ltd.*[4]*,* wherein the Hon'ble Supreme Court*, inter alia,* held as under:

"5. Having heard the learned Counsel for the respective parties, we are convinced that the order of the High Court impugned in these appeals should be set aside and the proceedings dated 30.11.1999 and 10.12.1999 can themselves be treated as show cause notices ***apart from permitting the Appellant to issue a comprehensive supplementary show cause notice*** *to the first Respondent Company within a period of three months after carrying out necessary inspection, investigation, inquiry and verification of the accounts and other records of the first Respondent Company."* (Emphasis Supplied)

14.3.5. It is further noted that in the present case, with respect to the supplementary SCN, the Noticee was granted adequate opportunities for filing reply and to attend

[4] *Civil Appeal Nos. 6753-6754 of 2004 and 2864 of 2006 dated February 26, 2013*

personal hearing in the matter, which were availed of by it. Therefore, the principles of natural justice have been duly complied with in the instant proceedings.

14.3.6. In view of the aforesaid discussions, the submissions of the Noticee in this regard is misplaced. I did not find any illegality in issuing the SSCN.

Violation of principles of natural justice

14.3.7. The Noticee in its replies has, *inter alia*, stated as under:

"113. It is submitted that along with the SCN and the SSCN, the Noticee has not been furnished with certain documents or information which have been referred to, relied upon and are in possession of SEBI. Absence of the same has caused grave prejudice to the Noticee and its ability to put up an adequate defense based on true facts.

114. The Noticee requests that the following documents are essential for the instant matter:

S. No	*Document required*
1.	*Copy of the opinion of the Whole-Time Member to appoint inspecting authority.*
2.	*Copy of the order approving inspection and / or appointing inspecting authority.*
3.	*Copy of opinion and / or order approving issue of notice for inspection.*
4.	*Copy of approval of inspection report.*
5.	*Opinion of Whole-Time Member / Chairman approving action after considering inspection report.*
6.	*Internal Notings / File Notings for both SCN and SSCN*
7.	*Copy of the opinion obtained / sought from the legal department in relation to issuance of SSCN, if any.*
8.	*Copy of the order of the Competent Authority dated September 25, 2024 appointing the Ld. Adjudicating Officer.*
9.	*Copy of the order of the Competent Authority dated June 05, 2024 appointing the Ld. Adjudicating Officer.*
10.	*Copy of Annexure 1 and Annexure 2 mentioned under para 2.1 of Annexure 2 (findings of inspection letter of SEBI dated March 22, 2024) to the Show Cause Notice*
11.	*Copy of Annexure A, Annexure B, Annexure C, Annexure D, Annexure E and Annexure F mentioned under column no. XII of Annexure 4 (Post inspection analysis report) to the Show Cause Notice.*

12.	*Copy of the opinion formed by the Competent Authority for initiation of adjudication proceedings.*
13.	*Copy of opinion formed by the Competent Authority, SEBI that an inquiry should be held against the Noticee.*
14.	*Copy of Case Management System (CMS) screenshot in the present proceedings.*
15.	*Copy of Annexure 7(2) "Format for handing over Fresh Cases" in the present proceedings.*
16.	*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*
17.	*Any statement recorded by SEBI during the inspection.*
18.	*Any adverse material available on record or any documents with SEBI evidencing anything in relation to the allegations against the Noticee.*

"

14.3.8. In this regard, it is noted that the Noticee, in its replies, has also placed reliance on the orders of the Hon'ble Supreme Court in the matter of T. Takano and Anr v. SEBI {(2022) 8 SCC 162}, and Reliance Industries Limited v. Securities And Exchange Board Of India & Ors {(2022) 10 SCC 181}; order of the Hon'ble Gauhati High Court in the matter of Sunita Agarwal v. Securities and Exchange Board of India and Another (2022 SCC OnLine Gau 2325), orders of the Hon'ble Bombay High Court in the matter of Ashok Dayabhai Shah And Ors v. Securities And Exchange Board of India And Ors (2023 SCC OnLine Bom 2602), and Milind Patel v. Union Bank of India & Ors (2024 SCC OnLine Bom 745); orders of the Hon'ble SAT in the matter of Mukesh D. Ambani v. Securities and Exchange Board of India (2023 SCC OnLine SAT 1019), and National Stock Exchange of India Ltd. v. Securities and Exchange Board of India (2023 SCC OnLine SAT 1407).

14.3.9. All the submissions of the Noticee in this regard including the case laws have been considered. From the material on record, it is noted that the following documents were provided to the Noticee along with the SCN dated June 12, 2024, and SSCN dated October 14, 2024.

Table 4

Sl. No.	Documents provided
1.	Copy of inspection report
2.	Copy of findings of inspection communicated to the Noticee vide letter dated March 22, 2024
3.	Copy of reply received from the Noticee vide letter dated April 04, 2024
4.	Copy of PIA
5.	Copy of VAPT revalidation report
6.	Copy of Cyber Security Audit Report
7.	Copy of auditor's letter dated April 03, 2024
8.	Copy of extract of minutes of the technology committee meeting as submitted by the Noticee vide letter dated April 04, 2024
9.	Copy of communique of appointment of Adjudicating Officer dated June 06, 2024
10.	Copy of communique dated September 25, 2024.

14.3.10. It is further noted that during the hearing, the Noticee was clarified that the documents mentioned in points No. 10 and 11 of para 114 of its reply dated October 28, 2024, were provided to the Noticee along with the SCN in the following manner:

Table 5

Documents query raised by the Noticee	Documents provided along with the SCN as
Annexure 1 of SEBI's findings of inspection letter dated March 22, 2024	Annexure 6 to the SCN
Annexure 2 of SEBI's findings of inspection letter dated March 22, 2024	Annexure 7 to the SCN
Annexure A of PIA	Annexure 6 to the SCN
Annexure B of PIA	Annexure 7 to the SCN
Annexure C of PIA	Annexure 8 to the SCN
Annexure D of PIA	Annexure 9 to the SCN
Annexure E of PIA	Annexure 9 to the SCN
Annexure F of PIA	Annexure 9 to the SCN

14.3.11. In this context, I would like to refer to the Order of the Hon'ble Supreme Court in the matter of *Kavi Arora vs. Securities & Exchange Board of India*[5], wherein the Hon'ble Supreme Court has, *inter alia*, stated as under:

[5]AIR 2022 SC 4362

*"49. **It is well settled that the documents which are not relied upon by the Authority need not be supplied** as held in Natwar Singh (supra) where this Court held:-*

"48. On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework."

50. The High Court rightly did not interfere with the proceedings at the stage of the Show Cause Notice. The Petitioner has apparently been permitted to inspect the opinion formed under Rule 3 of the SEBI Adjudication Rules. There is apparently no rule which requires SEBI to furnish the opinion under Rule 3 to the noticee in its entirety. The documents relied upon for formation of opinion under Rule 3, are not required to be disclosed to the noticee unless relied upon in the inquiry. In the event, the Petitioner is prejudiced by reason of any adverse order, based on any materials not supplied to the Petitioner, or any prejudice is demonstrated to have been caused to the Petitioner, it would be open to the Petitioner to approach the appropriate forum." (Emphasis Supplied)

14.3.12. In view of the aforesaid discussions, it is noted that all the documents relevant and relied upon in the present proceedings were provided to the Noticee along with SCN and SSCN. Hence, I find no merit in the aforesaid submissions of the Noticee.

15. **Issue II - If the answer to Issue I is affirmative, whether the Noticee can be held liable for the violations committed by TSR prior to its amalgamation with the Noticee?**

15.1. As discussed in the preceding paragraphs, it has been established that TSR had violated the provisions of Clause 41 of Annexure A to SEBI Circular dated September 08, 2017 read with Clause 2 of SEBI Circular dated May 27, 2022. Accordingly, the question that now arises for consideration is whether the Noticee can be held liable for the violations committed by TSR prior to amalgamation.

15.2. In this regard, the Noticee in its replies has, *inter alia*, stated that:

"It is important to highlight that in response to the SCN, the Noticee, in its intimation letter dated June 26, 2024, requested the disposal of the proceedings, as they pertained to an entity that had already been dissolved post-amalgamation. The continuation of the proceedings against the Noticee, as the resultant entity, is therefore unnecessary. The liability of a prior entity cannot be automatically transferred to a new or resultant entity after an amalgamation or merger, as established by statutory interpretation and legal precedents, which clearly separate the liabilities of merging entities from those of the new entity. Moreover, it is a well-settled legal principle that penal liabilities arising from violations committed by an amalgamated entity prior to the merger cannot be transferred to the newly resultant entity, as such liabilities remain personal to the entity that committed the violation. Therefore, in this case, any penal liability associated with the alleged violations by TSR Consultants, which occurred before its amalgamation, cannot be imposed on the amalgamated entity, i.e., the Noticee."

15.3. The Noticee in its replies has also placed reliance on the order of Hon'ble SAT in the matter of SKDC Consultants Limited v. SEBI (2001 SCC OnLine SAT 7), the SEBI Order dated February 22, 2017 in the M/s Teage Ltd., and the SEBI Order dated July 04, 2023, in the matter of NSEL.

15.4. All the submissions of the Noticee in this regard including case laws has been considered. In this context, I find it appropriate to refer to the relevant provisions of the Companies Act, 2013 which, *inter alia*, states as under:

"232. Merger and Amalgamation of Companies.

…….

(3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;"

15.5. In this context, I would also like to further refer to the judgment of Hon'ble Supreme Court of India in the case of *Saraswati Industrial Syndicate v C.I.T.*[6], wherein it was held that *"the true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two*

[6] AIR 1991 SC 70

companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. ***However, their respective rights and liabilities are determined under scheme of amalgamation*** *but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective."* ***[Emphasis Supplied]***

15.6. In view of the above, I note that it is a settled position that the respective rights and liabilities of entities involved in a scheme of amalgamation has to be determined from the Scheme of Amalgamation document. In this regard, it is pertinent to note that Clause 7 of the Scheme of Amalgamation as submitted by the Noticee, *inter alia*, states as under.

"Upon the Scheme coming into effect and with effect from the Appointed Date, all debts, liabilities, duties and obligations of every kind, nature and description of the Transferor Company No.1, Transferor Company No. 2 and Transferor Company No. 3 shall also under the provisions of Sections 230 read with section 232of the said Act, be transferred or deemed to be transferred, without any further act or deed, to the Transferee Company so as to become the debts, liabilities, duties and obligations of the Transferee Company and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract of arrangement by virtue of which such debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this clause."

15.7. From the aforesaid, it is noted that, in terms of aforesaid clause of the Scheme of Amalgamation approved by the Hon'ble NCLT, all the debts, liabilities, duties and obligations of TSR shall stand transferred to the Noticee so as to become the debts, liabilities, duties and obligations of the Noticee. Accordingly, the Noticee is liable for all the debts, liabilities, duties and obligations of the TSR prior to Amalgamation. Hence, the aforesaid submission of the Noticee that liability associated with the alleged violations by TSR that occurred before its amalgamation cannot be imposed on the amalgamated entity, i.e., the Noticee, cannot be accepted.

15.8. The Noticee in its replies has, *inter alia*, further stated that:

"At the outset, it is submitted that the onsite inspection conducted of TSR Consultants basis which the entire SCN / SSCN has been issued is perverse since the TSR Consultants stood amalgamated and dissolved prior to the onsite inspection of SEBI.

It may be noted that vide NCLT order dated December 18, 2023, TSR Consultants amalgamated with the Noticee with effect from July 01, 2022 and also stood dissolved. Whereas the inspection was conducted by SEBI only subsequent to such dissolution i.e. on February 12, 2024 despite the same was duly intimated by the Noticee vide its letter dated December 28, 2023.

NCLT Mumbai approved the said scheme of arrangement in an order dated December 18, 2023, under paragraph 16, stating that "The Transferor Companies will be dissolved, without winding-up."

Therefore, the entire foundation of the proceeding's rests upon an entity which already stood amalgamated and dissolved. Both the SCN and the SSCN do not provide for any reasons why the inspection itself took place in such circumstances. It is submitted that conducting an inspection of an entity that had already been dissolved is not only procedurally improper but also legally untenable. It is also does not stand to reason as to what remedial measure or a regulatory measure SEBI was or is attempting to undertake by inspecting TSR Consultants after its dissolution."

15.9. The Noticee in its replies has submitted that the TSR stood amalgamated prior to the onsite inspection of SEBI. In this regard, from the material on record, it is noted that the TSR has been amalgamated with the Noticee vide the Hon'ble NCLT Order dated December 18, 2023. It is further noted from the inspection report, that the inspection notice was communicated to the TSR vide letter dated December 08, 2023. Thereafter, onsite inspection was conducted for the period from September 01, 2022 to November 30, 2023, during February 12, 2024, to February 16, 2024. Hence, the inspection period pertains to the period prior to amalgamation of TSR with the Noticee. Consequently, the alleged non-compliances in the

present proceedings were based on the observations/documents provided by TSR to the inspection team for the period when TSR was in existence as a separate entity registered with SEBI. Hence, the aforesaid submissions of the Noticee are misplaced.

15.10. The Noticee in its replies has, *inter alia*, further stated that:

"*We respectfully bring to SEBI's attention that a similar show cause notice has previously been issued to the Noticee, based on identical facts and alleged violations.*

It is submitted that another similar Show Cause Notice dated July 09, 2024, bearing. No.: SEBI/EAD5/P/OW/2024/22520/1 was issued by SEBI against the Noticee.

Issuing two show cause notices addressing same factual matrix and same set of allegations serves no purpose and creates redundancy in the regulatory process. We submit that the issuance of multiple SCNs for the same matter is unwarranted especially considering the fact that TSR Consultants did not have a separate system. SEBI has inspected the same system for both Noticee and TSR Consultants.

Given that the Show Cause Notice dated July 09, 2024 is already being adjudicated by Ld. Adjudicating Officer Mr. Amar Navlani, it is clear that SEBI is attempting to subject the Noticee to multiple proceedings over the same issue.

In the aforesaid matter, the Ld. Adjudicating Officer exonerated the Noticee for the violation in relation to Technology committee meeting however a penalty of INR 1,00,000 was imposed on the Noticee for violations related to the VAPT Report under Section 15HB of the SEBI Act.

This amounts to a violation of the res sub-judice doctrine provided under Section 10 of Civil Procedure Code 1908 in as much as SEBI could not impose multiple proceedings against the same party in the same matter and under same cause of action.

Without prejudice to the foregoing, it is submitted that SEBI should consider the fact that the Noticee has already been penalized as a mitigating factor in the present matter."

15.11. The Noticee in its replies has submitted that a SCN dated July 09, 2024, has already been issued to the Noticee based on the identical facts and alleged violation as in the present case. From the perusal of the SCN dated July 09, 2024, as submitted by the Noticee, it is noted that the SCN dated July 09, 2024, was issued to the Noticee for the alleged non-compliances observed during the inspection of the Noticee. However, in the instant case, the adjudication proceedings were initiated against the Noticee for the alleged non-compliances observed during the inspection of the TSR. Hence, these are two separate proceedings against the Noticee, one for the alleged non-compliances observed during the inspection of the Noticee itself and other for the alleged non-compliances observed during the inspection of the TSR which stands amalgamated with the Noticee.

15.12. The Noticee in its replies further submitted that TSR does not have a separate system and SEBI inspected same system for the TSR and the Noticee. In this regard, it is noted that prior to amalgamation of TSR with the Noticee, TSR was registered with SEBI as a RTA with a separate registration number. It is further noted that during the inspection period, TSR was in existence as a separate legal entity. Hence, being a registered intermediary, TSR was required to comply with the requirements of securities law independently. Any arrangements of TSR with other intermediary including sharing of system does not dilute its responsibility and obligations to comply with the requirements of the securities law.

15.13. In view of the aforesaid discussions, I find no merit in the above mentioned submission of the Noticee. However, the fact that the Noticee has been penalized for the violation related to failure regarding closure of vulnerabilities immediately after detection and submission of compliance of closure of findings identified during VAPT to SEBI within three months, in separate proceedings, has been noted.

16. **Issue III - Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of SEBI Act?**

16.1. As discussed in the preceding paragraphs, it has been established that the TSR had violated the provisions of Clause 41 of Annexure A to SEBI Circular dated September 08, 2017 read with Clause 2 of SEBI Circular dated May 27, 2022. It has been further established that the Noticee can be held liable for the violations committed by TSR prior to its amalgamation with the Noticee. Accordingly, the question that now arises for consideration is whether the Noticee is liable for payment of a monetary penalty in terms of Section 15HB of the SEBI Act.

16.2. The Noticee, in its replies has, *inter alia*, stated:

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

….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."

16.3. In this regard, it is noted that the Noticee, in its replies, has also placed reliance on the order of the Hon'ble Supreme Court in the matter of Bharjatiya Steel Industries vs. Commissioner, Sales Tax, Uttar Pradesh ((2008) 11 SCC 617), order of the Hon'ble High Court of Rajasthan in the matter of Parasnath Granite India Ltd v. State of Rajasthan And Anr (2004 SCC OnLine Raj 480), and the orders of the Hon'ble SAT in the matter of DSE Financial Services Limited vs. SEBI (2012 SCC OnLine SAT 159), State Bank of India vs. SEBI (Appeal No 304, 306 and 307/2020), Religare Securities Limited vs. SEBI (Appeal No. 23/2011), UPSE Securities Limited vs. SEBI (2011 SCC OnLine SAT 86), ACML Capital Markets Limited vs. SEBI (Appeal No. 100/2020), Samrat Holdings Ltd. vs. SEBI (2001

SCC OnLine SAT 2), P.G. Electroplast and others vs. SEBI (2019 SCC OnLine SAT 148), and Piramal Enterprises Limited vs. SEBI (2019 SCC OnLine SAT 134). The Noticee, in its replies, has also provided reference to the SEBI orders passed by Ld. WTM/AO in other matters wherein either the entities were exonerated or penalties were imposed ranging from Rs. 50,000 to Rs. 7,00,000.

16.4. In this regard, it is noted that in the present case, violations established against the Noticee, *inter alia*, include immediate closure of vulnerabilities identified during VAPT audit. It is pertinent to note that immediate closure of vulnerabilities identified during VAPT audits is crucial to prevent cyberattacks, protect sensitive financial data, and maintain regulatory compliance. SEBI-regulated entities handle sensitive financial and personal data of investors. For SEBI-regulated entities, timely remediation ensures investor trust, market stability, and adherence to strict cyber security norms. Delays in addressing vulnerabilities is a serious lapse by the Noticee and cannot be dismissed as a casual omission. In this context, I would like to take note of the order of the Hon'ble SAT in the matter of ***Religare Securities Ltd. vs. SEBI (Appeal No. 23 of 2011),*** which has been referred to by the Noticee in its replies. The relevant extract of the said order is reproduced below:

"... 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...".

16.5. I further note that the judgment and orders relied on by the Noticee emanate from different factual matrix and hence, cannot be applied to facts of the present matter. Moreover, the Noticee has also not been able to demonstrate as to how the cited orders were applicable in the instant matter. Therefore, the reliance placed by the Noticee in the aforementioned cases cannot be accepted in the present proceedings.

16.6. In view of the aforesaid discussions, it is established that the Noticee is liable for payment of a monetary penalty in terms of Section 15HB of the SEBI Act.

16.7. The text of the above said Section 15HB of the SEBI Act is reproduced below:

"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 liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."*

Issue IV - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

*"**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."

<u>Factors Considered While Imposing Penalty</u>

18. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the TSR nor the amount of loss, if any, caused to an investor/clients as a result of the default of the TSR. As regard the repetitive nature of the default, I take note of the fact that SEBI had previously issued directions against the TSR for the violation of the provisions of SEBI (Registrar to an Issue and Share Transfer Agents) Regulations, 1993.

19. As discussed in preceding paragraphs, it has been established that the TSR has not followed the stipulated procedures with respect to the closure of vulnerabilities immediately after detection and submission of compliance of closure of findings identified during VAPT to SEBI within three months. The TSR, being a registered intermediary, was under a statutory obligation to comply with the mandate of the SEBI Circulars in letter and spirit. The non-adherence on the part of the TSR to the extant SEBI Circulars as brought out in the preceding paragraphs, clearly shows that the TSR was failed to comply with the mandate of the SEBI Circulars diligently. It has been further established in the preceding paragraphs that the Noticee can be held liable for the violations committed by TSR prior to amalgamation.

20. It is noted from the replies of the Noticee that the VAPT closure reports were submitted to SEBI inspection team vide e-mail dated June 07, 2024. The Noticee has provided a copy of e-mail dated June 07, 2024 to substantiate its claim. Hence, subsequent communication of VAPT closure reports to SEBI vide e-mail dated June 07, 2024, has been considered as mitigating factor while imposing penalty.

21. It is further noted from the replies of the Noticee that the Noticee has been penalized for its violation related to failure regarding closure of vulnerabilities immediately after detection and submission of compliance of closure of findings identified during VAPT to SEBI within three months, in separate proceedings. The penalties were imposed in those proceedings for non-compliances identified during the inspection of the Noticee itself. In contrast, the present case pertains to non-compliances identified during the inspection of the TSR, for which the Noticee has been held liable on account of subsequent amalgamation of TSR with the Noticee.

22. The aforementioned factors have been taken into consideration while adjudging the penalty.

E. ORDER

23. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in the preceding paragraphs, and in the exercise of

powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty on the Noticee namely Link Intime India Private Limited, in the matter of TSR Consultants Private Limited, as given in the table below**:**

Table 6

Penal Provision	Penalty Amount
Section 15HB of SEBI Act	Rs.1,00,000/- (Rupees One Lakh only)

24. I am of the view that the said penalty is commensurate with the lapses/omissions as established in the present matter.

25. 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.

26. 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 SEBI

HARIHARAN NEELAKANTA IYER

Digitally signed by HARIHARAN NEELAKANTA IYER
Date: 2025.02.11 18:27:10 +05'30'

Date: February 11, 2025

Place: Mumbai

N HARIHARAN

CHIEF GENERAL MANAGER

AND ADJUDICATING OFFICER