BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2021-22/14369]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 19-H (2) OF DEPOSITORIES ACT 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

Delstox Stocks and Shares having address at 3/1, DSE House, Asaf Ali Road Central Delhi, New Delhi-110002

In the matter of Delta Leasing & Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Delstox Stocks and Shares (**Noticee)** for the alleged violations of clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as **"D&P Regulations, 1996"**) read with Regulation 20AA *ibid* read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as **"D&P Regulations, 2018)** and clause 1.8(vii) & 1.8(viii) of SEBI Master Circular, CIR/MRD/DP/13/2013 dated April 15, 2013 and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated December 21, 2020 to inquire into and adjudge under Section 15HB of the SEBI Act, read with Section 19G of the

Depositories Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated *vide* order dated January 13, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/ST/2021/15254 dated July 14, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') and 4(1) of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ('Depositories Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticee in terms of Section 15HB of the SEBI Act, read with Section 19 G of the Depositories Act, for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. Delta Leasing & Finance Ltd. (DLFL) was incorporated in November 1983 and was listed on DSE on June 27, 1984 and at BSE on April 18, 2013. As per the website of DLFL, the company is engaged in investments and providing loan & advances and other related activities. Address details of DLFL are as under:

Registered Office Address	55, F.I.E, Patparganj Industrial Area, New Delhi– 110092
Corporate Office Address	104, Mukund House, Azadpur, New Delhi-110033

6. An investigation was conducted into the trading activities of in the scrip of DLFL from January 1, 2013 to December 31, 2014. Examination of off market data obtained from the Depositories revealed that promoter entities transferred substantial quantity of shares to several entities during the investigation period.

7. The off market transactions executed during the investigation period were carried out electronically in dematerialized form by transfer from the account of a Beneficial Owner (Transferor or Source Client) to the account of another beneficial owner (Transferee or the Target Client) through Delivery Instruction Slips (DIS).

8. On scrutiny of the DIS of some of the Source clients, it was observed that consideration amount for the off market transfer of shares was stated in the DIS. In certain other cases, the consideration amount was indicated to have been received in cash and in some other cases, though the consideration amount was mentioned but the mode and manner of the amount received were not stated. Copy of DIS slips were provided as **Annexure-2** with SCN**.** The Source clients and the Target clients did not substantiate their claim of consideration received / paid with any documentary evidences in response to the summons issued seeking the aforementioned information. Some of the source clients or the Target clients did not substantiate their claim of consideration received / paid with any documentary evidences in response to the summons issued, seeking the aforementioned information.

9. In this connection, the role of the Depository Participants (DP) in the off market transactions through DIS was examined to ascertain as to whether the DPs exercised their due diligence and complied with the Rules and Regulations before executing such off market transfers.

10. Code of Conduct is prescribed for a DP in Regulation 20AA under Schedule III, governing its day-to-day activities as a DP and requires that DPs act in a prompt, effective and efficient manner and maintain high standards of integrity in all its dealings.

11. Further, in terms of para 1.8(vii) of SEBI Master Circular bearing Ref. No. CIR/MRD/DP/13/2013 dated April 15, 2013, *"the DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS".* And para 1.8(viii) of the said Master Circular states that *"the authorized official of*

the DP verifying such transactions with the BO, shall record the details of the process, date, time, etc., of the verification on the Instruction Slip under his signature".

12. It was observed that the Noticee executed different categories of off market transactions which are considered as transactions under exceptional circumstances whereby the DPs are required to enquire with the beneficial owners about the transactions before its execution and record the same. The table below gives summary of such transactions:

Sno.	Name of DP	Cash			Gift			Loan/Return of loan shares			Bad Deliver/Delivery return			Consideration not mentioned		
		No. of source client	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares
1	Delstox Stocks and Shares Ltd.	3	35	7,48,160	0	0	0	8	106	28,55,869	0	0	0	0	0	0

13. Details of the transactions executed were given as **Annexure-3** with SCN. Further, on specific query to Noticee vide letters and summons pertaining to the extent of suo-moto due diligence exercised by them, the Noticee replied that it had exercised considerable due diligence while executing the transactions and had also obtained confirmation from the Source clients during verification of the DIS. However, the Noticee did not provide any documentary evidence of any record showing the name of the BO with whom verified, the manner of verification either phone or in person, date of such verification, the phone number to which calls made etc. substantiating their contention. The following Table gives details of summon issued and summary of the reply of the Noticee.

S No.	Name of the DP	Date of Letter/Summons issued	Date of Reply	Remarks
1	Delstox Stocks and Shares Ltd.	21.06.2019	05.07.2019	Confirmed exercise of due diligence but not substantiated with documentary evidence such as cross verification with the source client and recording of the same

14. Further, Noticee had executed transfers involving settlement in Cash of huge amounts, the details of which are as under:

	Name, PAN, Demat Id of source client (1)	Name, PAN, Demat Id of target client (2)	Quantity transferred (3)	Consideration (Rs.) received by source client (4)	Market rate (5)	Market value (Rs.) (6)	Date of payment by target client (7)	Date of transfer of shares by source client (8)	No. of days of delay (9)
1	PARMANAND YADAV 00026166	1.ASHOK KUMAR MITTAL HUF 00028581	2523	211932	149.50	377188.5	02.04.2012 (Rs. 2523 paid in cash)	30.05.2013	422
2	PREM CHAND 00028471	2. AMANJEET MADAN 00018175	5500	874500	133.55	734525	23.04.2013	23.05.2014	394
		3. DELPHINA DISTRIBUTORS PRIVATE LIMITED	60,000	23,75,000	35.75	21,45,000	N.A	27.06.2013	N.A
		4. DELPHINA DISTRIBUTORS PRIVATE LIMITED	40,000	15,82,000	35.75	14,30,000	N.A	27.06.2013	N.A
		5. PLACIDO MARKETING PRIVATE LIMITED	45,000	23,73,500	35.75	16,08,750	N.A	27.06.2013	N.A
		6. PLACIDO MARKETING PRIVATE LIMITED	35,000	13,84,250	35.75	12,51,250	N.A	27.06.2013	N.A
3	SAPNA 00030356	7. BALA GARG 00018521	16000	1312000	78.85	1261600	17.04.2013	22.08.2014	491
		8. NEERAJ CHAWLA & SONS HUF 10679475	24000	2334400	95	2280000	April 2012 (Rs. 48000)	05.08.2014	855

		9. SHILPA GARG 00018711	16000	1312000	78.85	1261600	15.04.2013 (Rs. 32000)	22.08.2014	493
		10. MEGHNA SRIVASTAVA 21358418	57300	4518105	77.3	4429290	14.05.2013 (44300 shares for Rs. 88600)	25.08.2014	467
		11. NEERAJ CHAWLA & SONS HUF 10679475	10000	788500	75.8	758000	April 2012 (Rs. 20000)	26.08.2014	876
		12. NITISH AHUJA 00024846	33000	2602050	75.8	2501400	02.04.2012 (Rs. 66000 paid in cash)	26.08.2014	875
		13. DIVYA JAIN 10138173	6500	502450	75.8	492700	22.04.2013 (Rs. 13000 paid in cash)	27.08.2014	491
		14. MEETU AGGARWAL 00031007	34000	262800	75.8	2577200	05.04.2013 (Rs. 68000 paid in cash)	27.08.2014	508
		15. MUKESH JAIN 10138884	20000	1546000	75.8	1516000	22.04.2013 (Rs. 40000 paid in cash)	27.08.2014	491
		16. NIRMALA DEVI 00031026	27000	2087100	75.8	2046600	05.04.2013 (Rs. 54000 paid in cash)	27.08.2014	508
		17. PRIYA JAIN 10138157	6500	502450	75.8	492700	25.04.2013 (Rs. 13000 paid in cash)	27.08.2014	488
		18. SAROJ BANSAL 10049574	35000	2705500	74.3	2600500	15.04.2013 (Rs. 122500 paid in cash)	28.08.2014	499
		19. ABHISHEK AHUJA 00024884	10200	785400	71.4	728280	02.04.2012 (Rs. 60000 [paid in cash)	02.09.2014	882
		20. ABHISHEK AHUJA 00024884	20000	1540000	71.4	1428000		02.09.2014	882
		21. SHARADA PRASAD 00052821	35000	2645000	71.4	2499000	10.05.2013 (Rs. 448200 paid in cash for 298800 shares)	02.09.2014	479
		22. SUDHIR PRASAD 00052834	35000	2645000	71.4	2499000	10.05.2013 (Rs. 218230 paid in cash for 145500 shares)	02.09.2014	479

		23. APURVA AGARWAL 14640085	5200	400400	70	364000	05.04.2013 (Rs. 10400 paid in cash)	03.09.2014	515
		24. VIJAY KUMAR AGGARWAL 00031011	20000	1428000	70	1400000	05.04.2013 (Rs. 41000 paid in cash)	03.09.2014	515
		25. VIJAY KUMAR AGGARWAL 00031011	500	35700	70	35000		03.09.2014	515
		26. ADHIR SACHDEVA 00005889	29000	2088000	68.6	1989400	10.05.2013 (cash)	04.09.2014	481
		27. RAJINDER BANSAL 18873305	35210	2535120	68.6	2415406	15.04.2013(cash)	04.09.2014	506
		28. SHARADA PRASAD 00052821	35000	2520000	68.6	2401000	10.05.2013 (Rs. 448200 paid in cash for 298800 shares)	04.09.2014	481
		29. SUDHIR PRASAD 00052834	35000	2520000	68.6	2401000	10.05.2013 (Rs. 218230 paid in cash for 145500 shares)	04.09.2014	481
4	PREM CHAND 00028471	30. RITA KATARIA 10011133	35000	1779500	39.5	1382500	15.04.2011, 16.04.2011, 18.04.2011 (Rs. 155198)	26.08.2013	863
		31. ANIL NAGPAL 00018308	6000	996000	182.95	1097700	26.04.2013(Rs. 42000)	26.05.2014	394
		32. BALPREET SINGH MADAN 00018181	6000	1116000	199	1194000	23.04.2013 (Rs. 42000)	03.06.2014	405
5	SUNIL SINGH BDGPS0774K 10113199	33. KRISHANU MUKHARJI ATUPM4571F 1201130000331614	3000	48209.65	203	609000	02.04.2013(Rs. 48209.65 paid in cash)	16.06.2014	439
		34. KRISHANU MUKHARJI 06446825 ATUPM4571F	3000		203	609000		16.06.2014	439
		35. TILAK RAJ BEHAL AAGPB4536N IN30086110186548	16500	132000	192	3168000	05.04.2013 (Rs. 132000)	07.07.2014	457

15. The reason for the transactions as mentioned in the above Table is mentioned as “cash” by the Source Clients in the DIS and it can be seen that the value of the transactions is quite huge running into several lakhs for which the DP should have ascertained the reasons in order to determine whether such transactions are genuine transactions, serving some economic purpose and not suspicious transactions which need to be reported as CTR & STR to FIU as part of due diligence of the DP. During the process of Investigation, summons were sent to the Source and Target Clients and the target clients stated in their replies that the transactions were settled in cash along with the sale bill, cash receipt etc. substantiating their claim. To this extent, there was a lack of exercise of due diligence on the part of DP.

16. It was therefore alleged that the Noticee had failed to exercise due diligence in executing off market transactions settled in cash exceeding the ceiling of Rs. Twenty thousand prescribed in Income Tax Act and failing to report such transactions to FIU through CTR as stipulated in paras 13.2 and 13.3 of SEBI Master circular on AML dated December 31, 2010.

17. In view of the above, Noticee was alleged to have violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of D&P Regulations, 1996 read with Regulation 20AA read with Regulation 98 of D&P Regulations, 2018, ; and clause 1.8(vii) & 1.8 (viii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013; and clause 13.2 & 13.3 of SEBI Master Circular CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010.

18. The relevant clauses of D&P Regulations, 1996 & 2018, SEBI Master Circulars dated December 31, 2010 and April 15, 2013 are reproduced as under:

<u>D&P Regulations, 1996:-</u>

THIRD SCHEDULE

CODE OF CONDUCT FOR PARTICIPANTS

***1**. A participant shall make all efforts to protect the interests of investors.*

***2**. A participant shall always endeavor to—*

(b) ensure that all professional dealings are effected in a prompt, effective and efficient manner;

***3.** A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.*

***4**. A participant shall be prompt and diligent in opening of a beneficial owner account, dispatch of the dematerialization request form, rematerialisation request form and execution of debit instruction slip and in all the other activities undertaken by him on behalf of the beneficial owners.*

***11**. A participant shall maintain the required level of knowledge and competency and abide by the provisions of the Act, Rules, Regulations and circulars and directions issued by the Board. The participant shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.*

Participants to abide by code of conduct.

***20AA.** The participant holding a certificate of initial or permanent registration shall, at all times, abide by the Code of Conduct as specified in Third Schedule.*

D&P Regulations, 2018:-

Repeal and savings.

***98**.(1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, shall stand repealed.*

(2)Notwithstanding such repeal, anything done or any action taken or purported to have been taken or contemplated under the repealed regulations before the commencement of these regulations shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of these regulations.

(3)After the repeal of the regulations referred to in sub-regulation (1), any reference thereto in any regulation, guideline, circular or direction issued by

the Board shall be deemed to be a reference to the relevant provisions of these regulations.

SEBI Master Circular CIR/ISD/AML/3/2010 dated December 31, 2010*:-*

13. *Reporting to Financial Intelligence Unit-India13.1 In terms of the PML Rules, intermediaries are required to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND) at the following address:*

Director, FIU-IND,
Financial Intelligence Unit-India,
6th Floor, Hotel Samrat,Chanakyapuri,
New Delhi-110021. Website: http://fiuindia.gov.in

13.2 *Intermediaries shall carefully go through all the reporting requirements and formats enclosed with this circular. These requirements and formats are divided into two parts- Manual Formats and Electronic Formats. Details of these formats are given in the documents (Cash Transaction Report- version 1.0 and Suspicious Transactions Report version 1.0) which are also enclosed with this circular. These documents contain detailed directives on the compilation and manner/procedure of submission of the manual/electronic reports to FIU-IND. The related hardware and technical requirement for preparing reports in manual/electronic format, the related data files and data structures thereof are also detailed in these documents. Intermediaries, which are not in a position to immediately file electronic reports, may file manual reports with FIU-IND as per the formats prescribed. While detailed instructions for filing all types of reports are given in the instructions part of the related formats, intermediaries shall adhere to the following:*

(a) The Cash Transaction Report (CTR) (wherever applicable) for each month shall be submitted to FIU-IND by 15th of the succeeding month.

(b) The Suspicious Transaction Report (STR) shall be submitted within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a

series of transactions integrally connected are of suspicious nature. The Principal Officer shall record his reasons for treating any transaction or a series of transactions as suspicious. It shall be ensured that there is no undue delay in arriving at such a conclusion.

(c) The Principal Officer will be responsible for timely submission of CTR and STR to FIU-IND; (d) Utmost confidentiality shall be maintained in filing of CTR and STR to FIU-IND. The reports may be transmitted by speed/registered post/fax at the notified address. (e) No nil reporting needs to be made to FIU-IND in case there are no cash/suspicious transactions to be reported.

13.3 *Intermediaries shall not put any restrictions on operations in the accounts where an STR has been made. Intermediaries and their directors, officers and employees (permanent and temporary) shall be prohibited from disclosing ("tipping off") the fact that a STR or related information is being reported or provided to the FIU-IND. This prohibition on tipping off extends not only to the filing of the STR and/or related information but even before, during and after the submission of an STR. Thus, it shall be ensured that there is no tipping off to the client at any level. It is clarified that the registered intermediaries, irrespective of the amount of transaction and/or the threshold limit envisaged for predicate offences specified in part B of Schedule of PMLA, 2002, shall file STR if they have reasonable grounds to believe that the transactions involve proceeds of crime.*

SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013:-

1.8 Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode.

vii. The DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS.

viii. "….The authorized official of the DP verifying such transactions with the BO, shall record the details of the process, date, time, etc., of the verification on the instruction slip under his signature".

19. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 15HB of the SEBI Act, read with Section 19G of Depositories Act.

20. In response to the SCN, Noticee filed the reply to the SCN vide letter dated August 18, 2021. Opportunity of hearing was provided to the Noticee through video conferencing on September 06, 2021. Mr. Prabodh Gupta, and Ms. Alpana Tripathi, authorised representative (AR) of the Noticee attended the hearing and reiterated the submissions made in reply.

21. The key submissions of the Noticee are summarized as below:

22. The present SCN is issued after an extraordinary long period of more than 7 years from the execution of Delivery Instructions Slips on behalf of demat account holders, in Noticee's normal course of depository services. However, no specific reasons have been mentioned in the SCN for the extraordinary and unexplained delay of more than 7 years. Hence, there is an inordinate delay in initiation of proceedings by SEBI and the SCN should be disposed of at the threshold itself. In this regard, Noticee refers following:
    i. Para 23 of Order dated May 27, 2019 passed by Hon'ble Securities Appellate Tribunal in the matter of Mr. Rakes Kathotia vs. SEBI (Appeal No.07 of 2016).
    ii. Para 6 and 8 of Order dated August 22, 2019 passed by Hon'ble Securities Appellate Tribunal in the matter of Ashok Shivlal Rupani & Annr. Vs. SEBI (Appeal No. 417 of 2018).
    iii. case of Aditi Dalal in Hon'ble Securities Appellate Tribunal

23. The Noticee further submits and clarifies that it has no connection with other co noticees whatsoever and has no information or source to the operations or transactions carried by other co-noticees. Noticee, has no relation whatsoever either with the concerned company or with the promoters/ management of DLFL, with any of the employees of the company or with any of the three demat account holders, except that of DP-client relationship.

24. Noticee is also a member of BSE and NSE and is providing broking and depository services to the clients through its business affiliates who were/are also registered with SEBI/Exchanges as Authorised Persons and/or Sub brokers. The clients mentioned in point No. 19 of the SCN were introduced by one of Noticee's Sub Broker namely, Karnam Securities Pvt Ltd, having SEBI Sub-broker Regn. No. INS019270136 dated 28.06.2010 and INS239229730 dated 24.06.2010. The copies of KYC forms of the clients are also placed on records for ready reference. The details of the clients are as follows:

S.No	**Name of the account holder**	**BO ID (Demat Client ID)**	**Referred/ Introduce by**	**Sebi Regn. No. Of Introducer**
1.	Parmanand Yadav	1203200000 026166	Karnam Securities P. Ltd	INS019270136 INS239229730
2.	Prem Chand	1203200000 028471	Karnam Securities P. Ltd	INS019270136 INS239229730
3.	Sapna	1203200000 030356	Karnam Securities P. Ltd	INS019270136 INS239229730

25. There is no allegations whatsoever w.r.t to the noticee company being a beneficiary, either directly or indirectly, out of the concerned DIS execution and any inference derived that DP acted without due diligence or of any other similar nature (related to depository transactions or trades) should be levied only if the noticee's entire conduct is found to be illegitimate or with malafide intention, which in the present case is not there. Thus the allegations against noticee, may kindly be quashed.

26. Noticee as Depository participant, exercised appropriate due diligence as prescribed under various Depository rules and regulations. Noticee duly called the clients and cross verified the validity and genuineness of the particulars filled in DIS. Noticee had also enquired from the clients as to the rationale of such transfer and the date, time and mobile no. called were noted. The clients confirmed that they had issued these DIS and confirmed the reasons also as filled in the DIS. The calling time and initials of the DP officials were duly put on the DIS (on the back side of DIS). SCN has ignored this very essential

operational due diligence done by Noticee and rather observed on the contrary, that records were not maintained by Noticee. It appears that, since Noticee had annexed the front side of DIS only along with its reply there is a misunderstanding that Noticee had not cross verified with the clients before execution of DIS. Noticee has now provided sample copies of both sides of few DIS, confirming beyond doubt that appropriate due diligence steps, as required and prescribed for DI's, were taken. The date and time and mobile number called details were duly noted as per regulations.

27. The SCN further erred, after receiving the replies of source and target clients (which were submitted by the BOs in reply to SEBI's summons/notices after several years of DIS execution), when it alleges that mode of payment (as mentioned in DIS) and substantiation of exchange of payment between the parties was not verified by the Noticee. The SCN wrongly ignored the fact that no DP has any access to the banking database of clients to cross verify that whether the mentioned consideration has got exchanged or not between the BOs. Hence there is no lack of due diligence at Noticee end in the light of above submission.

28. It would not be out of place to bring on record that CDSL vide its circular no CDSL/OPS/DP/SYSTM/2018/465 dated September 04, 2018 made it mandatory to collect information related to payment exchange between the BOs, such as Bank account no, Bank name, Bank branch, transaction no, payment date, mode of payment etc. Therefore, it would be highly unfair to raise allegations against Noticee that it did not collect payment mode/details from BOS in the year 2013-14 i.e. 4-5 years before the issuance of such guidelines.

29. The SCN further erred when it alleges that noticee DP has not reported the transactions to FIU as per provisions of PMLA, whereas the fact of the matter is that, though there were glitches in the initial stages when FIU reporting, noticee had identified these transactions as suspicious transactions and reported them to FIU as suspicious transactions. The same fact was also

mentioned in letter dated July 05, 2019 leaving no scope of any misapprehension. Some of the sample files uploaded to FIU in the year 2014 are provided for ready reference.

30. It further submitted that in some instances the BOs have given the reasons for off market transfer of securities as "loan" or "return of loan" and did not mentioned/involved any money consideration. The same reasons did not seem rationale and Noticee's officials were not at all convinced with the expressed reasons considering the value of securities and the transactions were not in commensurate with the disclosed income of these clients. Since as per Depository rules and regulations Noticee could not deny executing on the clients' instructions as per their DIS, Noticee had filed reports to FIU.

31. It submitted that the Noticee company provides the broking and depository related services to its clients and the present SCN is related to transactions in some demat account holders and there is no such acts and omissions on the part of Noticee, in its beneficiary demat account(s) or proprietary books, in the present matter which may constitute to have been the motive for alleged acting negligently with any vested or illegitimate intentions on noticee's part. The fact of the matter is that in all the instances, mentioned in SCN, the clients have themselves entered in some off- market transactions with other unknown entities and for reasons only known to them, as per details filled in their DIS, and we had acted only to the extent of executing the DIS after complying to the prescribed regulations in bonafide manner.

32. Noticee had charged nominal and normal depository charges from these clients, as charged from any other client, and no favour or concessional rates were accorded to them. The details of turnover, UCC and other account related information of these clients, scanned copies of DIS and KYC forms have also been placed on records. The transactions classified under suspicious category, on the basis of PMLA guidelines, were reported to FIU and sample copies of same have also been placed on records.

33. It is further clarified that, at no point of time, either during IP or even beyond IP there exists any sort of relation, other than DP-client relationship by virtue of their demat accounts with noticee, between these clients and Noticee company. Moreover, noticee did not have any information as to their transactions with other third parties. It had only executed the delivery slips, pertaining to their demat accounts, as per their duly filled and executed DIS and that too after cross verifying from them as well as, thereafter, reporting the suspicious transactions to FIU.

34. The entire SCN, against the Noticee, is based on presumption and incorrect observation that we as DP did not exercise due diligence while executing the client delivery instruction slips, and has ignored the following facts while issuing SCN:

    i. Noticee had cross verified with the clients as due diligence ,
    ii. Noticee had no mechanism to substantiate the actual exchange of payments, if any, between the clients
    iii. mode of payment between the clients was not to be provided or filled in DIS in the years 2013-14, and hence there is no default from Noticee side when SCN incorrectly alleges that mode of payment or exchange of payment was not substantiated or payment mode was not noted.

35. Since Noticee is a Depository participant of CDSL and subjected to yearly/ periodic inspections by them, copies of inspection reports, after inspection conducted by CDSL, for the year 2013 and 2014 are also placed on records. It may be please noted that no adverse remarks/ observations were made in the reports and it is established beyond any doubt that Noticee was acting as per prescribed guidelines and regulations.

36. Noticee would like to further draw attention towards point No. 15 of the SCN wherein it is clear from the data/ reply supplied by Depositories that no alerts were sent to the Noticee, and it was the Noticee, itself, who had identified these transactions as suspicious and acted in most appropriate and practical

manner. The Noticee's internal system to take all due diligence in its routine depository operations is clearly established from this fact.

37. The Noticee, as explained hereinabove thus, does not either have any role/ connection in the impugned transactions or has failed to take appropriate due diligence steps while performing its duties as DP, which have allegedly led to any money laundering activity. Noticee is a bonafide entity and engaged only in bonafide depository services, on behalf of its clients, with the intention of performing its duties as DP and earning a nominal depository income. The practice undertaken by Noticee is similar to that of any other rational entity.

38. Therefore in the light of the aforesaid, it submitted that, the allegations in the Notice under reply are baseless, sweeping & vague, unsubstantiated, misconceived and based on assumptions & presumptions and thus are completely contrary to the factual position on record. Hence, no negative inference should be drawn against the Noticee, on the basis of aforesaid submission. In view of the aforesaid, Noticee submitted that the allegation against Noticee, ought to be quashed and no monetary penalty be imposed on Noticee company.

39. As the inquiry in the matter is complete, I now proceed to decide the matter on the basis of SCN issued, reply received and material placed on record.

CONSIDERATION OF ISSUES AND FINDINGS

40. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as **"D&P Regulations, 1996"**) read with Regulation 20AA ibid read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as **"D&P Regulations, 2018)** and clause 1.8(vii) & 1.8(viii) of SEBI Master Circular, CIR/MRD/DP/13/2013 dated April 15, 2013 and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010 ?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, read with Section 19G of the Depositories Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules; and Section 19I of the Depositories Act read with Rule 5(2) of the Depositories Adjudication Rules?

Issue No. I Whether the Noticee violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as "D&P Regulations, 1996") read with Regulation 20AA ibid read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as "D&P Regulations, 2018) and clause 1.8(vii) & 1.8(viii) of SEBI Master Circular, CIR/MRD/DP/13/2013 dated April 15, 2013 and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010 ?

41. Before going into the merits of the case, I note the Noticee's contention that there is inordinate delay of 7 years in the matter. In this regard I note that the Investigation was initiated in the year 2019 and was concluded in the year 2020. The appointment of the undersigned in the matter was made in January, 2021. Hence, it cannot be said that there is inordinate delay in the initiation of the instant proceedings against the Noticee. I also note that no limitation is prescribed in SEBI Act or Regulations for issuance of SCN or for completion of the Adjudication proceedings.

42. The allegations against the Noticee are based upon certain off market transactions in respect of which Noticee was required to carry out certain due diligence as well as reporting under AML requirements. The transactions are alleged to be under exceptional circumstances whereby DPs were required to cross check with the Beneficial Owners (BOs) about the transactions before its execution.

43. I note that clause 1.8 (vii) and (viii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013 mandates that the DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS; and in certain cases the details of the cross verification with the BOs should be recorded by the DP official on the instruction slip. In this regard, Noticee has contended that it cross verified the transaction details and rationale with the clients and noted the details/reply on the back side of the DIS before executing the transactions. Further the Noticee has contended that it did not have any access to the banking database of clients to cross verify that whether the mentioned consideration has got exchanged or not between the BOs. As well as it was only in year 2018 that CDSL vide its circular dated September 04, 2018, made it mandatory for DPs to collect information related to payment exchange between the BOs, such as Bank account no, Bank name, Bank branch, transaction no, payment date, payment mode etc. Noticee has contended that it exercised required due diligence in case of impugned transactions, and it did not violate Clause (vii) and (viii) of Reg. 1.8 Master Circular dated April 15, 2013 as alleged.

44. In this regard I note that, the term “exceptional circumstances” has not been defined, and there is no provision in the aforesaid circular, giving any indication or direction as to which transaction is to be classified as exceptional. The differentiation of the off market transactions into categories such as “Cash”, “Gift”, “Loan/ Return of Loan shares”, “Bad Delivery/Delivery Return” and “Consideration not mentioned category”, and treating these categories as exceptional circumstances, is not provided in this circular which was

applicable during the relevant period. These categories were specified much later in July 2019.

45. Further, I have perused the DIS slips based on which the allegations referring to exceptional circumstances as well as suspicious transactions are made. I note that there in 95 DIS slips, ‘Loan against Shares’/ ‘Loan’ is mentioned as reason of transfer, in 2 DIS slips reason of transfer ‘purchase” along with consideration is mentioned; in 2 DIS slips purpose and consideration is not mentioned; in one DIS slip the purpose of transfer is not legible, and consideration is mentioned. In view of the above, I note that reason for not mentioning consideration is recorded. Further, there is nothing in DIS slips indicating that the off market transactions were cash transactions.

46. Further, I have perused the back side of the 11 sample DIS slips (involving 13 transactions) provided by the Noticee, and I note that the details of verification by the officials of the Noticee with the BO/transferor is available on the back side of these DIS Slips. While the Noticee has not produced DIS Slips for all transactions to substantiate that such verification was conducted by its officials in respect of all the impugned transactions, I find that material on record does not bring out any concerns raised by respective BOs. I further note that this requirement of cross-checking with the BO was put in place to safeguard the concerns of investors.

47. Therefore, there is insufficient material on record to conclude that these off market transactions were cash transactions or were under exceptional circumstances. Hence violation of clause 1.8 (vii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013 by Noticee is not established.

48. I also note that as per clause 1.8 (viii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013, verification with BO is applicable in cases wherein either all the ISIN balances in an account are transferred at a time and there was no debit transaction in the account for past 6 months, OR if the concerned BO Account has 5 or more ISINs, and all such ISINs are

transferred at one time. I find that there is no material on record to substantiate that the criteria for verification as stipulated in aforesaid clause was met for the accounts involved in the off market transactions executed by the Noticee. Further, the Noticee has claimed it exercised due diligence in all the off market transfer cases, and in the absence of any records to contradict the Noticees claims, I find that Noticee has not violated clause 1.8 (viii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013.

49. Noticee has also contended that despite no alerts being received from depositories, Noticee on its own found that in some of the impugned off market transfers the value of securities and the transactions were not in commensurate with the disclosed income of the clients involved. Noticee contended that these transactions were reported by Noticee to FIU as suspicious transactions. I have perused the copy of sample files provided by Noticee, and I note that some of the transactions of Prem Chand and Sapna were reported by Noticee in STR by uploading same to FIU system in year 2014.

50. I note that there was no mechanism available with the Noticee DP, to verify the genuineness of the transactions or to ascertain whether consideration has actually exchanged between the BOs of the transfers. Noticee being DP, executed the transactions as per details filled in DIS slips. Further, as per the sample files provided by Noticee, I find that that the transactions, which Noticee perceived as suspicious, were reported to FIU.

51. With regard to reporting of transactions in CTR with FIU-IND, I note that the material on record is insufficient to show if there were cash transactions executed by the Noticee during the Investigation Period in excess of the ceiling of Rs. 20000/-, as specified in Section 269SS of Income Tax Act. In view of the above, material on record does not substantiate that Noticee failed to file CTR with the FIU-IND.

52. In view of the above, I find that there is insufficient material on records to establish that Noticee did not exercise reasonable due diligence and violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as **"D&P Regulations, 1996"**) read with Regulation 20AA ibid read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as **"D&P Regulations, 2018);** and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010.

53. As the violations alleged against the Noticees are not established, issues II and III do not merit consideration.

ORDER

54. In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticees vide SCN dated July 14, 2021 are disposed of.

55. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules and Rule 6 of the Depository Adjudication Rules.

DATE: October 26, 2021 **MANINDER CHEEMA**
PLACE: MUMBAI **ADJUDICATING OFFICER**