

QJA/AA/MIRSD/MIRSD-SEC-5/30716/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

**Under Regulation 27 of the Securities and Exchange Board of India
(Intermediaries) Regulations, 2008**

In respect of

Name of Noticee	PAN
Abhipra Capital Limited Registration Number: INR000003829	AABCA1702F

In the matter of Abhipra Capital Limited

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) had conducted an inspection of Abhipra Capital Limited (hereinafter referred to as Noticee/Abhipra), a SEBI registered Registrar to an Issue and Share Transfer Agent (hereinafter referred to as RTA) having Registration Number INR000003829 for the period April 01, 2021 to September 19, 2022 (hereinafter referred to as the inspection period). Thereafter, the findings of the said inspection were communicated to the Noticee vide letter dated March 09, 2023. In response to the findings of the inspection report, the Noticee, vide letter dated April 01, 2023, submitted its reply to SEBI.
2. Based on the response received from the Noticee, a post inspection analysis was conducted and the following violations of the provisions of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (hereinafter referred to as the Certification Regulations), SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (hereinafter referred to as the RTA Regulations), SEBI Notification and SEBI Circulars were alleged:

- 2.1. Certification of Associate Persons: Employees of Abhipra handling RTA related activities did not have valid NISM certificate thereby allegedly violating the provisions of Section 'NISM Certification' of 'Sec III (Compliance Certification)' of Annexure to SEBI Circular No. CIR/MIRSD/7/2012 dated July 05, 2012, regulation 3(2), 4, 5, 6, 9(2) and (3) and 10(1) of the Certification Regulations read with SEBI Notification No. LAD-NRO/GN/ 2009-10/18/175577 dated September 04, 2009 and Clause 3, 16, 29 and 30 of Schedule III read with Regulation 13 of the RTA Regulations.
- 2.2. Possession and maintenance of specimen signature cards: For a significant number of folios, signature cards are not available with the RTA. Also, the RTA had not provided details regarding letters issued by it to clients for providing details of signatures. Hence, it is alleged that the RTA violated provisions of Clause 12(ii) of Part II (Provisions with regard to Transfer/ Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P /2018/73 dated April 20, 2018.
- 2.3. Not marking folios for enhanced due diligence and system based alerts to exercise due diligence: Several folios had no PAN and bank account linked to them but only few folios were marked for due diligence in violation of Clause 13 of Part II (Provisions with regard to Transfer/ Transmission/Correction of Errors, etc.) of SEBI circular no. SEBI/ HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 and Clauses 2, 3 and 16 of Code of Conduct (Schedule III) of the RTA Regulations. Further, identification of folios to be marked for due diligence was being done manually by the Noticee and the Noticee did not have an automatic system based alert mechanism for enhanced due diligence in violation of Clauses 13 and 14 of Part II (Provisions with regard to Transfer /Transmission/Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD /DOP1/CIR/P/2018/73 dated April 20, 2018.
- 2.4. Issuing letters to physical shareholders (whose PAN, bank details are not available): failed to provide the information regarding letters sent to shareholders for whom signature cards are not available. Further, the sample letters observed to be issued by the Noticee to investors whose PAN, bank details, etc. were not available, were on plain A4 paper and not on letter head of the Noticee. Further, the Noticee had not sent such letters under

speed/registered post. Hence, it is alleged that the Noticee violated Clause 12(ii) of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018.

2.5. Appointment of the Compliance Officer: During the inspection, junior staff of the RTA without valid NISM certificates was handling the RTA related functions in the absence of Compliance Officer for a significant period. Further, it is alleged that there was no clear evidence with respect to the attendance of compliance officer to ascertain the work being done by him. In view of the above, it is alleged that the Noticee violated regulation 15A(1) of the RTA Regulations and Clauses 2, 3 and 16 of Code of Conduct of Schedule III read with Regulation 13 of the RTA Regulations.

B. ENQUIRY PROCEEDINGS BY DESIGNATED AUTHORITY

3. In this regard, the Designated Authority (hereinafter referred to as DA) was appointed in exercise of powers under regulation 24(2) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the Intermediaries Regulations) vide Order dated December 06, 2023, to enquire and submit a report giving recommendation in respect of the Noticee under regulation 25 and 26 of the Intermediaries Regulations. Accordingly, in terms of regulation 25(1) of the Intermediaries Regulations, the DA issued an Enquiry Show Cause Notice dated January 10, 2024 (hereinafter referred to as the Enquiry SCN) and supplementary Show Cause Notice dated May 22, 2024 to the Noticee to show cause as to why appropriate recommendations be not made for the alleged violations as mentioned above. The Noticee had filed replies dated February 10, 2024, May 30, 2024, June 04, 2024 and had attended personal hearing before the DA on February 14, 2024.
4. Thereafter, upon completion of the Enquiry, an Enquiry report dated June 24, 2024 (hereinafter referred to as the Report), was submitted by the DA to the Competent Authority, wherein the DA has recommended as follows:

“After taking into consideration the facts and circumstances of the case, material available on record and submissions made by the Noticee, having regard to orderly functioning of the securities market and protection of interest of investors, I

recommend that the Noticee i.e., Abhipra Capital Ltd., SEBI Registration No: INR000003829, be prohibited from taking up any new assignment or contract for a period of one month in terms of Regulation 26(1)(iv) of SEBI (Intermediaries) Regulations, 2008.”

C. POST ENQUIRY PROCEEDINGS BY THE COMPETENT AUTHORITY SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A post-enquiry Show Cause Notice dated July 03, 2024 (hereinafter referred to as Post Enquiry SCN) was issued to the Noticee enclosing therewith a copy of the Enquiry Report submitted by the DA and calling it to show cause in terms of Regulation 27 of the Intermediaries Regulations as to why action as recommended by the DA or any other action as deemed fit by the Competent Authority should not be taken against the Noticee for the alleged non-compliances/violations of the law. Thereafter, the Noticee filed reply vide letter dated July 24, 2024 and attended hearing on August 14, 2024. During the hearing, Mr. Kunal Katariya and Ms. Ashmita Goradia, authorized representatives of Abhipra, made submissions in line with the abovementioned reply dated July 24, 2024. The submissions made by the Noticee to the Enquiry SCN, supplementary SCN and Post Enquiry SCN are detailed in the following relevant paragraphs where each issue is considered to determine whether the Noticee has violated the alleged provisions of law.

D. CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully examined the allegations made against the Noticee and the replies filed to the Enquiry SCN and the post enquiry SCN and the documents/material available on record. The issues that arise for consideration in the instant case are whether or not the Noticee has violated the provisions of the RTA Regulations, Certification Regulations, SEBI notifications and circulars as alleged at paragraph 2 above and whether the action recommended by the DA in the Enquiry Report may be issued against the Noticee.
7. I now proceed to deal with all the issues one by one.

Issue 1: Certification of Associate Persons

Allegation:

8. It has, *inter alia*, been alleged that the employees of Abhipra handling RTA related activities, namely Abhinav Aggarwal, Ashok Kumar Sawarnkar, Deen Dayal Singh, Janan Mehta, Nitin and Umesh Chander Ijral did not have valid NISM certificate. Accordingly, it is alleged that the Noticee has violated provisions of Section 'NISM Certification' of 'Sec III (Compliance Certification)' of Annexure to SEBI Circular No. CIR/MIRSD/7/2012 dated July 05, 2012; Regulation 3(2), 4, 5, 6, 9(2) and (3) and 10(1) of the Certification Regulations read with SEBI Notification No. LAD-NRO/GN/ 2009-10/18/175577 dated September 04, 2009 and Clause 3, 16, 29, and 30 of Schedule III read with Regulation 13 of the RTA Regulations.

Relevant provisions of law alleged to have been violated

9. Before dealing with this issue, I deem it apposite to refer to the relevant provisions of law alleged to have been violated, extracts whereof are reproduced below:

Section 'NISM Certification' of 'Sec III (Compliance Certification)' of Annexure to SEBI Circular No. CIR/MIRSD/7/2012 dated July 05, 2012:

" ...

E. NISM Certification

<i>Number of associated persons employed or engaged with the RTI/ STA for the purpose of performing any of the activities as enumerated under clauses (a) to (g) of Notification dated September 4, 2009 issued under Regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007, who have obtained necessary NISM Certificate/ Continuing Professional Education (in terms of NISM communiqués dated April 27, 2012), along with following details.</i>				
		<i>No. of persons who are required to comply with</i>	<i>No. of persons who have obtained NISM Certificate/ CPE</i>	
	<i>Category of associated person</i>			

		NISM Certification/ CPE		
	Principal			
	Grandfathered person			
	Others			
	Action plan for those who are yet to comply with the above requirement:			

SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

“ ...

3. Obligation to obtain certification

...

2) An associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged by the intermediary.

...

4. Manner of obtaining certificate

(1) Subject to the provisions of this regulation, an associated person may obtain the certificate in any of the following manners, namely:-

(a) by passing a certification examination conducted by any organization or self regulatory organization approved or engaged as may be specified by NISM from time to time; or

(b) by obtaining such number of classroom credits accumulated through attending classes on such subjects as may be specified by NISM from time to time; or

(c) by delivering such number of formal classroom sessions in all or specific programmes of continuing professional education as may be specified by NISM from time to time.

(2) An associated person being principal shall obtain the certificate in any of the manners specified in clause (a) or clause (b) or clause (c) of sub regulation (1).

(3) An associated person, other than a principal, who has attained the age of fifty years or who has atleast ten years experience in the securities markets in the

activities mentioned in sub regulation (4) of regulation 3 on the date specified in the notification issued under sub regulation (1) of regulation 3, shall obtain the certificate in the relevant category in the manner specified in clause (a) or clause (b) of sub regulation (1).

(4) An associated person other than those mentioned in sub regulation (2) or sub regulation (3) shall obtain the certificate in the manner specified in clause (a) of sub regulation (1).

Validity period of certificate

5.(1) The certificate granted under regulation 3 shall be valid for a period of three years from the date of the grant of the certificate or revalidation thereof as the case may be.

(2) Upon expiry of the validity of certificate possessed by an associated person, the certificate shall be revalidated for a period of three years at a time, provided the associated person successfully completes a programme of continuing professional education specified by NISM in accordance with Chapter IV of these regulations.

Associated person not to undertake certain activities without a valid certificate

6.No associated person engaged in any of the activities mentioned in clauses (a) to (f) of sub regulation (4) of regulation 3 shall continue to be so engaged after the date specified in sub regulation (1) or sub regulation (2) of regulation 3, as the case may be, unless such associated person holds a valid certificate.

...

9. Continuing Professional Education requirements for associated persons

...

(2) No intermediary shall permit any associated person to continue and no associated person shall continue to perform duties as an associated person unless such person has complied with the requirements specified by NISM under sub regulation (1) within 3 years from the date of obtaining the certificate or revalidation thereof.

(3) The requirements of sub regulations (1) and (2) shall apply to associated

persons who are engaged in any of the activities mentioned in clauses (a) to (f) of sub regulation (4) of regulation 3.

Intermediary to ensure participation in continuing professional education

10. (1) Each intermediary shall be responsible to ensure that its associated persons participate in a programme of continuing professional education approved by NISM under sub regulation (1) of regulation 9.”

SEBI notification no. LAD-NRO/GN/ 2009-10/18/175577 dated September 04, 2009

“ ...

NOW THEREFORE the Board hereby specifies that an associated person engaged or employed or to be engaged or employed by a Registrar to an Issue or Share Transfer Agent for performing any of the activities as enumerated under clauses (a) to (g) above, shall obtain RTA- Corp Certification or Series-II-B: RTA-MF certification as the case may be, as stated hereinafter:

(a) where such associated person is engaged or employed by a Registrar to an Issue or Share Transfer Agent prior to the date of this notification, he shall obtain Series-II-A: RTA- Corp Certification or Series-II-B: RTA-MF certification as the case may be within two years from the date of this notification;

(b) where on being employed or engaged by a Registrar to an Issue or Share Transfer Agent on or after the date of this notification such associated person does not possess Series-II-A: RTA- Corp Certification or Series-II-B: RTA-MF certification as the case may be, he shall obtain the said certification within one year from the date of being so employed or engaged.

....”

SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993

“13. To abide by Code of Conduct.—Every registrar to an issue and share transfer agent holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule III.”

Schedule III

“ 3. A Registrar to an Issue and Share Transfer Agent shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

16. A Registrar to an Issue and Share Transfer Agent shall maintain the required level of knowledge and competency and abide by the provisions of the Act, rules, regulations, circulars and directions issued by the Board. The Registrar to an Issue and Share Transfer Agent shall also comply with the award of the Ombudsman passed under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

29. A Registrar to an Issue and Share Transfer Agent shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).

30. A Registrar to an Issue and Share Transfer Agent shall be responsible for the acts or omissions of its employees and agents in respect of the conduct of its business.”

Submissions and Findings:

10. The Noticee has stated that during the inspection period, the RTA operations of the Company were limited and of very small magnitude and were being effectively managed by Mr. Jeewat Rai, who had been serving the Company for more than 19 years. The Noticee has further stated that Mr. Jeewat Rai had the necessary experience and qualification, including NISM certification, to handle the RTA operations and all the other employees in Abhipra were working under his supervision.

11. Further, the Noticee has stated that during the end of 2022, Mr. Jeewat Rai expressed his desire to retire from Abhipra. While Abhipra requested Mr. Jeewat Rai to continue with his services for a little longer, it simultaneously took steps to prepare other team members to take care of the RTA operations, including Mr.

Abhinav Aggarwal. Mr. Abhinav Aggarwal enrolled for the NISM certification on December 08, 2022 but due to certain technical issues at NISM end, the date of NISM certification was received much later. Mr. Abhinav Aggarwal received his NISM certificate in January 2023. The other two employees, i.e., Mr. Janan Mehta and Mr. Ashok Kumar Sawarnkar, who were also overseeing operation of RTA also possessed valid NISM certificates dated March 29, 2021 and March 01, 2021, respectively. Further, Mr. Kapil Bansal, Mr. Arun Saxena, Mr. Renu Bhardwaj and Ms. Poonam Wasan obtained NISM certification on February 13, 2024, February 06, 2024, January 23, 2024 and January 17, 2024, respectively. Additionally, the Noticee has submitted that Mr. Deen Dayal Singh, Mr. Nitin and Mr. Umesh Ijral were being supervised by Mr. Jeewat Rai and Mr. Abhinav Aggarwal and did not carry out any activity independently as enlisted under regulation 3(4) of the Certification Regulations that deals with the work handled by associated persons.

12. The Noticee has further contended that regulation 3(2) of the Certification Regulations states that an associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain certificate within one year from the date of being employed or engaged by the intermediary. Thus, the Noticee has contended that the provisions allow one year from date of being engaged by the intermediary to obtain necessary certification. Hence, the Noticee has contended that Mr. Abhinav Aggarwal who started getting engaged in the services of Abhipra from around October – November 2022 and obtained the necessary certification in January 2023 is in compliance with the Certification Regulations.

13. I note that it has been alleged that 6 employees of the Noticee – Mr. Abhinav Aggarwal, Mr. Ashok Kumar Sawarnkar, Mr. Deen Dayal Singh, Mr. Janan Mehta, Mr. Nitin and Mr. Umesh Chander Ijral – who were handling RTA related activities of the Noticee did not have valid NISM certificate. In this regard, I note from the documents provided by the Noticee that Mr. Janan Mehta and Mr. Ashok Kumar Sawarnkar possessed valid NISM certificates dated March 29, 2021 and March 01, 2021, respectively. With respect to the remaining 4 employees – Mr. Abhinav

Aggarwal, Mr. Deen Dayal Singh, Mr. Nitin and Mr. Umesh Chander Ijral – I note that the period of employment at Abhipra during the inspection period is as follows:

Table 1

Sr. No.	Name and designation of Employee	Period of employment at Abhipra-RTA
1	Deen Dayal Singh	August 23, 2021 to September 30, 2022
2	Nitin	April 12, 2021 to September 30, 2022
3	Umesh Chander Ijral	September 09, 2021 to September 30, 2022
4	Abhinav Aggarwal	April 01, 2021 to September 30, 2022

14. Hence, I agree with the DA's finding that as at the end of the inspection period, all the 4 employees of the Noticee had been handling RTA related functions for more than a period of 1 year. Yet, none of the 4 employees had a valid NISM certificate. Further, the Noticee has acknowledged that the NISM certificate by Mr. Abhinav Aggarwal was obtained only in January 2023. Also, the Noticee has not furnished any document in support of its statement that the delay with respect to obtaining certification by Mr. Abhinav Aggarwal was on account of technical issue at the end of NISM. I also note that the Noticee has submitted a certificate issued to Mr. Abhinav Aggarwal for completing CDSL's 2 day RTA Training Programme in June 2021. I am of the opinion that attending a training programme is not a substitute for relevant NISM certification. Further, it also signifies that Mr. Abhinav Aggarwal could be handling RTA related functions for the Noticee since 2021 as against October-November 2022 claimed by the Noticee. With respect to the remaining 3 employees, the Noticee has contended that all the other employees in Abhipra were working under the supervision of Mr. Jeewat Rai who possessed necessary experience and qualification.

15. Additionally, as it has not been alleged in the SCN that Mr. Kapil Bansal, Mr. Arun Saxena, Mr. Renu Bhardwaj and Ms. Poonam Wasan worked at Abhipra without NISM certification, I do not find the information that these employees have completed NISM certification relevant to the current proceedings.

16. Accordingly, I agree with the finding of DA that the employees of Abhipra handling RTA related activities, namely Mr. Abhinav Aggarwal, Mr. Deen Dayal Singh, Mr. Nitin and Mr. Umesh Chander Ijral, did not have valid NISM certificate. In view thereof, I find that the Noticee has violated provisions of Section 'NISM Certification' of 'Sec III (Compliance Certification)' of Annexure to SEBI Circular No. CIR/MIRSD/7/2012 dated July 05, 2012, Regulation 3(2), 4, 5, 6, 9(2) and (3) and 10(1) of the Certification Regulations read with SEBI Notification no. LAD-NRO/GN/ 2009-10/18/175577 dated September 04, 2009 and Clause 3, 16, 29, and 30 of Schedule III read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 related to obtaining NISM certification by associate persons.

Issue 2: Possession and Maintenance of specimen signature cards

Allegation

17. It is alleged that for 44,493 folios out of 62,380 folios, signature cards were not available with the RTA. Further, it is alleged that Abhipra had not been sending letters to all the investors for whom signature cards were not available. Additionally, it is alleged that letters had been sent on plain A4 paper instead of letterhead bearing the stamp of the Noticee. In view thereof, the Noticee is alleged to have violated Clause 12(ii) of Part II (Provisions with regard to Transfer/ Transmission/ Correction of Errors etc.) SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018.

Relevant provisions of law alleged to have been violated

18. Before dealing with this issue, I deem it apposite to refer to the relevant provisions of law alleged to have been violated, extracts whereof are reproduced below:

Clause 12 (ii) of Part II (Provisions with regard to Transfer/ Transmission/ Correction of Errors etc.) SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018

"12. Issuer Companies through their RTAs shall take special efforts to collect copy of PAN, and bank account details of all securities holders holding securities in physical form as mentioned below. While collecting details, RTAs shall ensure that

.....

(ii) They send a letter under registered/Speed post seeking PAN and bank details (a copy of the PAN card and original cancelled cheque leaf /attested bank passbook showing name of account holder) within 90 days of the circular and two reminders thereof after the gap of 30 days. All the 3 letters will have 21 days' notice period to provide the details."

Submissions and Findings:

19. The Noticee has submitted that for physical folios, the Noticee is maintaining information regarding PAN, bank account details and other KYC information in its software. With respect to signature cards, the Noticee has stated that it is maintaining the cards for investors as were provided to it by the Company at the time of undertaking their services as RTA. The Noticee has further submitted that it has repeatedly sent letters to the Investors (directly or through respective listed company for updation of KYC). The Noticee has also provided details with respect to certain company-specific folios for whom signature cards were not available with the Noticee. Additionally, the Noticee has contested that Clause 12 (ii) of Part II (Provisions with regard to Transfer/ Transmission/ Correction of Errors etc.) SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 mandates RTAs to collect information regarding shareholders' PAN and bank account details and to send reminder letters but it does not mandate maintaining signature cards by RTAs. With respect to the sample letters to shareholders, the Noticee has stated that the letters on plain A4 papers are only office copies and original copies are sent to investors on letterhead with signature and Abhipra stamp. Additionally, the Noticee has contended that the said SEBI circular dated April 20, 2018 does not mandate issuance of letter on letterhead.

20. The Noticee has contended that there is no requirement to maintain signature cards under Clause 12 (ii) of Part II (Provisions with regard to Transfer/ Transmission/ Correction of Errors etc.) SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018. In this regard, I agree with the DA's observation that the text of the relevant provision alleged to have been violated has no specific/categorical requirement of sending letters to the investors for whom signature cards were not

available. However, I note that Clause 25(a) of “Draft of Agreement between the STA and the Company” of Annexure B of Schedule II of SEBI Circular “Instruction to Registrars to an Issue/ share Transfer Agents” dated October 11, 1994, *inter alia*, states as under:

“The company and Transfer Agent shall maintain following documents and records pertaining to Transfer activities by way of hard copies and if required may be stored by way of tape drives in computers: a) Check-list, inward register, transfer register, buyer / sellers register with net effect as on date of approval of transfer proposals, transfer deeds, specimen signature cards / signature captured on signature scanner, despatch register/ postal journal, objection memos, mandates, Power of Attorney/ Board Resolution, RBI Approval in case of NRI Jumbo Transfer Deeds in case of FIIs, Register of Members, Annual Returns / Return of Allotment, Interest/ Dividend Register.”

21. Further, the Hon’ble Supreme Court of India in the matter of *N Mani vs Sangeetha Theatre and Ors* [Civil Appeal No. 6460 of 1998- (2004) 12 SCC 278] held as under:

“9. It is well-settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

22. Thus, I find that an RTA is obligated to maintain specimen signature cards and as a best practice, the RTA should have made efforts to send letters to investors/shareholders for whom signature cards are not available. In view of the above, I find that the Noticee has violated Clause 25(a) of “Draft of Agreement between the STA and the Company” of Annexure B of Schedule II of SEBI Circular “Instruction to Registrars to an Issue/ share Transfer Agents” dated October 11, 1994 by not maintaining record of signature cards for all folios.

Issue 3 - Not marking folios for enhanced due diligence and system based alerts to exercise enhanced due diligence

Allegation:

23. It has been alleged that as per the data provided by the RTA, 29,215 and 27,110 folios had no PAN and Bank account linked to them, respectively. However, the RTA had marked only 115 of these folios for enhanced due diligence. Further, it has been alleged that the identification of the folios that were to be marked for enhanced due diligence was being done manually by the Noticee and there was no automatic 'system based alert' mechanism for enhanced due diligence, i.e., these folios were not flagged / marked on the system. In view thereof, it has been alleged that the Noticee has violated provisions of Clauses 13 and 14 of Part II (Provisions with regard to Transfer/ Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 and Clauses 2, 3 and 16 of Code of Conduct (Schedule III) of the RTA Regulations.

Relevant provisions of law alleged to have been violated

24. Before dealing with this issue, I deem it apposite to refer to the relevant provisions of law alleged to have been violated, extracts whereof are reproduced below:

Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018

" ...

13. The Issuer Company and RTAs shall exercise enhanced due diligence in following cases:

...

ii. PAN / bank account details not available in the folio

...

RTAs shall maintain a list of such account folios and share with the Issuer Company at the end of every quarter of a financial year.

14. RTAs shall have system based alerts for processing of all transactions in such account folios referred above in para 13."

SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993
Schedule III

“2. A Registrar to an Issue and Share Transfer Agent shall fulfill its obligations in a prompt, ethical and professional manner.

3. A Registrar to an Issue and Share Transfer Agent shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

...

16. A Registrar to an Issue and Share Transfer Agent shall maintain the required level of knowledge and competency and abide by the provisions of the Act, rules, regulations, circulars and directions issued by the Board. The Registrar to an Issue and Share Transfer Agent shall also comply with the award of the Ombudsman passed under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.”

Submissions and Findings:

25. The Noticee has submitted that the ‘quantum’ of its RTA business is small and accordingly, the physical folio requiring attention is quite less. Additionally, the Noticee has submitted that there is strict instruction to each team member that if any request is received in any physical folio, it is not to be processed unless the shareholder provides updated information and provides ISR-1, ISR-2 and SH-13 forms (forms for registering PAN, KYC, signature confirmation, nominations, etc.). Further, the Noticee has submitted that as per Abhipra’s policy, each physical folio is treated as if it were under enhanced due diligence.

26. Upon perusal of the Noticee’s submission to the allegations made against it, I agree with the DA that the reply of the Noticee is generic in nature and that the Noticee has not demonstrated with specific and relevant details and documents if it had marked all account folios where folios had no PAN and Bank account linked to them, for enhanced due diligence, as per the mandate. Hence, I concur with the DA that the Noticee had violated Clause 13 of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 and Clauses 2, 3 and 16 of Code of Conduct (Schedule 3) of the RTA Regulations.

27. Further, with respect to system based alerts for processing transactions in such folios, the Noticee has submitted that relevant provisions of law do not require a separate system to be maintained or that an automatic system has to be created. Thus, when a request is received by the Noticee from any physical shareholder, its system shows the message 'Not complied folio' and only after information is updated by the shareholder, the request is processed further. Additionally, the Noticee has stated that as per its policy, each physical folio is treated as under enhanced due diligence. Also, the Noticee has stated that although it may not have a separate system-based alert highlighting enhanced diligence, its system does not allow further processing of request until necessary information is duly updated.

28. I note that the relevant provisions of law require an RTA to exercise enhanced due diligence in cases where PAN/bank account details are not available in folio and to have system-based alerts for processing all transactions in such folios. In this regard, upon perusal of the Noticee's submission, I agree with the DA that the Noticee has not demonstrated with specific and relevant details and documents if it had a system based alert for identification of all the folios that are to be marked for enhanced due diligence. Further, the Noticee's submission that "*though we may not have a separate system-based alert highlighting enhanced-diligence*" is in the nature of admission. I also note from the Noticee's earlier submissions to SEBI to the findings of inspection that the Noticee in this regard had submitted that, "*...As advised we are discussing with the Software developer to create logic for generating the system-based alerts ...*". In view of the above, I find that the submissions made by the Noticee in response to the Enquiry and Post Enquiry SCN with respect to a system-based prompt are only an afterthought and the Noticee did not have any such system/mechanism in place during the inspection period. In view of the same, I agree with the DA that the Noticee has violated Clause 14 of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 with respect to having system-based alerts for processing transactions in such account folios.

Issue 4 – Not Issuing letters to physical shareholder (whose PAN, bank details not available)

Allegation:

29. It is alleged that:

- 29.1. Noticee failed to provide the information regarding letters sent to its shareholders for providing details of signatures.
- 29.2. Letters issued by the Noticee to investors for whom PAN, Bank details, etc. were not available were on plain A4 paper and not on the letter head of the Noticee and without any stamp.
- 29.3. Further, from the records provided by the Noticee, it was observed that the Noticee had not sent letters under registered/Speed post seeking PAN and bank details to all the folio holders for which PAN and Bank details are unavailable with the RTA.

30. Accordingly, it is alleged that the Noticee has violated provisions of Clauses 12(ii) of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018.

Relevant provisions of law alleged to have been violated

31. Before dealing with this issue, I deem it apposite to refer to the relevant provisions of law alleged to have been violated, extracts whereof are reproduced below:

Clause 12 (ii) of Part II (Provisions with regard to Transfer/ Transmission/ Correction of Errors etc.) SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018

“12. Issuer Companies through their RTAs shall take special efforts to collect copy of PAN, and bank account details of all securities holders holding securities in physical form as mentioned below. While collecting details, RTAs shall ensure that

(ii) They send a letter under registered/Speed post seeking PAN and bank details (a copy of the PAN card and original cancelled cheque leaf /attested bank

passbook showing name of account holder) within 90 days of the circular and two reminders thereof after the gap of 30 days. All the 3 letters will have 21 days' notice period to provide the details."

Submissions and Findings:

32. The Noticee has submitted that the SEBI circular was issued in April 2018 and required dispatch of letters within 90 days (i.e. by July 2018) and then 2 reminders in next 30 days each (i.e., by August 2018 and September 2018). In this regard, the Noticee has submitted that the said letters were duly sent either by the respective listed company or through the Noticee on behalf of the company within the stipulated timeframe. Further, the Noticee has stated that copies of these letters may not be made available due to some confusion between the same not pertaining to the Inspection Period and on account of several further reminders being sent to the shareholders subsequently. However, the Noticee has stated that various reminders are sent to the shareholders and it has enclosed the confirmation from the listed companies (which have sent the letters directly to the shareholders over the period) and the proof of dispatch/bills of speed post booked in its books for letters sent directly to the shareholders by the Noticee.

33. I note that Clause 12(ii) of Part II of SEBI Circular bearing no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 requires the RTA to send a letter under registered/Speed post seeking PAN and bank details. Therefore, I agree with the DA that the Noticee's contention, *"that the said letters were duly sent either by the respective listed company or through us"* is devoid of merit and not acceptable as the obligation to send these letters lies with the RTA. I also agree with the DA in that the Noticee's submissions are vague in so far as they state that letters could not be made available due to confusion regarding the letters not pertaining to the inspection period and several reminders having been sent to shareholders subsequently. I also note that the Noticee has not clearly demonstrated with relevant details and documents that it had sent letters through registered/Speed post to all such folio holders for whom PAN and Bank details are unavailable with the Noticee.

34. With respect to the Noticee's submission of confirmation from listed companies as proof that reminders for bank details and PAN are sent to shareholders, I note that the submissions by the Noticee are with respect to actions taken by client companies. Accordingly, I agree with the DA that the submission is out of context as the onus of sending letters is on the Noticee.

35. With respect to the sample letters to shareholders, the Noticee has stated that the letters on plain A4 papers are only office copies and original copies are sent to investors on letterhead with signature and Abhipra stamp. Additionally, the Noticee has contended that the said SEBI circular dated April 20, 2018 does not mandate issuance of letter on letterhead. In this regard, I find that the Noticee's submission that original letters are sent on Abhipra letter head duly signed and stamped has not been supported by any documentary evidence. Further, as per the documents provided by the Noticees, it is noted that sample letters sent to the investors for updating the KYC, signatures and nomination for certain companies sent on Noticee's letter head as provided by the Noticee pertain to the month of February 2023 and not to the inspection period of April 01, 2021 – September 19, 2022. Therefore, I agree with the DA that the Noticee has violated Clause 12(ii) of Part II of SEBI Circular dated April 20, 2018.

Issue 5 - Appointment of the Compliance Officer

Allegation:

36. It is alleged that during the course of inspection, compliance officer was not available for inspection as he was out of country. Further, it is alleged that there is no written policy of the RTA regarding handling of RTA related functions in the absence of compliance officer. Additionally, it is alleged that junior staff of the RTA, without having valid NISM certificates, were handling the RTA related functions in the absence of Compliance Officer for a significant period. Hence, it is alleged that there was no clear evidence with respect to the attendance of compliance officer to ascertain the work being done by him. In view thereof, it is alleged that the Noticee has violated provisions of Regulation 15A (1) of the RTA Regulations, clauses 2, 3 and 16 of Code of Conduct of Schedule III read with Regulation 13 of the RTA Regulations.

Relevant provisions of law alleged to have been violated

37. Before dealing with this issue, I deem it apposite to refer to the relevant provisions of law alleged to have been violated, extracts whereof are reproduced below:

SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993

“15A. Appointment of a Compliance Officer.— (1) Every registrar to an issue and share transfer agent shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the Board or the Central Government and for redressal of investors' grievances.

“13.To abide by Code of Conduct — Every registrar to an issue and share transfer agent holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule III”

Schedule III

“2. A Registrar to an Issue and Share Transfer Agent shall fulfill its obligations in a prompt, ethical and professional manner.

3. A Registrar to an Issue and Share Transfer Agent shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

16. A Registrar to an Issue and Share Transfer Agent shall maintain the required level of knowledge and competency and abide by the provisions of the Act, rules, regulations, circulars and directions issued by the Board. The Registrar to an Issue and Share Transfer Agent shall also comply with the award of the Ombudsman passed under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.”

Submissions and Findings:

38. The Noticee has submitted that when the compliance officer Mr. Jeewat Rai was not available in office, he was actively coordinating all operations through remote access and over calls. Additionally, it has been submitted that along with Mr.

Jeewat Rai, two senior officers with valid NISM certificates were overseeing the RTA operations of the Noticee.

39. In this regard, I note that the Noticee in its response has provided the attendance sheet of Mr. Jeewat Rai along with his salary slips to corroborate the Noticee's statements that Mr. Jeewat Rai was actively coordinating all operations through remote access and over calls. Further, valid NISM certificates of 2 junior staff members have also been provided by the Noticee. In view of the same, I agree with the DA that the alleged violation in respect of the Regulation 15A of SEBI RTA Regulations, 1993, has not been brought out clearly along with specific details in respect of the Noticee in this regard. Therefore, I am inclined to allow benefit of doubt to the Noticee in this regard. However, I find that compliance function is of utmost importance as it ensures that a registered entity operates with integrity and follows applicable laws, regulations and internal policies. Therefore, I am of the opinion that the Noticee should avoid long and regular absences of Compliance Officer from its office even if it is because of remote working.

40. From the foregoing, it is established and therefore concluded that the Noticee has violated the following provisions of law:

40.1. By not having employees of Abhipra handling RTA related activities, namely Mr. Abhinav Aggarwal, Mr. Deen Dayal Singh, Mr. Nitin and Mr. Umesh Chander Ijral, possess valid NISM certificate, the Noticee violated Section 'NISM Certification' of 'Sec III (Compliance Certification)' of Annexure to SEBI Circular No. CIR/MIRSD/7/2012 dated July 05, 2012; Regulation 3(2), 4, 5, 6, 9(2) and (3) and 10(1) of the Certification Regulations read with SEBI Notification No. LAD-NRO/GN/ 2009-10/18/175577 dated September 04, 2009 and Clause 3, 16, 29, and 30 of Schedule III read with regulation 13 of the RTA Regulations.

40.2. By not possessing and maintaining specimen signature cards for a significant number of folios, the Noticee has violated provisions of Clause 25(a) of "Draft of Agreement between the STA and the Company" of Annexure B of Schedule II of SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994.

- 40.3. By not marking folios with no PAN and Bank account linked to them for enhanced due diligence and by not having system based alerts for processing of all transactions in such account folios, the Noticee has violated Clause 13 and 14 of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 and Clauses 2, 3 and 16 of Code of Conduct (Schedule III) of the RTA Regulations.
- 40.4. By not issuing letters under registered/Speed post seeking PAN and bank details to all the folio holders for which PAN and Bank details are unavailable with Abhipra, the Noticee has violated Clause 12(ii) of Part II (Provisions with regard to Transfer / Transmission/ Correction of Errors etc.) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018.

41. The Noticee has also drawn reference to SEBI WTM order in the matter of *Refex Industries Limited* and Hon'ble Supreme Court Order in the case of *Hindustan Steel Ltd. vs. State of Orissa (1970) 1 SCR 753; (AIR 1970 SC 2563)* to contend that the allegations in the Enquiry report are technical and venial and they do not warrant permanent damage to the Noticee. In this regard, I am of the opinion that even if the violations established are considered technical and venial by the Noticee, the recommendation by the DA to prevent the Noticee from taking up any new assignment or contract for a period of one month is only deterrent in nature and cannot be considered as permanent damage to the Noticee.

E. ORDER AND DIRECTIONS

42. Therefore, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Regulation 27(5) of the Intermediaries Regulations, upon consideration of the facts listed in this Order, applicable legal provisions and submissions of the Noticee, I hereby direct that the Noticee shall be prohibited from accepting any fresh client for a period of one month from the date of this Order. However, the Noticee is allowed to renew old contracts that may be up for renewal during the period of this one month. The Noticee shall disclose the contents of these directions on its website(s) immediately. The above direction shall come into force with immediate effect.

43. A copy of the order shall be served on the Noticee. A copy of the order shall also be served on the recognised stock exchanges and depositories for necessary information.

Date: August 28, 2024

Place: Mumbai

Dr. Anitha Anoop
Chief General Manager
Securities and Exchange Board of India