BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No. Order/AN/PR/2024-25/31229]

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

In respect of:

CB Management Services Pvt. Ltd.
(PAN: AABCC1781C/ SEBI Registration Number: INR000003324**)**

In the matter of inspection in respect of CB Management Services Pvt. Ltd.

A. BRIEF BACKGROUND:

1. Securities and Exchange Board of India ('SEBI') carried out inspection of C B Management Services Pvt. Ltd. (Noticee'/ 'entity'/ 'CB'/ 'RTA'), registered with SEBI as a Category I Registrar to an Issue & Share Transfer Agent having SEBI registration number INR000003324. The inspection of the Noticee was undertaken between March 3, 2022 and March 30, 2022. The inspection was conducted at its registered office located at P-22, Bondel Road, 2nd Floor, Kolkata – 700019. The period of inspection was April 1, 2019 to Octover 30, 2020 ('Inspection period'/ 'IP').

2. Pursuant to the inspection, the findings of the inspection were communicated to the Noticee vide letter dated April 05, 2022 and the Noticee submitted its reply to the observations of SEBI on April 21, 2022, August 01, 2022 and August 10, 2022.

3. Pursuant to the above, SEBI analysed the findings vis-à-vis the replies of the entity and carried out post inspection analysis. In view thereof, SEBI inter alia observed and alleged that Noticee had violated the following:

3.1. Regulation 9A(1)(b) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (' SEBI RTA Regulations'); Draft Agreement in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994; Clauses 3 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations 1993.

3.2. Clause 4 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

3.3. Clause 13 and 14 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

3.4. Clause 15 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.") of the Annexure to SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

4. In view thereof, SEBI initiated Adjudication proceedings in respect of the Noticee under Section 15 I of the Securities and Exchange Board of India Act, 1992 for the alleged violations of the provisions of law, as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER:

5. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, therefore, in exercise of the powers conferred under Section 19 of the SEBI Act, 1992 read with Section 15I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('Adjudication Rules'), Competent Authority appointed the undersigned as Adjudicating Officer vide order dated July 25, 2023 to inquire into and adjudge under Section 15HB of the SEBI Act, for the aforesaid alleged violations by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated July 28, 2023.

C. SHOW CAUSE NOTICE, REPLY, AND HEARING:

6. A Show Cause Notice No. *SEBI/HO/EAD/EAD5/P/OW/2024/1034/1* dated January 08, 2024 (SCN) was issued upon the Noticee under Rule 4 of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty, if any, not be imposed against the Noticee under Section 15HB of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

7. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

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4.Findings and Observations by SEBI and Alleged Violations thereto in respect of the Noticee are as under:

Based on the inspection in the matter, briefly summarized findings/allegations by SEBI are interalia given below:

4.1.Finding (1): Agreements / Tripartite agreement entered into by the RTA:

4.1.1. The Draft Agreement as provided by SEBI vide Draft Agreement as available in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994 has been tampered with by the RTA in its Agreement with M/s Exide Industries Limited. Specifically Clause 13 of the Draft Agreement inter alia stating "Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it" has been removed in the agreement with Exide by the RTA thereby reducing RTA's liability".

4.1.2. The agreements with two random companies were checked namely:

- *i. Exide Industries Limited (Letter dated March 26, 2021 from Exide Containing a copy of the Agreement between RTA & Exide at Annexure 5)*
- *ii. Berger Paints India Limited (Letter dated April 1, 2021 from Berger Paints Containing a copy of the Agreement between RTA & Berger at Annexure 6)*

4.1.3. It was found that the agreement with Exide Industries Limited did not have the line "Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it" at Clause 11 of the Draft Agreement, specifically, Clause 13 of Draft Agreement as available in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994 states as under:

"Transfer Agent shall use its best efforts to perform the duties assigned to it in terms of this agreement with the utmost care and efficiency. Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it. Transfer Agent shall, however, not be responsible or liable for any direct or consequential omission / commission committed by the Transfer Agent in good faith or in absence of its negligence or breach of the terms of this agreement or due to reasons beyond the Transfer Agent's reasonable control."

4.1.4. The Noticee in this regard had submitted that, "the agreement with Exide Industries Ltd was executed long back and renewed thereafter through exchange of letters. The line "Transfer Agent shall……reasonable control" was not included. We are already in process of execute a fresh agreement on the above line in terms of Annexure B of Schedule II in SEBI Circular." (Email dated August 10, 2022 from the RTA at Annexure 7)

4.1.5. SEBI in this regard observed that, The RTA has submitted that the Agreement with Exide Industries Limited was executed long back and were renewed thereafter. The same may not be accepted as the Draft Agreement issued by SEBI vide Circular "Instruction to Registrars to an Issue/ share Transfer Agents" was issued in the year 1994.

4.1.6. Also, since the RTA had submitted in its reply that they are in the process of executing a fresh agreement in line with the line with terms of Annexure B of Schedule II in SEBI Circular dated October 11, 1994, they were asked to submit a copy of new agreement.

4.1.7. Vide email dated August 10, 2022 (Annexure 7), the RTA has submitted that "the draft of Agreement has been forwarded to the client (Exide Industries Ltd) and had a discussion on the same. They have more or less agreed on the terms of the Agreement and the matter is pending at their higher level which we hope will be resolved very soon."

4.1.8. As on date, the violation of tampering with the text of Draft Agreement issued by SEBI stands, which may reduce the legitimate liability of the RTA under Agreement with the Listed Company.

In view of the above, it is alleged that the Noticee had violated the following provisions:

- *i. Regulation 9A(1)(b) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993*
- *ii. Draft Agreement in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994*
- *iii. Clauses 3 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations 1993.*

4.2.Finding (2)- Compliance of SEBI circular Dated April 20, 2018 & July 16, 2018- Maintenance of system log:

4.2.1. At the folio level, the SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 envisaged that in a folio, which change has been carried out (i.e. change in signature, change in Bank Account details etc.) by which user from the front end, on what date and at what time should be available in the 'system log'. That data is not at all being tracked / maintained from the date of Circular till the date of Inspection.

4.2.2. The RTA confirmed during inspection they have separate login id for each user and accordingly a log is created for every login from each user id which can be accessed by the IT team of the RTA only. It must be noted that the inspection team too had been provided two such login ids to check company wise, folio wise information for the purpose of inspection. The login ids provided to the inspection team were S016 and S017.

4.2.3. The RTA was asked to generate the log for all users for March 15, 2022 since on that day the inspection team (user S016) had accessed many folios to check enhanced due diligence requirements. The team had a list of folios that the team had accessed and wanted to check if the log generated by the RTA correctly showed the inspection team (user S016) accessing such folios.

4.2.4. Although the RTA had verbally informed earlier that they were tracking which user was accessing database of which company, when asked to produce such data log for verification, the RTA said that they have enabled the same only now (this was on the morning of March 17, 2022) and the log of such user wise data log is not available for March 15, 2022.

4.2.5. The RTA was then asked to show what tracking have they enabled in their system now. The RTA submitted that system log being maintained now has mechanism to show as to:

- *i. which user has logged into their system on which date*
- *ii. using which computer*
- *iii. and has accessed data for which company*

4.2.6. A sample was shown to the inspection team and screenshot of the same is placed at Annexure 8.

4.2.7. However, even after this tracking has been enabled, it must be noted that, which folio was accessed by the user from among the thousands of folios of the company accessed by the user is not being tracked. Also, the user has accessed which information for a folio i.e. signature of shareholder, Bank details of shareholder etc. is also not being tracked.

4.2.8. When looked from the perspective of folio, the Circular dated April 20, 2018 envisaged that in a folio, which change has been carried out (i.e. change in signature, change in Bank Account details etc.) by which user from the front end and on what date and at what time should be available in the 'system log'. That data is not at all being tracked / maintained.

4.2.9. The Noticee in this regard has submitted that, we have since put in place tracking system to, identify and record the user who has accessed / viewed and altered the 'field of the folios of the company i.e signature, address, bank details etc.

4.2.10. As per SEBI, SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 at sub clause 4 of Clause II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure inter alia states that all updation in a folio shall be allowed only from front end and the RTA is to ensure that a 'System Log' having complete details of any change must be maintained. The term 'change' refers to any change in signature, address, Bank Account details, change in / updation of PAN number etc. Which user from the front end, on what date and at what time has carried out that 'change' must be available in the 'system log'. That data is not being tracked / maintained and the RTA has accepted the same in its reply.

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

i. Clause 4 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018

ii. Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993.

iii. Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

4.3. Finding (3): Compliance of SEBI circular Dated April 20, 2018 & July 16, 2018- System based alerts to exercise Enhanced Due Diligence:

4.3.1. Compliance of SEBI circular Dated April 20, 2018 & July 16, 2018- System based alerts to exercise Enhanced Due Diligence for cases as listed out in clause 13 of SEBI Circular dated April 20, 2018;

i. With respect to folios with missing PAN number and Missing Bank Account details, no "system based alert" or pop-up etc. is enabled in Database Master for the RTA as visible from the screenshots taken for 50 such high value folios.

ii. With respect to folios with dividend unpaid for more than 3 years no "system based alert" or pop-up etc. is enabled in Database Master of the RTA.

iii. No Enhanced Due Diligence Performed while processing the three requests for Change of Bank Account details for requests whose documents are provided for the following:

a. Berger Paints India Ltd., Folio No.- M04587 (Annexure 9)

b. Exide Industries Limited, Folio No.- 065517 (Annexure 10)

c. Berger Paints India Ltd., Folio No.- S06859 (Annexure 11)

4.3.2. Two of the criteria for which enhanced due diligence has to be performed as listed out in clause 13 of the said SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 are folios where PAN and Bank Account details of shareholder are missing.

4.3.3. Accordingly, the RTA was asked to provide a list of the top 5 shareholders (by number of shares held) each for its top 10 most active companies where either PAN number or Bank Account details or both are missing. This list as provided by the RTA is attached at Annexure 12.

4.3.4. For these 50 folios it was checked whether the RTA's software has listed them out as folios marked for enhanced due diligence. It was found that the RTA's software did not have any pop-up or any other similar mechanism in its software's master data to show that these folios are marked for enhanced due diligence. In fact, it did not seem that the software of the RTA has a system enabled mechanism to allow for a pop-up or to warn the user (RTA employee) that the said folio is marked for enhanced due diligence which is what was envisaged in the Circular dated April 20, 2018.

4.3.5. The screenshot taken from the software of the RTA for each of the 50 folios is available at Annexure 13 where no such pop-up or warning is visible in the screenshot showing that the folio is marked for enhanced due diligence.

4.3.6. Similarly, the RTA was asked to demonstrate if the folios have been marked as ones for enhanced due diligence when dividend remains unpaid for a certain period. The RTA verbally submitted (and subsequently showed) that the same can be checked in the 'dividend master' for the said folio. However, there is no pop-up enabled in the 'database Master' (which is different from 'dividend master') even for such folios where Dividend remains unpaid for 3 years or more.

4.3.7. Once it is established that the folios are NOT marked for enhanced due diligence in RTA's software as envisaged in the said Circular, it was attempted to ascertain whether the RTA is actually performing enhanced due diligence in folios where enhanced due diligence is supposed to be performed i.e. folios as listed out in clause 13 of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018.

4.3.8. For this purpose, folios where Change of Bank (COB) account was carried out during the period of inspection were checked as they were folios that were to be marked as enhanced due diligence folios since previously the Bank Account details were missing in those folios.

4.3.9. For verifying COB related due diligence, a total of 15 folios were given as sample to the RTA (initial samples given before the beginning of inspection) which were now checked to see if 'enhanced due diligence' was performed while processing the request for COB.

4.3.10. It may be noted that one of these 15 requests was a rejected request, one was a repeat request (as India Power Corp Limited was earlier known as DPSC Ltd and there were two separate entries for the same entity) and one request was only for email id updation (code for that in RTA system is code 9 which is also the code for COB request and that is why the confusion). So only 12 valid requests from the sample of initial 15 were to be verified. During the process of verification it was further found that there were 3 requests from unlisted companies as the RTA did not understand the pre-inspection questionnaire and submitted data related to unlisted companies also.

4.3.11. Therefore, Out of 9 valid requests, 5 requests were found to be have been processed with necessary 'enhanced due diligence'. Violation with respect to the remaining 4 folios is listed out in the Table 1 below:

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4.3.12. The summary of violations observed is provided below:

4.3.12.1. In all four cases, RTA has not taken the PAN card of shareholder to establish the identity of shareholder

4.3.12.2. In all four cases, no document to establish proof of address (i.e. Adhaar etc.) were sought from shareholder

4.3.13. Therefore, it can be concluded that that the RTA is not doing the necessary 'enhanced due diligence, consistently in all folios (including very high value folios as provided in Table 1 above) where enhanced due diligence is mandated to be performed.

4.3.14. The Noticee in this regard has submitted that, in terms of SEBI Circular No. SEBI/HO/MIRSD/DOPI/CIR/P/2018/73 dated April 20, 2018, our system provides TAG for enhanced due diligence for folios with unpaid dividend for more than three years. It also shows KYC fields those are not updated and accordingly further processing of service request are restricted. However, after the inspection as advised by the Inspection team, we have introduced the Pop-Up in addition to caution TAG.

4.3.15. As per SEBI, with respect to folios with missing PAN number and Missing bank Account details, no "system based alert" or pop-up etc. is enabled in Database Master for the RTA as visible from the screenshots taken for 50 such high value folios (Available at Annexure 12 and Annexure 13). The only explanation offered by the RTA that their "system shows KYC fields those are not updated and accordingly further processing of service request are restricted" seems to be of no consequence as the Circular is clear in stating that an alert mechanism must be enabled.

4.3.16. With respect to folios with dividend unpaid for more than 3 years, the RTA's submission that "Our system provides TAG for enhanced due diligence for folios with unpaid dividend for more than three years" is incorrect as the 'system' being referred to by the RTA is their 'Dividend Master' and not the 'Database Master' which was shown to the Inspection Team initially. 'Dividend Master' was shown subsequently to the Inspection team on being questioned regarding database of unpaid dividends. It must be noted that there is no reason for a user (RTA employee) to refer to the 'Dividend Master' while processing request for say Change of Address and therefore the user will never know about the requirement of Enhanced Due Diligence. Whereas if the folio is marked for Enhanced Due Diligence in the 'Database Master', even for processing Change of Address request (or any other request), the user will know and therefore perform Enhanced Due Diligence. Therefore the said TAG should be available in 'Database Master'.

4.3.17. The RTA has inter alia submitted that the pop-up has now been enabled in their systems, implying thereby that they did not have such a system in place earlier.

4.3.18. With respect to the violation brought out in the four folios where Change of Bank request was processed

4.3.18.1. Collecting Original Cancelled Cheque is the procedure for processing Change / updation of Bank Account details in normal folios. In folios requiring Enhanced Due Diligence at least proof of identity and address must also be sought as provided in clause 14 of Part II to Annexure of Circular dated April 20, 2018. Therefore it cannot be said that the RTA has done the necessary due diligence to "reasonably satisfy itself about the genuineness of the request" as mentioned in clause 14. Therefore Enhanced Due Diligence has not been performed.

4.3.18.2. Collecting Original Cancelled Cheque is the procedure for processing Change / updation of Bank Account details in normal folios. In folios requiring Enhanced Due Diligence at least proof of identity and address must also be sought as provided in clause 14 of Part II to Annexure of Circular dated April 20, 2018. Therefore it cannot be said that the RTA has done the necessary due diligence to "reasonably satisfy itself about the genuineness of the request" as mentioned in clause 14. Therefore Enhanced Due Diligence has not been performed.

4.3.18.3. Since RTA has sought PAN and Aadhaar, therefore the submission of the RTA may be accepted.

4.3.18.4. Collecting Original Cancelled Cheque is the procedure for processing Change / updation of Bank Account details in normal folios. In folios requiring Enhanced Due Diligence at least proof of identity and address must also be sought as provided in clause 14 of Part II to Annexure of Circular dated April 20, 2018. Therefore it cannot be said that the RTA has done the necessary due diligence to "reasonably satisfy itself about the genuineness of the request" as mentioned in clause 14. Therefore Enhanced Due Diligence has not been performed. The RTA claims that PAN was updated on Nov 17, 2020. This cannot be accepted as the Change of bank is a separate request as it was processed on a different date (Jan 15, 2021) and for each separate request, Enhanced Due Diligence must be performed. Therefore it can be concluded that Enhanced Due Diligence has not been performed.

4.3.19. Therefore neither does the RTA have a "system based alert" or pop-up etc. enabled in their 'Database Master' to warn the user regarding impending Enhanced Due Diligence in the folio nor is the RTA performing Enhanced Due Diligence consistently in all folios where Enhanced Due Diligence must be performed.

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

- *i. Clause 13 and 14 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018*
- *ii. Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993.*
- *iii. Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008*

4.4. Finding (4): Compliance of SEBI circular Dated April 20, 2018 & July 16, 2018- Maintenance of Register for Record of Destruction of Documents:

4.4.1. The Circular states that a physical register to record destroyed documents is to be maintained which the RTA is not maintaining. Secondly, the RTA is only maintaining records of share certificates destroyed that were received from shareholders for Demat (Record of other destroyed documents is not maintained). Also, the digital log of destroyed Demat certificates that the RTA shared with the inspection team did not have the following details as mandated in SEBI Circular dated April 20, 2018:

- *i. Name of authority authorizing the destruction*
- *ii. Date of authorization of destruction*

iii. Destroyed in whose presence (with signature)

4.4.2. The RTA submitted that it maintains such a register containing record of destruction of documents in electronic form only. The entire log for the period of inspection was shared with the inspection team (which was voluminous) of which the log for the period April 1, 2020 to June 30, 2020 was retained and is available at Annexure 14.

4.4.3. On verification it was observed that the said log at Annexure 14 contained data of share certificates destroyed which were received for Demat only. Other data and records destroyed by the RTA are not recorded anywhere for instance the Dividend Demand Draft / Warrants that return undelivered back to the RTA are destroyed by the RTA but no record of the same is kept.

4.4.4. The RTA in this regard has submitted that, We have system generated destruction register. We have destroyed only the Physical Share Certificate lodged along with Demat Request. Printout of the Demat cum Destruction register duly signed by Vice President and Compliance Officer was produced before inspection team during inspection. As regard destruction of other records, i.e Undelivered Dividend Warrants, Unused Stationery for Dividend Warrants, please be informed that the said documents are not yet destroyed kept in our Warehouse which was explained to the Inspection team during inspection.

4.4.5. As per SEBI, The RTA's submission that they have a system generated log may not be accepted since the Circular requires a physical register to be maintained. Also the submission that the system generated log was submitted to SEBI inspection team with signature of Vice President and Compliance Officer also may not be accepted since these signatures were done at the time of submission of data. However, the Circular envisages that the Physical register must contain the following details:

i. Name of authority authorizing the destruction
ii. Date of authorization of destruction
iii. Destroyed in whose presence (with signature)

4.4.6. None of these details are available in the system generated register submitted to SEBI team. Also, the submission that the RTA has never destroyed any other document (except original share certificates received for Demat) may not be accepted. Maintaining such a register is mandatory irrespective of whether documents are destroyed or not. In view of the above, it is alleged that the Noticee has violated the following:

i. Clause 15 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.") of the Annexure to SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018
ii. Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993.
iii. Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

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8. Vide emails dated January 19, 2024 and January 23, 2024 and letter dated January 25, 2024 Noticee sought extension of time to submit its reply to the SCN. Vide email and letter dated January 31, 2024, the Noticee sought copies of documents, as stated therein and again sought extension of time to submit its reply to the SCN. Vide email and letter dated February 12, 2024, Noticee requested for inspection of documents. In this regard, vide email dated May 21, 2024, Noticee was afforded an opportunity of inspection of documents which was availed by the Noticee on May 30, 2024. Vide letter dated June 10, 2024, Noticee sought copy of PIA in the matter which was provided to the Noticee on June 14, 2024.

9. In the interest of principles of natural justice, vide Hearing Notice dated June 25, 2024 Noticee was afforded with an opportunity of hearing on July 02, 2024. On the scheduled date of hearing i.e. on July 02, 2024, the Noticee availed the opportunity of hearing through its Authorised Representatives

(ARs) viz. Mr. Sumit Agrawal, Mr. Kavish Garach, Mr. B.N. Ramakrishnan, Mr. Nipun Mudaliar. During the hearing, the ARs relied upon and reiterated the submissions made by the Noticee vide its reply dated June 29, 2024. The ARs sought additional time till July 10, 2024 to make additional submissions as final and complete submissions in the matter, accordingly the same was allowed. Vide letter dated July 09, 2024, the Noticee submitted its additional submissions.

10. Key submissions of Noticee made vide letter dated June 29, 2024 and July 09, 2024, as its reply and additional submissions to the SCN respectively, are as under:

Submissions dated June 29, 2024:

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IV. PRELIMINARY SUBMISSIONS

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

17. At the outset, it is respectfully submitted that the allegations enumerated under the SCN against the Noticee are perverse in law as well as on facts. The same are untenable and it is vehemently denied that the Noticee have violated any provision of the SEBI Act, 1992 or the regulations framed thereunder. The SCN is based only on conjectures and surmises and is nothing but a figment of imagination and against the material evidence on record.

A. VIOLATIONS OF PRINCIPLES OF NATURAL JUSTICE

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

19. Vide letter dated January 31, 2024, the Noticee intimated SEBI that the SCN was incomplete since it contained certain pages / information in an illegible manner while there were pages of annexures which were completely missing and therefore requested legible copy of the said illegible pages. Thereafter, request seeking inspection of originals of documents was made through an Inspection Letter dated February 12, 2024. While SEBI granted the inspection opportunity on May 30, 2024, it failed to provide a majority of the requested documents.

20. In response to the inspection proceedings, the Noticee filed a letter dated June 10, 2024 indicating the documents provided / not provided vis-à-vis documents sought under the inspection letter and also sought a post inspection analysis. The copy of the letter dated January 31, 2024, Inspection Letter dated February 12, 2024, minutes of the proceedings of the inspection of documents on May 30, 2024 and letter dated June 10, 2024 are attached herewith as 'Annexure C Colly'

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

22. During the inspection conducted on May 30, 2024, SEBI provided only the missing and illegible pages of the SCN and annexures, as well as a copy of the Communique dated July 28, 2023, which was already included as Annexure 1 to the SCN. SEBI did not provide reasons for why the other documents requested in the Inspection Letter dated February 12, 2024, were not supplied.

23. Noticee had sought inspection of all relevant documents, but SEBI only provided a limited set of documents as stated above. SEBI ought to have granted inspection of all relevant documents and its failure to do so in violation of the principles of natural justice has clearly impeded the Noticee's ability to submit a comprehensive reply to the SCN.

24. The Inspection letter dated February 12, 2024 outlined a comprehensive list of documents requested during the inspection conducted on May 02, 2024. Unfortunately, the majority of these documents have not been provided which were also informed to SEBI vide letter dated June 10, 2024 as below:

…

25. This blatant disregard for the principles of natural justice and fair inquiry has hindered the Noticee's ability to adequately defend itself. In this regard, the Noticee relies on the following judgements:

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

(b) Supreme Court of India in the matter of Reliance Industries v. SEBI (2022) 10 SCC 181 requiring SEBI to act in a transparent and fair manner and it was held that '…The approach of SEBI, in failing to disclose the documents also raises concerns of transparency and fair trial. Opaqueness only propagates prejudice and partiality…' and '…another disconcerting aspect of this case that comes to the fore is SEBI's attempt to cherry-pick the documents it proposes to disclose. … Such cherry-picking by SEBI only derogates the commitment to a fair trial…';

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

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

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

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

26. *It is submitted that SEBI, without providing any rationale, has dismissed / rejected the request for obtaining file noting(s) or the opinion formed by the competent authority regarding the current proceedings, which blatantly violates the principles of natural justice and fairness. This denial has caused significant prejudice to the Noticee in as much as:*
    (a) *The Noticee has been deprived of access to crucial information regarding the opinion formed by the Competent Authority on the necessity of appointing an adjudicating officer to conduct an inquiry in the prescribed manner.*
    (b) *Furthermore, this prejudice is compounded by the fact that the Noticee remains unaware of the identity of the Competent Authority who evaluated the inspection report and determined that the minor instances noted therein could be construed as 'contraventions' or 'failures to comply' under Section 15HB of the SEBI Act, 1992.*
    (c) *Furthermore, it remains uncertain whether an independent assessment was conducted to prevent conflicts of interest between the inspection wing and the enforcement wing.*
27. *It is well-settled that SEBI is required to give file noting(s) containing the reasons for formation of opinion to initiate action against any person / entity by competent authority and reliance in this regard is placed on the judgment of the Hon'ble Gauhati High Court in the judgment of Sunita Agarwal v. Securities and Exchange Board of India and Another[1].*
28. *There have been cases where the Hon'ble SAT had to pass strictures against WTMs and referring the matter to the Finance Minister of India. In the case of Adventz Finance Private Ltd. v. SEBI and Anr[2], SEBI was directed to furnish internal notations/file notations upon an appeal by a noticee. Despite requests from the noticee, SEBI disregarded their pleas, and such requests were dismissed by the Assistant General Manager (AGM)/Manager without providing a reasoned order from the Whole-Time Member (WTM). SEBI defended these rejections before SAT on the ground that file notings are internal and not relevant for the noticees. SAT, noting the severity of the issue, referred the matter to the Hon'ble Finance Minister of India (FM).*
29. *In addition to the above, in the Mukesh D. Ambani v. SEBI (supra), SEBI had provided internal noting / file noting and the same is evident from the following observation of the SAT:*

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

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

V. SUBMISSIONS ON MERITS

31. *It is respectfully submitted that the alleged violations enumerated under the SCN against the Noticee are perverse in law as well as on facts. These allegations are not sustainable, and it is strongly refuted that the Noticee has contravened any provision of the SEBI Act, 1992, or any related rules, regulations, or circulars. The SCN is based without appreciating the volume of business, process undertaken and misapplication of law to the facts of the Noticee. The allegations in the SCN are negatived by the evidence on record.*
32. *The Overlooked Elements in the Show Cause Notice: It is submitted that the SCN does not consider the Noticee's response to SEBI inspection team providing detailed clarifications and explaining that there is no case of any violation whatsoever. The SCN fails to consider absence of any 'interest of investors' or 'interest of securities market' that has been hurt, when applying any regulation or circular under the SEBI Act, 1992. On the contrary, the SCN is against the objects of these legislations in as much as any penalty on the Noticee in the absence of any violation having been made out would run contrary to the objection of 'promoting the development of' securities market'.*

A. *NOTICEE EXERCISED ITS INDEPENDENT PROFESSIONAL JUDGEMENT WHILE ENTERING INTO AGREEMENTS / TRIPARTITE AGREEMENT BY THE RTA AND THENOTICEE HAS NOT VIOLATED PROVISIONS WITH RESPECT TO THE TEMPLATE / OPTIONAL DRAFT AGREEMENT OF SEBI PROVIDED UNDER THE RTA REGULATIONS AND SEBI CIRCULARS.*

33. *SEBI has under the impugned SCN alleged that the agreement executed by Noticee with Exide Industries Limited did not contain the following line provided under the Draft agreement available in Annexure B of Schedule II of SEBI Circular dated October 11, 1994:*
    "Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it"
34. *SEBI has alleged that the Noticee has tampered with the text of Draft Agreement issued by SEBI which may reduce the liability of RTA thereby violating:*
    (a) *Regulation 9A(1)(b) of RTA Regulations;*
    (b) *Draft Agreement in Annexure B of Schedule II of the SEBI Circular dated October 11, 1994; and*
    (c) *Clause 3 of Schedule III (Code of Conduct) r/w Regulation 13 of RTA Regulations.*

35. *The entire allegation proceeds on the fallacious assumption that the Notice is bound to adopt each provision of the draft agreement verbatim. On the contrary, paragraph 1 of the SEBI Circular dated October 11, 1994, itself states that the model agreement between RTA and Body Corporate can be suitably modified depending upon the circumstances of each case. Thus, the circular itself gives autonomy to the RTA to modify the agreement according to its own independent professional judgement. In pursuance of this right, the Noticee has exercised its independent professional judgement while executing*

[1] 2022 SCC OnLineGau 2325 (Para 90)
[2] SAT Order in Appeal No. 206 of 2016 dated July 15, 2016 (*Para 5-7, 9, 13, 14*)

the agreement between the RTA and Exide Industries Limited ("Exide") in terms of Regulation 13 of RTA Regulation and Clause 3 of Schedule III (Code of Conduct) of RTA Regulations.

36. *It is submitted that the aforesaid allegation of tampering with the text of draft agreement is completely perverse and the same ought to be withdrawn since incorporating all the clauses on 'as it is' basis is neither the requirement under the SEBI Circular dated October 11, 1994 nor the intention of SEBI.*
37. *Clause 1 of the SEBI Circular dated October 11, 1994 does not make it mandatory for the RTA to incorporate all the clause from the model / draft agreement provided by SEBI. The said clause states the following:*

> *"While the RTI / STA and the Issuer / body corporate may suitably modify the agreement depending upon the circumstances of each case, they should, as far as possible, observe the spirit behind the various clauses contained in the model agreements."*
>
> *(Emphasis Supplied)*

38. *The term 'as far as possible' indicates that the stipulation is not mandatory. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the matter of Osmania University v. V.S. Muthurangam and Ors[3] wherein the term 'as far as possible' was interpreted to mean the following:*

> *"8... Mr. Solicitor General is justified in his contention that Section 38 (1) of the Act recognizes flexibility and the expression `as far as possible' inheres in it an inbuilt flexibility"*
>
> *(Emphasis Supplied)*

39. *Similarly the Hon'ble Supreme Court in the case of State of M.P. v. Narmada Bachao Andolan and Another[4] has observed the following:*

> *"…*
> *"As far as possible"*
> *38. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary Motorola Inc.27 and High Court of Judicature for Rajasthan v. Veena Verma12.) Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case"*
>
> *(Emphasis Supplied)*

40. *It is evident from the above that the inclusion of phrases such as 'as far as possible' and 'depending upon the circumstances of each case' renders the clauses in the draft agreement non-mandatory. The only caveat provided under the said circular is "While doing so, it must also be ensured that neither party should reserve for itself any rights which would have the effect of diminishing in any way its liabilities and obligations under the Companies Act, 1956 and SEBI (Registrars to an Issue and Share Transfer Agents) Rules and Regulations, 1993". However, the same is not the case in the present matter.*

41. *In view of the above, it is submitted that the aforementioned clause must be regarded as non-mandatory. If SEBI intended to mandate the incorporation of all clauses in the draft agreement, it ought to have expressly stated so in the SEBI Circular dated October 11, 1994. Therefore, it is well settled that something which a statute does not provide cannot be expressly read into. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in Shiv Shakti Coop. Housing Society v. Swaraj Developers & Ors[5] wherein the following was observed:*

> *"It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74)) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided"*
>
> *(Emphasis Supplied)*

42. *It is also well settled that there is no presumption that a casus omissus exists and a Court should avoid creating a casus omissus where there is none and reliance in this regard is placed on Babita Lila v. Union of India[6] wherein the following was observed:*

> *"3. It is a trite law that there is no presumption that a casus omissus exists and a court should avoid creating a casus omissus where there is none. It is a fundamental rule of interpretation that courts would not feel the gaps in statute, their functions being jus discre non facere i.e. to declare or decide the law. In reiteration of this well- settled exposition, this Court in (2008) 306 ITR 277 (SC) Union of India and others vs. Dharmendar Textile Processors and others had ruled that it is a well settled principle in law that a court cannot read anything in the statutory provision or a stipulated provision which is plain and unambiguous. It was held that a statute being in edict of the Legislature, the language employed therein is determinative of the legislative intent. It recorded with approval the observation in Stock v. Frank Johns (Tipton) Limited (1978) 1 All ER 948 (HL) that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. The observation therein that, rules of interpretation do not permit the courts to do so unless the provision as it stands meaningless or doubtful and that the courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the statute, was underlined. It was proclaimed that a casus omissus cannot be supplied by the court except in the case of clear necessity and that reason for is found in the four corners of the statute itself but at the same time a casus omissus should not be readily*

[3] (1997) 10 SCC 741
[4] (2011) 7 SCC 639
[5] AIR 2003 SC 2434
[6] (2016) 9 SCC 647

inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

64. More recently this Court amongst others in Petroleum and Natural Gas Regulatory Board vs. Indraprastha Gas Limited and Others (2015) 9 SCC 209 had propounded that when the legislative intention is absolutely clear and simple and any omission inter alia either in conferment of power or in the ambit or expanse of any expression used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in Sree Balaji Nagar Residential Association vs. State of Tamil Nadu and Others (2015) 3 SCC 353 to the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise noticed in a statute or in a provision thereof had been a conscious legislative intendment."

(Emphasis Supplied)

43. *Reliance is also placed on M/s. Hiralal Ratanlal vs. STO[7] wherein the Hon'ble Supreme Court observed:*

> *"In construing a statutory provision, the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision says. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."*
>
> *(Emphasis Supplied)*

44. *Further, in Raghunath Rai Bareja v. Punjab National Bank[8] it was observed:*

> *"It may be mentioned in this connection that the first and the foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. Securities and Exchange Board of India [(2004) 11 SCC 641: AIR 2004 SC 4219]. As held in Prakash Nath Khanna v. CIT [(2004) 9 SCC 686] the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide Delhi Financial Corpn. v. Rajiv Anand [(2004) 11 SCC 625]. Where the legislative intent is clear from the language, the court should give effect to it, vide Govt. of A.P. v. Road Rollers Owners Welfare Assn. [(2004) 6 SCC 210] and the court should not seek to amend the law in the garb of interpretation"*
>
> *(Emphasis Supplied)*

45. *In any case, not inserting the aforesaid line cannot in any manner be considered to reduce or absolve the Noticee from any obligations / liability under either the RTA Regulations or relevant SEBI circulars since in any case an RTA is required to comply with SEBI Regulations as well as its applicable circular.*
46. *Further, Paragraph 3 of Schedule III of RTA Regulations i.e., Code of Conduct prescribes that an RTA / Share Transfer Agent ("STA") shall exercise due diligence, ensure proper care and exercise independent professional judgment at all times. Thus, the absence of the abovementioned clause (which is not mandatory) in the agreement with Exide from the Model Agreement prescribed under SEBI Circular dated October 11, 1994, was a legitimate exercise of independent professional judgment of the Noticee authorized by the concerned circular itself and hence, SEBI cannot sit in judgement over the Noticee's bona fide independent professional judgement.*
    In any case, the Noticee has rectified the alleged irregularity.
47. *Without prejudice to the above, it is submitted that the Agreement between the Noticee and Exide is a longstanding agreement that was first executed on December 12, 1997, and has been consistently renewed thereafter.*
48. *It is very much on record that the Noticee was in the process to executing a fresh agreement in line with the terms of Annexure B of Schedule II in SEBI Circular dated October 11, 1994, and the same was pending at negotiation stage with Exide.*
49. *The same was clearly pointed out that the Noticee has taken necessary step (without admitting any violation) to have these clauses included under its agreements. The same is evident from the letter dated April 21, 2022 (Annexure 4 to the SCN) and email dated August 10, 2022 (Annexure 7 to the SCN) of the Noticee which explicitly stated the following:*

    > *"Letter dated April 21, 2022*
    > *"The agreement with Exide Industries Ltd was executed long back and renewed thereafter through exchange of letters. The line "Transfer Agent shall .....reasonable control" was not included. We are already in process of execute a fresh agreement on the above line in terms of Annexure B of Schedule II in SEBI Circular."*
    >
    > *Email dated August 10, 2022*
    > *"With reference to your e-mail dated August 9, 2022, we would like to inform you that the draft of Agreement has been forwarded to the client and had a discussion on the same. They have more or less agreed on the terms of the Agreement and the matter is pending at their higher level which we hope will be resolved very soon."*

[7] AIR 1973 SC 1034
[8] (2007) 2 SCC 230

50. *Furthermore, the Noticee herein has entered into a fresh agreement with Exide in terms of the SEBI Circular dated October 11, 1994 which was executed on August 01, 2022 and the same was submitted before SEBI vide email dated August 19, 2022 immediately after execution which clearly states that "Transfer Agent shall ensure that adequate controls are established to ensure the accuracy of the reports furnished by it.". A copy of the agreement dated August 01, 2022 and email dated August 19, 2022 is attached hereunder as Annexure D.*

51. *It is pertinent to note that both under the Post Inspection Analysis of SEBI and the SCN it has been erroneously stated 'As on date, the violation of tampering with the text of the draft agreement issued by SEBI stands….' However, as stated hereinabove, the agreement executed with Exide on August 01, 2022, does contain the said clause. Therefore, violation if any, was merely venial which stood rectified even before the issuance of the SCN.*

52. *It is reiterated that that the purpose of inspection is not punitive. The Hon'ble Securities Appellate Tribunal had in the case of Samrat Holdings Ltd. v. SEBI[9] had observed that if a person proactively rectifies a mistake upon discovering new information, penalizing such person would not be justified for violation of law. The relevant extract is reproduced below:*

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

53. *Reliance is also placed on the judgment of Hon'ble SAT in the matter of DSE Financial Services Limited[10] wherein the court considered corrective measures undertaken by the Appellant therein and set aside the monetary penalty imposed by SEBI. It was observed:*

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

54. *Henceforth, the Noticee, having duly rectified the alleged irregularity, any attempt to penalize them for said alleged irregularity would be deemed unjust and unwarranted. Therefore, the Noticee has not violated Regulation 9A(1)(b) of RTA Regulations and SEBI Circular dated October 11, 1994. .*

Noticee is in compliance with the code of conduct under the RTA Regulations

55. *It is to be noted that the Noticee had been observing the highest standards of integrity, fairness, and professionalism in its working. It had worked with due diligence in its dealing with Exide and other companies on whose behalf the Noticee is acting as an RTA.*

56. *The Noticee had been co-operating with SEBI and as soon the SEBI had pointed out the alleged non-inclusion of one line in the agreements, steps were taken to rectify and the same was rectified much prior to the issuance of the SCN. Without admitting any liability, the Noticee has entered into an agreement with Exide in terms of SEBI Circular dated October 11, 1994. Therefore, it could not be said that the Noticee had failed to exercise due diligence and violated the RTA Regulations. To the contrary, the Noticee has been upholding the Code of Conduct prescribed under RTA and Intermediaries Regulation in its letter and spirit by ensuring proper care and exercising due diligence in its functioning.*

57. *In Chander Kanta Bansal v. Rajinder Singh Anand[11], the Hon'ble Supreme Court was concerned with amendment of pleadings under the Code of Civil Procedure, and placed reliance on the following definitions of 'due diligence':*

> *"10…The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the*

[9] 2001 SCC OnLine SAT 2.
[10] 2012 SCC OnLine SAT 159
[11] AIR 2008 SC 2234

party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial…."

(Emphasis Supplied)

58. *In this context the Queen's Bench Division in England & Wales, in the case of Peco Arts Inc V. Hazlitt Gallery Ltd.*[12] *interpreted the meaning of the term 'due diligence' in the following words.*

> *"Taking into account these authorities I conclude, first of all, that it is impossible to devise a meaning or construction to be put on those words which can be generally applied in all contexts because, as it seems to me, the precise meaning to be given to them must vary with the particular context in which they are to be applied. In the context to which I have to apply them, in my judgment, I conclude that reasonable diligence means not the doing of everything possible, not necessarily the using of any means at the plaintiff s disposal, not even necessarily the doing of anything at all, but that it means the doing of that which an ordinarily prudent buyer and possessor of a valuable work of art would do having regard to all the circumstances, including the circumstances of the purchase".*
>
> *(Emphasis Supplied)*

The aforementioned judgment has been adopted by the SAT in various judgements including UBS Securities Asia Ltd. v. SEBI[13] *and JM Mutual Fund v. SEBI*[14]*.*

59. *Placing reliance on the observation of the Hon'ble Supreme Court in the above matter, the Hon'ble Securities Appellate Tribunal (SAT) in Almondz Global Securities Limited v. SEBI*[15] *while discussing the scope of 'due diligence' to be exercised by merchant bankers, made the following observation:*

> *"This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances. Hon'ble Supreme Court in the case of Chander Kanta Bansal Vs. Rajender Singh Anand reported in MANU/SC/7310/2008 : 2008 (5) SCC 117 held that due diligence in law means reasonable diligence and doing "everything reasonable, not everything possible".*
>
> *(Emphasis Supplied)*

60. *In fact, it may be noted that SEBI itself has applied the test of reasonable person as was observed by Hon'ble Securities Appellate Tribunal in the matter of Sharedeal Financial Consultants Private Limited v. Chairman, SEBI:*[16]
61. *In addition to the above, SEBI in the case of Link Intime India Pvt. Ltd vide order dated May 20, 2022, relied upon the aforesaid cases and exonerated the Noticee therein:*

> *"41. In view of the facts brought out in the preceding paragraphs, the moot question that remains for consideration is whether the Noticee exercised proper due diligence or not Here I would like to draw the attention to the judgment of Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Cameo Corporate Services Limited vs Securities and Exchange Board of India (appeal no. Appeal No. 566 of 2019 decide on 26.11.2019) has, inter-alia, observed that……*
> *Further, I would also like to mention that in Chander Kanta Bansal v. Rajinder Singh Anand , the Hon'ble Supreme Court was concerned with amendment of pleadings under the Code of Civil Procedure, and placed reliance on the following definitions of 'due diligence'….*
> *From the above, it can be seen that the concept of due-diligence is not speculative but based on reasonable and expected actions founded in law. An obligation to act or omit to do has to be specifically prescribed by law especially when its breach has civil and penal consequences. As brought out in the preceding paragraphs 37-40, the Noticee has at various stages exercised reasonable due diligence and hence in view of the same, the allegations made in the SCN do not stand established."*

62. *In view of the above, it must be noted that the settled legal standard for due diligence is premised on whether the entity concerned did everything reasonable to discharge its legal obligation. In the present case, the Noticee, without admitting any violation, promptly remedied the alleged omission of a single line within the draft agreements with their clients. Moreover, it is untenable to assert that the Noticee failed to exercise due diligence, as the clauses within said draft agreements are non-mandatory. Consequently, the allegation of contravening Clause 3 of Schedule III (Code of Conduct) in conjunction with Regulation 13 of RTA Regulations lacks substantive foundation.*

B. *THE NOTICEE HAS BEEN IN COMPLIANCE WITH SEBI CIRCULAR DATED APRIL 20, 2018, AND JULY 16, 2018, WITH RESPECT TO THE MAINTENANCE OF SYSTEM LOG*

63. *SEBI has alleged that the Noticee did not track the data pertaining to change carried out in a folio i.e. change in signature, change in Bank account details etc by user from the front end. As per SEBI, such change carried once carried out should be available in the 'system log' of the Noticee indicating the date and time when the said change was carried out. Thus, according to SEBI, the Noticee has violated:*

    (a) *Clause 4 of Part II (Provisions with regard to Transfer / Transmission / Correction of errors etc.) of Annexure to SEBI Circular dated April 20, 2018;*
    (b) *Clause 3 and 16 of Schedule III (Code of Conduct) r/w Regulation 13 of RTA Regulations; and*
    (c) *Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of Intermediaries Regulations.*

    The alleged irregularity was rectified promptly by the Noticee.

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[12] *[1983] 3 All ER 193.*
[13] *SAT order dated September 09, 2005 in Appeal No. 97 of 2005);*
[14] *Appeal No.39/04 & 39A/04; Order dated November 22, 2004.*
[15] *SAT Order dated May 13, 2016 (Appeal No. 275/2014)*
[16] *SAT Order dated May 23, 2003(Appeal No. 111/2002)*

64. *It is reiterated that the purpose of inspection is not punitive and SEBI ought to take into consideration the steps undertaken by the RTA to rectify the alleged deficiency in maintenance of the system log.*
65. *It is submitted that as soon SEBI inspection team had pointed out, the Noticee has taken diligent steps to rectify the same. The same is evident from the SCN itself which provides:*
"4.2.5. The RTA was then asked to show what tracking have they enabled in their system now. The RTA submitted that system log being maintained now has mechanism to show as to:
i. which user has logged into their system on which date
ii. using which computer
iii. and has accessed data for which company"

66. *Further, even while responding to the SEBI findings vide letter dated April 21, 2022, the Noticee had submitted that:*

"We have since put in place tracking system to identify and record the user who has accessed / viewed and altered the field of the folios of the company i.e signature, address, bank details etc."
67. *Furthermore, the following system is in place in order to comply with SEBI Circular dated April 20, 2018 in true letter and spirit and the same were implemented immediately after receipt of SEBI Circular dated April 20, 2018:*

(a) any changes in Signature, Change in Bank Account details etc. are now routed through KYC updation by dedicated employees with separate User ID and Password. None of the front office user can change or modify any information. They can view the information only. Any changes / updation in KYC are being done through 'Maker/checker' system by dedicated employees with Audit trail.

(b) As and when any user login to the System with their dedicated user ID and password for viewing the related information like Folios, Dividend details etc. are recorded in the System log with date & time stamping. Hence system log as per SEBI Circulars is in place.
68. *Even if the contention of SEBI is that the Noticee did not have the requisite systems in place previously, the Noticee has taken prompt steps to incorporate all changes into the system as recommended by the Inspection Team. Further, the motive behind such inspections is not to penalize the RTAs but to ensure that the RTAs rectify such mistakes promptly. In Karvy Consultants Ltd. v SEBI[17], the Hon'ble SAT pointed out that:*

> *"21. None of the factors in our view have been seriously considered by the adjudicating officer. There is no doubt that there has been some oversight and carelessness on the part of the appellant. However, as pointed out by the High Court in SEBI vs. Cabot International Capital Corporation reported in (2004) 51 SCL 307 (BOM.) one cannot take a strict liability in cases of this nature. It all depends on the burden of work and the will and ability to rectify mistakes promptly as soon as the mistakes are pointed out by the shareholders. We do not expect the impossible from RTAs. At the same time, we expect the RTAs to act promptly to rectify any mistakes that are pointed out to them."*
>
> *(Emphasis Supplied)*

69. *Similarly, SEBI's own stand in past has been merely issuing a warning and not imposing any penalty in cases where the alleged irregularities pointed out during the inspection are rectified. In the case of Insight Share Brokers Pvt Ltd[18], it was observed that:*

> *"3.5 On a careful perusal of each of the charges and the reply of the broker, I find that the irregularities alleged to have been committed by the broker are minor and technical breaches. In the facts an circumstances of the case and on considering the explanation of the broker, I am inclined to accept the finding and recommendation of the enquiry officer.*
> *3.6 The following are considered as the mitigating factors*
> *1. There are no complaints against the broker with regard to the delay in payment or delivery of securities to the clients.*
> *2. The broker has stated that he rectified the anomalies pointed out in the inspection report.*
> *3.7 In view of the above, I am of the view that it would meet the ends of justice if a warning is given to the broker."*
>
> *(Emphasis Supplied)*

No complaints from the issuer companies

70. *It is submitted that maintenance of system log in accordance with SEBI Circular dated April 20, 2018 is the responsibility of the RTAs and issuer companies, and the same is evident from Clause 4 of Part II (Provisions with regard to Transfer / Transmission / Correction of errors etc.) of Annexure to SEBI Circular dated April 20, 2018 as extracted hereinbelow:*

> *"4. RTAs and Issuer Companies shall ensure that all updation in the folio records shall be enabled only through front end modules. No back-end entry/updation /correction should be permitted. RTAs and Issuer Companies shall ensure that "System Log" having complete details for any change (viz. nature of change, user access history, user identification, date/time of change etc.) must be maintained. This provision will come into effect after 90 days from the date of this circular"*
>
> *(Emphasis Supplied)*

71. *Please note that an RTA acts as an agent for its principal issuer companies. There is no allegation or finding that the issuer companies were denied any data or entries. SEBI has not claimed that any issuer companies had grievances or complaints against the Noticee. Therefore, finding a violation in this regard would be unfounded based on the facts presented in the SCN. Any adverse observation against the Noticee would contradict the intent of the circular, which aims to ensure correct data maintenance—a standard that the Noticee has met. Moreover, SEBI has not alleged that the Noticee failed to maintain the system log. The Noticee has asserted that their systems are periodically updated, and the SEBI inspection team was shown the complete system updates immediately after the inspection.*
72. *Accordingly, the Learned Adjudicating Officer is requested to recognize that, since the time of inspection, no issues remain unresolved that would warrant any penalty.*

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[17] *Order dated 13.06.2005 in Appeal No. 159 of 2004*
[18] *WTM Order No. dated January 06, 2006*

No Injury Caused to Any Investor

73. *The allegations against the Noticee that the folios are not being tracked is, at best, merely a technical violation which was rectified promptly. In the absence of any evidence that such a violation has caused any injury to any investor or has been detrimental to the stock market at large, it is reasonable to consider addressing this matter with a cautionary approach rather than punitive measures.*
74. *Further, allegations against the Noticee are premature and speculative as there is insufficient evidence to support the claim that any wrongdoing has occurred. Further, swift rectifications demonstrate a commitment to rectify any identified shortcomings, thereby challenging the assertion that a violation persists.*
75. *Based on the aforementioned reasons, as on date there is no violation of the alleged provision since even prior to the issuance of the SCN, they stood rectified and thus the alleged violations against the Noticee ought to be withdrawn.*

C. *THE NOTICEE HAS BEEN IN COMPLIANCE WITH SEBI CIRCULAR DATED APRIL 20, 2018, AND JULY 16, 2018, WITH RESPECT TO THE SYSTEM BASED ALERTS TO EXERCISE ENHANCED DUE DILIGENCE*

76. *It is alleged by SEBI that the Noticee did not have has not enabled any system-based alert or pop-up in its Database Master for the folios with missing PAN numbers and missing Bank Account details and folios with dividend unpaid for more than three (3) years. Further, the Noticee did not have enhanced due diligence performed while processing the requests for change of bank account details. SEBI during the inspection allegedly found that RTA's software did not have pop-up to show that such folios are marked for enhanced due diligence where PAN or bank account details were missing thereby violating:*
    (a) *Clause 13 and 14 of Part II (Provisions with regard to Transfer / Transmission / Correction of errors etc.) of Annexure to SEBI Circular dated April 20, 2018;*
    (b) *Clause 3 and 16 of Schedule III (Code of Conduct) r/w Regulation 13 of RTA Regulations;*
    (c) *Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of Intermediaries Regulations.*

Implementation of System Based Intimation for Folios Impending Enhanced Due Diligence Has Consistently Been In Force.

77. *The allegation against the Noticee that the RTA does not have "system-based alert" or pop-ups, enabled in their "Database Master" to warn the user regarding impending Enhanced Due Diligence in the folio, is false, baseless and without merit.*
78. *The Noticee, in its operational infrastructure, has established a system to assign a "TAG" for enhanced due diligence to folios of unpaid dividend accounts in the Dividend Master. Furthermore, for folios that remain un-updated, the Noticee has implemented restrictions on further processing. Tag was marked against each of such Folios where KYC was incomplete by which no front manager could process any Service Request without Enhanced Due Diligence. Further as submitted at the time of inspection, pop-up was also installed after it was pointed out during inspection team. A copy of such pop-up in folio is attached as 'Annexure E'.*
79. *In compliance with SEBI Circular dated April 20, 2018 and July 16, 2018 system based Tagging was implemented both in Dividend Register and Database by which no Service Request could be processed without enhanced due diligence. However, immediately after inspection the pop-up system was also implemented, immediately after the inspection i.e on March 25, 2022,ensuring compliance of the said SEBI Circulars. A copy of such pop-up in folio is attached as 'Annexure F'*
80. *Therefore, as on the date of issuance of SCN, the technical violation, if any, of not having a pop-up was not installed, stood rectified duly.*
81. *The Circular dated April 20,2018 does not expressly mandate the inclusion of "pop-ups" or prescribe a specific format for generating system-based alerts. The Clause 14 of the Circular imposes the duty on Issuer Companies/RTAs to conduct enhanced due diligence and ensure the authenticity of requests, it does not offer specific guidelines on the manner in which alerts are to be generated, allowing flexibility for RTAs to implement effective alert mechanisms in line with their operational systems. The Clause 14 is reproduced below for ease of reference:*

> *"14. RTAs shall have system-based alerts for processing of all transactions in such account folios referred above in para 13. In case any request for transactions is received from such folios, the Issuer Company and RTAs shall exercise enhanced due diligence. For the purpose of exercising enhanced due diligence, Issuer Companies and/or RTAs shall call for documents related to proof of identity/address, PAN and bank details, and such other additional procedures that would enable the Issuer Company/RTA to reasonably satisfy itself about the genuineness of the request."*

82. *Additionally, there is no proof provided in the SCN that the system of the RTA has been inadequate for ensuring enhanced due diligence of the folios or incapable of fulfilling its designated functions. Without prejudice, even if there was any violation, with respect to enhanced due diligence then the same was corrected and pop-was made available as soon as it was pointed out by the SEBI inspection team.*

83. *Further, the RTA Regulations prescribes an Internal Code to be developed by the RTA for governing its own operations and laying down appropriate conduct for its employees. This provides the flexibility to tailor operational guidelines and employee conduct in a manner deemed most effective. This regulatory scheme grants the RTA the authority to adopt measures it deems fit for enhancing due diligence without a specific mandate for "pop-ups" or predefined alert mechanisms. The Clause 27 of Schedule III (Code of Conduct) of SEBI (Registrar to and issue and Share transfer Agents) Regulation 1993 is reproduced below for ease of reference:*

> *"27. A Registrar to an Issue and Share Transfer Agent shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in carrying out its duties as a Registrar to an Issue and Share Transfer Agent and as a part of the industry. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests etc."*

84. *This regulatory provision underscores the importance of allowing RTAs to exercise discretion in determining the most suitable methods for ensuring compliance, fostering responsible conduct, and fulfilling their regulatory obligations. acknowledges the diversity of operations among RTAs and recognizes that a one-size-fits-all approach may not be suitable. In essence, the regulatory framework not only permits but encourages RTAs to exercise their judgment in adopting measures that they believe are most effective in achieving the objectives of enhanced due diligence. This reinforces the*

understanding that regulatory compliance is not a rigid checklist but rather an adaptive process that accommodates the diverse operational landscapes of RTAs.

85. *Moreover, even if the Noticee is held to be in default, the pop-up alerts have now been enabled in the Noticee's systems. The Hon'ble SAT in Karvy Consultants Ltd. (Supra) pointed out that strict liability cannot be taken in such cases and it depends on the ability of the RTA to rectify the mistakes promptly.*

When the words of the statute are clear, there is no need to take recourse to principles of interpretation.

86. *It is a well settled principle of law that the Court cannot read anything into a statutory provision which is plain and unambiguous. The literal rule of interpretation must be applied to the statute unless the reading of the statute literally would nullify the very object of the statute. The Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. In M/s. Hiralal Ratanlal(supra), the Hon'ble Supreme Court observed:*

> *"In construing a statutory provision, the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision says. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."*
>
> *(Emphasis Supplied)*

87. *Relying on the aforementioned principle, the Hon'ble Supreme Court in the decision of B. Premanand & Others v. Mohan Koikal & Others[19], held that:*

> *"It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB vs. Securities and Exchange Board, India, AIR 2004 SC 4219. As held in Prakash Nath Khanna vs. C.I.T. 2004 (9) SCC 686, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide Delhi Financial Corporation vs. Rajiv Anand 2004 (11) SCC 625. Where the legislative intent is clear from the language, the Court should give effect to it, vide Government of Andhra Pradesh vs. Road Rollers Owners Welfare Association 2004(6) SCC 210, and the Court should not seek to amend the law in the garb of interpretation."*
>
> *(Emphasis Supplied)*

88. *Thus, when the circular on plain reading holds that the RTA must adopt system-based alerts and complete enhanced due diligence to "reasonably satisfy itself about the genuineness of the request", it becomes evident that the directive is explicit and leaves no room for questioning the necessity or efficacy of such measures. The absence of explicit directives on a singular approach acknowledges the regulatory intent to grant flexibility to RTAs in determining the most effective means for compliance. Therefore, SEBI cannot assert that one method is superior to another, as long as the RTA adheres to the overarching objective of implementing system-based alerts and conducting enhanced due diligence to reasonably assure the genuineness of the requests.*

89. *Additionally, it is important to note that while Clause 13 of the SEBI Circular dated April 20, 2018, necessitates enhanced due diligence for specified folios but there is no explicit requirement for conducting due diligence at periodic intervals or upon the initiation of each transaction. A straightforward interpretation of the clause indicates that the transaction can proceed as long as the necessary procedures are implemented to the extent that the RTA is satisfied about the genuineness of the transaction. Thus, the claim of SEBI that the PAN of a certain folio was updated in November 17, 2020 and for a separate request received in the folio on January 15, 2021, the Noticee has failed to conduct enhanced due diligence is not on merits, as the gap between both the transactions is of less than two months. The Noticee is not obligated to conduct enhanced due diligence as long as it is satisfied about the genuineness of the transaction.*

90. *In addition to the above, there is no requirement under the Regulations or circular that for unpaid dividend the pop-ups should only be under the database master and not dividend master. The Noticee had during the inspection submitted that folios with unpaid dividend could be checked under the dividend master (Para 4.3.6 of the SCN). Additionally, in the response of the Noticee to the SEBI findings vide letter dated April 21, 2022, clearly mentioned that there was an appropriate 'TAG' system to identify the same. The relevant portion of the response is extracted hereinbelow for reference:*

> *"4.3.6. Similarly, the RTA was asked to demonstrate if the folios have been marked as ones for enhanced due diligence when dividend remains unpaid for a certain period. The RTA verbally submitted (and subsequently showed) that the same can be checked in the 'dividend master' for the said folio. However, there is no pop-up enabled in the 'database Master' (which is different from 'dividend master') even for such folios where Dividend remains unpaid for 3 years or more."*

91. *Furthermore, even if SEBI is of the view that the Noticee has inadvertently violated the aforesaid provisions, no penalty ought to be imposed since sufficient enhanced due diligence was undertaken:*

    (a) *SEBI itself acknowledged that in majority of the samples enhanced due diligence was performed. SEBI under Para 4.3.11 of the SCN clearly states that out of nine (9) valid request, five (5) requests were found to be have been processed with necessarily enhanced diligence and violation was found was only with respect to four (4) remaining folios. Purpose of inspection is not to penalize. It is not that all the folios were not fulfilling the criteria. Majority of the folio, SEBI has found them to be in compliance. Further, even with respect to those 4 folios which SEBI has alleged to be not in complaince, it is submitted that:*

Berger Paints India Ltd – Folio No. M04587.	*Shareholder is a Resident of USA and submitted copy of self-attested (i) PAN Card (ii) US Visa (iii) US Driving License (iv) copy of Bank Statement of Axis Bank (v) Cancelled Cheque No. 194068. Thereafter, Bank details were updated on the basis of original cancelled cheque no 194068 of Axis Bank Ltd bearing the name of shareholder printed and the amount of unpaid dividend credited to respective NRO Account through NEFT. (Annexure G).*

[19] Supreme Court order dated 16.03.2011 in Civil Appeal No. 2684 of 2007

	Hence it may please be observed that enhanced due diligence was conducted for this case as well as per SEBI guidelines.
Exide Industries Limited, Folio No. - 065517	*Shareholder is Limited Company and submitted (i) Self attested copy of PAN Card, (ii) Certificate of Incorporation, (iii) Front page of Bank Statement of Indian Overseas Bank, (iii) Original Cancelled Cheque & Original un-encashed Dividend Warrant.* *Thereafter, Bank details were updated on the basis of original cancelled cheque No. 961040 of Indian Overseas Bank bearing the name of shareholder printed and the amount of unpaid dividend credited to respective account through NEFT. (Annexure H).* *Hence it may please be observed that enhanced due diligence was conducted for this case as well as per SEBI guidelines.*
Exide Industries Limited, Folio No. - 025363	*Shareholder is a Resident individual and submitted (i) copy of PAN Card, (ii) Copy of Aadhaar Card, (iii) Copy of Client Master list for Bank Account Details. Accordingly, Bank details were updated and amount of unpaid dividend were credited to his Bank A/c No. 10041633486 with State Bank of India. (Annexure I)* *Hence it may please be observed that enhanced due diligence was conducted for this case as well as per SEBI guidelines.*
Berger Paints India Ltd – Folio No. S06859	*Shareholder is a Resident Individual and submitted (i)* *Self-attested copy of Aadhaar Card, (ii) Self attested copy of Passport, (ii) Signature attestation by Canara Bank, (iv) Original Cancelled Cheque & (v) Bank Statement of Canara Bank.* *Bank Statement reflects the credit of Dividend of Berger Paints for the year 2021. Thereafter, Bank details were updated on the basis of original cancelled cheque no 438753 of Canara Bank bearing the name of shareholder printed and the amount of unpaid dividend credited to respective account through NEFT. (Annexure J).* *Hence it may please be observed that enhanced due diligence was conducted for this case as well as per SEBI guidelines.*

(b) It has been alleged by SEBI under para 4.3.12 that RTA has not taken PAN of shareholders to establish the identity and proof of address. However, as stated above, it may be observed that in 3 cases, PAN were taken, and in the fourth case where instead of PAN, Aadhar and Passport were taken to justify the identity of the shareholder.

(c) Once pointed out by SEBI, the Noticee had taken appropriate steps to update the and pop-ups have been enabled. Post inspection care has been taken. Further, even SEBI has acknowledged under its SCN that the pop-up is now available.

92. SEBI even under Para 4.3.18 of the SCN has alleged that proof of identity and address must also be sought. However, as stated hereinabove, the proof of Identity and Address were obtained by way of Aadhar, Passport, Bank Statement as a measure of Enhanced Due Diligence

D. *THE NOTICEE HAS BEEN MAINTAINING THE REGISTER FOR RECORD OF DESTRUCTION OF DOCUMENTS.*

93. It is alleged by SEBI that the Noticee did not maintain physical register to record destroyed documents and also that the Noticee only maintained records of share certificates destroyed that were received from shareholders for demat and no other documents destroyed were recorded. Further, it is also alleged that the digital log of destroyed Demart certificates did not contain (i) Name of authority authorizing the destruction; (ii) Date of authorization of destruction; and (iii) Destroyed in whose presence (with signature) thereby violating:

(a) *Clause 15 of Part II (Provisions with regard to Transfer / Transmission / Correction of errors etc.) of Annexure to SEBI Circular dated April 20, 2018;*
(b) *Clause 3 and 16 of Schedule III (Code of Conduct) r/w Regulation 13 of RTA Regulations; and*
(c) *Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of Intermediaries Regulations.*

94. It is submitted that the Noticee has been maintaining the Register for Record of Destruction of Documents ("Register") in an electronic format and the same was produced before the inspection team of SEBI.

95. Paragraph 15 of the SEBI Circular dated April 20, 2018 does not specifically provide for maintenance of register in a physical format and the only requirement is with respect to maintenance of the aforementioned register. Clause 15 provides that:

> *"15. RTAs shall maintain a register containing details of records and documents destroyed. The register shall inter alia contain the following particulars: description of the records and documents destroyed, name of authority authorising the destruction, date of authorization of destruction, destroyed in whose presence (with signature) and date of destruction. The authenticity of the register shall be verified during internal audit. The register shall be maintained till perpetuity."*

96. It is reiterated that something which is not expressly provided, cannot be read into by SEBI. Thus, when the SEBI Circular dated April 20, 2018, itself has not provided for maintenance of a physical register, SEBI cannot on its own read such condition into the provisions of the aforementioned Circular. Further, The Register for Destruction of Share Certificates tendered for Dematerialization is done on quarterly basis and printed, signed by Compliance Officer and Vice President. Documents are destroyed by Compliance Officer in presence of Vice President. Board of RTA has authorised Compliance Officer to destroy the Share Certificates from time to time. The Compliance Officer puts his signature with date on the printed copy.

97. Further, it is a well-known fact that Physical Register gets damaged and not easily traceable at the time of use. Therefore, the Noticee has maintained the register in digital form.

98. The entire base of the allegations that law provides for physical register is based on misinterpretation of the SEBI circular which clearly shows non-application of mind and hence the allegation ought to be withdrawn.

99. In addition to the above, Schedule III to RTA Regulations itself provides for maintain electronic registers. Clause 20 of Schedule III to RTA Regulations provides that:

"A Registrar to an Issue and Share Transfer Agent shall take adequate and necessary steps to ensure that continuity in data and record keeping is maintained and that the data or records are not lost or destroyed. Further, it shall ensure that for electronic records and data, up-to-date back up is always available with it."

(Emphasis Supplied)

Therefore, any interpretation contrary to the same ought not to be taken by SEBI.

100. *Thus, the maintenance of Register by the Noticee was in compliance with the SEBI Circular dated April 20, 2018, and hence, there cannot be any violation of Intermediaries Regulation as alleged in the SCN.*

The requirement to maintain register is only for destroyed documents

101. *SEBI at para 4.4.6 has alleged that the submission of the Noticee that it has never destroyed any other document (except original share certificates received for Demat) cannot be accepted since such a register is mandatory 'IRRESPECTIVE OF WHETHER DOCUMENTS ARE DESTROYED OR NOT'.*

102. *It is submitted that such an interpretation of law is completely perverse since under the Circular dated April 20, 2018, Clause 15 clearly uses the term 'destroyed' by stating 'RTAs shall maintain a register containing details of records and documents destroyed'. Now to say that register has to be maintained whether document is destroyed or not is completely perverse and non-application of mind and against the true letter and intent of the circular. If no documents have been destroyed, it would be unreasonable to require a register documenting such nonexistent destruction.*

103. *Further, it is very much on record that the records pertaining to Undelivered Dividend Warrants, Unused Stationery for Dividend Warrant are not destroyed and are kept in the warehouse of the Noticee. Thus, no violation can be formulated for the same. The same was also submitted by the Noticee vide its letter dated April 20, 2022 wherein the following was stated:*

"We have system generated destruction register. We have destroyed only the Physical Share Certificate lodged alongwith Demat Request. Printout of the Demat cum Destruction register duly signed by Vice President and Compliance Officer was produced before inspection team during inspection. As regard destruction of other records, i.e Undelivered Dividend Warrants, Unused Stationery for Dividend Warrants, please be informed that the said documents are not yet destroyed kept in our Warehouse which was explained to the Inspection team during inspection."

Non-Maintenance of Details in the Register is merely technical in nature.

104. *It is an admitted fact that, in the present case, no loss has been caused to the shareholders/investors or the securities market. Furthermore, SEBI has not received a single complaint against the Noticee, and the investigation by SEBI was initiated of its own accord.*

105. *The absence of minor details like, Name of authority authorizing the destruction, Date of authorization of destruction and Destroyed in whose presence (with signature) are merely technical aspects as the absence of such data has not affected any shareholder / investor or the securities market.*

106. *The SAT had in the case of State Bank of India v. SEBI[20] had observed that a technical violation need not be penalized. The relevant extract is reproduced below:*

"11. Given the above facts and reasons, we do not find any justifiable reason to impose any monetary penalty in the present matters, as every technical violation need not be visited with monetary penalty. In these matters a warning is sufficient. Further, SEBI is at liberty to impose penalty for similar violations in future."

107. *Thus, penalizing the Noticee for such technical aspects would in no way advance the twin objects of investor protection and promotion and development of the securities market as envisaged by the SEBI Act.*

108. *In view of the aforesaid submissions, the Noticee submit that they have not violated any provision of the RTA Regulations, Intermediaries Regulations or the SEBI Circulars, as alleged in the SCN.*

109. *Therefore, the Noticee respectfully implores the Ld. Adjudicating Officer, to dispose off the SCN without any monetary penalty.*

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

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

111. *In this regard, it is evident that SEBI has not found any non-compliances with respect to the more serious charges of Investor service/ Complaints, Conditions of grant of registration or Anti-money laundering guidelines, violation of which would not only affect Our Client but investors at large.*

112. *In this regard, reliance can be placed on Hon'ble SAT in matters with respect to market intermediaries. Reference in this regard may be made to the matter of M/s. DSE Financial Services Limited v. SEBI (supra), which relies on the ratio propounded in Religare Securities Limited v. SEBI, and states that:*

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

(Emphasis Supplied)

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

114. *It is pertinent to note that the Hon'ble SAT in the matter of State Bank of India vs Securities and Exchange Board of India (supra) set aside the penalty imposed by the Adjudicating Officer considering that the violations were technical. The Hon'ble SAT held:*

[20] *SAT Order dated January 07, 2021 (Appeal No 304, 306 and 307/2020)*

"8. Therefore, though admittedly there is a violation but in the face of excruciating factors in delaying full compliance and therefore leading to a technical violation need not always result in penalty. The judgement of the Hon'ble Supreme Court in the matter of Bhavesh Pabari (supra) is quite relevant that factors under Section 15J of the SEBI Act is not exhaustive and the adjudicating authorities can look beyond, wherever genuine reasons/factors exist.

…

11. Given the above facts and reasons, we do not find any justifiable reason to impose any monetary penalty in the present matters, as every technical violation need to be visited with monetary penalty. In these matters a warning is sufficient."

115. *It is submitted that the purpose of inspection of books and accounts under the SEBI Act is to ensure compliance of intermediaries with the SEBI Act and the rules and regulations made thereunder. The purpose of inspection is supervisory and advisory but not punitive, unless culpable.*
116. *In this regard, the Hon'ble Securities Appellate Tribunal in Religare Securities Limited v. SEBI[21] held as under:*

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

(Emphasis Supplied)

117. *In fact, SEBI is empowered to register and regulate the working of intermediaries as well as call for information, undertake inspection, conduct inquiries and audit of Registrar to an Issue and Transfer Agents under the SEBI Act, 1992 as well as the RTA Regulations. SEBI routinely undertakes these functions and exercises its powers on various intermediaries registered with SEBI under Section 12 of the SEBI Act, 1992 including of Mutual Funds, Stockbrokers, Sub-brokers, Portfolio Managers, Merchant Bankers, Investment Advisors, Research Analysts, Underwriters, Credit Rating Agencies, etc.*
118. *Pursuant to such an inspection, SEBI has the power to take action including issuance of a letter for corrective action listing out Cases of non-compliance, and various Circulars / Guidelines issued thereunder from time to time, Cases of Deficiency, Cases of Advice or issues an Administrative Warning.*
119. *Thus, SEBI can correct any alleged lapses by issuing directions for corrective actions rather than take a harsh measure which would be disproportionate and perverse in facts and in law.*
120. *In this context, the Hon'ble SAT in UPSE Securities Limited v. SEBI[22] observed that:*

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

(Emphasis Supplied)

121. *This view was followed by the Hon'ble SAT in ACML Capital Markets Limited v. SEBI[23] wherein it was reiterated that:*

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

(Emphasis Supplied)

122. *Accordingly, the Noticee has taken all necessary steps within its power to remain compliant with the regulations. Therefore, it is submitted that, in keeping with the true intents and purposes of an inspection, appropriate and apposite steps have been taken by Noticee to obviate the issues identified.*
123. *The allegations made by SEBI that the Noticee does not have in place a system to track the logs of the users, was rectified immediately by the Noticee during the inspection period which was also recognised by SEBI in the Show Cause Notice, as reproduced below for ease of reference:*

"4.2.5. The RTA was then asked to show what tracking have they enabled in their system now. The RTA submitted that system log being maintained now has mechanism to show as to:

i. which user has logged into their system on which date
ii. using which computer
iii. and has accessed data for which company"

124. *Further, SEBI held that even after the tracking was enabled, the folios and also, the information in the folio which has been accessed was not being tracked. In this regard, the Noticee further added systems to ensure such information was also being tracked. This also has been acknowledged by SEBI in the SCN. The relevant para of the SCN is reproduced below for ease of reference:*

"4.2.9. The Noticee in this regard has submitted that, we have since put in place tracking system to, identify and record the user who has accessed / viewed and altered the 'field of the folios of the company i.e. signature, address, bank details etc"

125. *Thus, based on the above aforementioned submissions, it can be held that the systems were immediately put in place and the same was also, recognized by the inspection team during the Inspection Period. In light of these developments, the SCN cannot be deemed valid as it fails to clarify how the Noticee is still in violation of the Clause 4 of Part II of Annexure to SEBI Circular dated April 20, 2018. Violation if any, could merely be venial since the same stood rectified and further the purpose of inspection is not punitive.*
126. *In view of the above position it is submitted that this is not a fit case for an imposition of penalty pursuant to alleged discrepancies found during the aforesaid inspections of the Noticee undertaken by SEBI. The Ld. Adjudicating Officer is*

[21] *SAT Order dated June 16, 2011 (Appeal No. 23/2011)*
[22] *2011 SCC OnLine SAT 86.*
[23] *Order dated 29.06.2022 in Appeal No. 100 of 2020.*

requested to note that there is no incentive or motive for the Noticee to be engaging in alleged irregularities and there is no such finding by SEBI as well.

F. *THE SCN IS VAGUE AND INCOHERENT*

127. *The Show Cause Notice (SCN) submitted lacks clarity and the essential elements of a proper show cause notice. It does not provide details of how the Noticee is still held to be in violation of Clause 4 of Part II of Annexure to SEBI Circular dated April 20, 2018.*

128. *It is well settled that a show cause notice which does not contain any reasons is bad in law and in violation of principles of natural justice and reliance in this regard is placed on Gorkha Security Services v. Govt. (NCT of Delhi)[24] where the following was observed:*

> *"21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.*
>
> *22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz: (i) The material/ grounds to be stated on which according to the Department necessitates an action; (ii) Particular penalty/action which is proposed to be taken……."*
>
> *(Emphasis supplied)*

129. *The motive behind issuing a SCN is to assist the noticee understand the precise case set up against him which he has to meet. In Surender Kumar Jain V. Principal Commissioner, Delhi North Zone & Anr[25], it was observed by the Hon'ble Delhi High Court that:*

> *"4. Clearly, the impugned SCN fails to disclose any reason for the proposed action and is incapable of eliciting a meaningful response from the petitioner. It is well settled that Show Cause Notices are not meant to be issued mechanically to comply with a formality; the same are issued to serve the principles of natural justice and to enable the concerned authority to take an informed decision. The entire purpose of the Show Cause Notice is to enable the noticee to respond to the allegations on the basis of which an action is proposed. Tested on the aforesaid anvil, the impugned SCN does not qualify to be considered as a Show Cause Notice at all".*
>
> *(Emphasis Supplied)*

130. *Further, most of the allegations against the Noticee with respect to internal procedures, policies and system logs, lacking specificity on how such violations have affected the stock market or the investors at large. The vagueness coupled with the technical nature of the violations, calls into question the requirement of the adjudication proceeding for such a miniscule contravention.*

131. *Based on the aforementioned findings, it can be said that the SCN was issued prematurely without thorough assessment and proper application of mind. Thus, the SCN ought to be withdrawn immediately.*

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

132. *Without prejudice to the above, SEBI has on several occasions have either exonerated RTAs or decided to adopt a lenient view while deciding upon the penalty to be imposed upon RTAs for alleged violations of regulations by either with a warning or minimum penalty.*

133. *In the matter of Link Intime India Pvt Ltd in the matter of Atlanta Infrastructure and Finance Ltd[26], SEBI had held that:*

> *"34. Since, there was no procedure prescribed in applicable circular in respect of non-availability of the signature, the procedure specified in the aforesaid circular relating to material difference in signature/s of transferor/s on Transfer Dead/s vis-à-vis specimen signatures was not applicable in the instant case. The Noticee was well within its rights to adopt a standard procedure for such cases based on reasonable due diligence and then consistently follow the adopted procedure. Further, I also note that the Noticee issued notices to transferors informing them about the transfer requests lodged with Notice and seeking objections if they have any, within 15 days from the date of the letter. Noticee executed the transfers after more than 30 days from issuance of letters. There is nothing on record to indicate whether there was any objection raised by the transferors in respect of these transfer requests. I also note that there is dispatch proof on record in support of Noticee's claim of issuing letters/notices to the transferors.*
>
> *…*
>
> *36. In view of the above, material on record does not establish that these transfers were cases where there was material difference in the signature of the transferors on transfer deeds vis-d-vis specimen signatures recorded with the Company/STA. Therefore, the procedure specified at Sr. no. 03 in Norms for objection of SEBI RT| Circular No. 1(2000-2001) dated May 09, 2001, was not applicable in the impugned transfer of shares.*
>
> *37. Hence, I am of the view that based on material on record, allegation of violation of SEBI RTI Circular No. 1(2000-2001) dated May 09, 2001 by the Notices is not established.*
>
> *…*
>
> *39. In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticee vide SCN dated July 14, 2021, is disposed of."*
>
> *(Emphasis Supplied)*

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[24] *(2014) 9 SCC 105*
[25] *W.P.(C) 17700/2022 dated January 25, 2023*
[26] *SEBI Adjudication Order No. Order/MC/RM/2021-22/13952 dated October 28, 2021*

134. *The aforementioned order covers the case of the Noticee as the violations against the Noticee with respect to the internal procedures is not prescribed in the Circulars or the RTA regulations. Further, there are no objections or complaints with respect the systems and hence, the proceeding should be disposed off on these findings.*
135. *In the matter of 3i Infotech Limited order dated June 19, 2019 (WTM/GM/EFD/15/2019–20), after the personal hearing, the WTM warned the RTA to exercise due care and caution in conduct of its business but did not impose any penalty.*
136. *In the matter of ABS Consultants Private Limited (Order dated 01 February 2006), after the personal hearing, the WTM warned the RTA to be more careful in future in its dealings in the securities market and diligently adhere to the provisions of the SEBI Act 1992, the Regulations and the Rules made thereunder. The WTM did not impose any penalty upon the RTA in this case.*
137. *In the matter of Beetel Financial & Computer Services Private Limited (Order dated 03 August 2009), after the personal hearing, the WTM gave the benefit of doubt to the RTA and no penalty was imposed.*
138. *The Ld. Adjudicating Officer is requested to consider the orders issued by Whole-Time Members / co-ordinate adjudicating officers in similarly placed matters where inspection of intermediaries were conducted and numerous breaches were alleged. The details of such instances are delineated below for comprehensive understanding and comparison:*
139. *It has been held consistently that SEBI as a regulator must adopt a consistent and predictable approach. Reliance is placed on the decision of the Hon'ble Supreme Court of India in the matter of Securities and Exchange Board of India v. Sunil Krishna Khaitan (CIVIL APPEAL NO. 8249 OF 2013- Para 52).*
140. *Further, the Hon'ble Supreme Court has held in Securities and Exchange Board of India v. R.T. Agro (P.) Ltd.[27] that SEBI was not justified in penalizing a Company by taking a 'hyper-technical view' of the law. The matter related to certain related party transactions.*
141. *As has been previously considered by other WTMs, QJAs or Adjudicating Officers in cases involving SEBI-registered intermediaries, it is essential to evaluate the facts and circumstances of a case holistically rather than from the hyper-technical perspective adopted by the SEBI inspection team.*

H. *IMPOSING A PENALTY AGAINST THE NOTICEE WOULD, IN EFFECT, PENALIZE THE PARENT COMPANY, LINK INTIME, WHICH SHOULD BE AVOIDED*

142. *It is respectfully submitted that Link Intime India Pvt. Ltd. has acquired 99.999% shareholding, equivalent to 92,499 shares of the Noticee and 1 share held by the nominee thereby acquired 100% of the shares of the Noticee and is a Wholly Owned Subsidiary of Link Intime India Private Ltd with effect from December 2023 and the violations pertains to the inspection period prior to that i.e April 01, 2019, to October 30, 2020.*
143. *Under the approval granted by SEBI vide letter dated December 04, 2023 bearing no. SEBI/HO/MIRSD/MIRSDRACDoR2/P/OW/2023/48511/1 also noted that there was change in shareholding of the Noticee as below:*

"List of Shareholders						
Current Shareholding Pattern				*Proposed Shareholding Pattern*		
S No	*Shareholders name*	*% of Total Shares*	*Number of shares held*	*Shareholder's Name*	*% of Total Shares*	*Number of shares held*
1.	*Mrs Esha Banerjee*	*75.675%*	*7000*	*Link Intime India Pvt Ltd*	*99.999%*	*92499*
2.	*Mrs. Reeta Mandal*	*24.325%*	*22500*	*Mr. Kishor Thakkar (on behalf of Link Intime India Pvt Ltd)*	*0.0001%*	*1*
	Total	*100%*	*92500*		*100%*	*92500*

144. *Further, the said letter of SEBI also notes that there is change in control as below:*
4. Details of Directors: The present and proposed Directors pursuant to change in control shall be as given below:

Sr. No.	*Present Director*	*Proposed Director*
1	*Mr. Anjan Mandal*	*Mr. Kishor Purshottam Thakkar*
2.	*Mr. K. K Biswas*	*Mr. Sanjeev Mavji Nandu*
3.	*-*	*Mr. Anjan Mandal*

145. *From the above, it can be seen that the new management was not involved in the functioning of the Noticee company during the inspection period. SEBI has not alleged that the Noticee continued the contraventions as alleged or that the parent company, Link Intime, failed to strengthen the Noticee's systems. It is not the case of SEBI that there is any concern whatsoever since the time Link Intime has acquired the Noticee. Based on the same, the proceedings against the Noticee should be withdrawn or, alternatively, considered in favor of the Noticee.*

I. *NO PENALTY CAN BE IMPOSED ON NOTICEE FOR ANY ALLEGED VIOLATION.*
146. *Without prejudice to the above, even if it was found that the Noticee is in non-compliance of the provisions of the RTA Regulations as laid out in the SCN, no penalty can be imposed. It is abundantly clear that in absence of any investor complaint in this regard, that the actions of the Noticee have not adversely affected any rights or obligations of a third party.*
147. *It is also relevant to mention herein that, without prejudice the submissions that there has been no contravention on part of the Noticee as alleged or otherwise, the violations alleged in the Show Cause Notice are neither repetitive nor has the Noticee made any gain or avoided any loss in course of the same.*
148. *It is a well settled law that power to impose penalty includes power to impose no penalty in the given facts and circumstances. It is not that every breach or error is culpable even though it is possible to construe the same as a contravention. In a case, where a noticee demonstrates its bona fide and an authority is not able to demonstrate a noticee's mala fide, at the very least, discretion needs to be applied to provide benefit of doubt to such a noticee. The case of Noticee is squarely covered in this undisputed, settled principle.*
149. *The Noticee also respectfully submits that imposition of any penalty whatsoever is totally unjustified in the given facts and that the case of the Noticee requires serious consideration. The Noticee respectfully submits that any imposition of penalty would be completely contrary to canons of securities laws and jurisprudence. Further any imposition would irreparably prejudice the Noticee's reputation in the industry which has been built on the basis of integrity and excellence in rendering*

[27] *Order dated April 25, 2022 in CIVIL APPEAL NO. 2957 OF 2022*

services to its clients. The Noticee is neither guilty of conduct which is contumacious or dishonest, nor has the Noticee acted in conscious disregard of law or in defiance of law. The violations alleged in the SCN are neither repetitive nor has the Noticee made any gain or avoided any loss in course of the same.

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

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

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

152. *It is submitted that the judgment of the Hon'ble Supreme Court in the case of SEBI vs. Shriram Mutual Fund[28], is blindly applied by various Adjudicating Officers for imposition of monetary penalty by nitpicking few lines from the judgment stating 'In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not'.*

153. *However, if correctly interpreted, the said judgment only holds that mens rea is not an essential requirement of all contraventions of statutory obligations, and not that each contravention, no matter how trivial or irrelevant or innocent, has to be penalized. In fact, the subsequent judgments of the Hon'ble Supreme Court have clearly held that every infraction does not merit a penalty as apparently assumed by SEBI including in inspection cases. In fact, the Hon'ble Supreme Court in its subsequent judgment in Bharjatiya Steel Industries v Commissioner, Sales Tax, Uttar Pradesh[29], expressly referred to the judgment in the matter of SEBI vs. Shriram Mutual Fund (supra) and held that the concerned authority always has to exercise his discretion as to whether to levy a penalty or not, and that for the exercise of such discretion, existence of mens rea becomes a relevant factor. Thus, every contravention of statutory provisions, irrespective of how trivial or venial the breach is, does not merit levy of a penalty*

154. *Further, reliance is placed on the decision of the Hon'ble Supreme Court in decision in SEBI v. Bhavesh Pabari,[30] where the Hon'ble Court has held the Adjudicating Officers of SEBI to have sufficient discretion to impose penalties or exonerate entities by applying factors beyond Section 15J (a)(b)(c).*

155. *It is also pertinent to note the observations of the Hon'ble SAT in Piramal Enterprises Limited v. SEBI[31] which has observed as under:*

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

156. *Likewise, in the matter of P.G. Electroplast and others v. SEBI[32] the Hon'ble SAT while setting aside the monetary penalty imposed by the AO held:*

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

157. *It is further submitted that the Noticee 2 has an unblemished record. Therefore, any penalty no matter how small, shall have an adverse impact on the Noticee 2. It is also pertinent to note the further observations of the Hon'ble SAT in Piramal Enterprises Limited v. SEBI[33] which has observed as under:*

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

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

…'

[28] *(2006) 5 SCC 361*
[29] *(2008) 11 SCC 617*
[30] *2019 SCC OnLine SC 294.*
[31] *2019 SCC OnLine SAT 134.*
[32] *2019 SCC OnLine SAT 148.*
[33] *2019 SCC OnLine SAT 134.*

Additional Submissions dated July 09, 2024:

'….

***D.** Violation of Regulation 9A cannot be alleged in the facts of this case*

4. *SEBI has alleged under the SCN that the agreement executed by Noticee with Exide Industries Limited did not contain a line provided under the Draft agreement available in Annexure B of Schedule II of SEBI Circular dated October 11, 1994 i.e. 'Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it'. Due to the same, it was perversely alleged that Noticee has tampered with the text of Draft Agreement issued by SEBI which may reduce the liability of RTA thereby violating:*

(a) *Regulation 9A(1)(b) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulation, 1993 ("RTA Regulations");*

(b) *Draft Agreement in Annexure B of Schedule II of the SEBI Circular dated October 11, 1994; and*

(c) *Clause 3 of Schedule III (Code of Conduct) r/w Regulation 13 of RTA Regulations.*

5. *In this regard, it is submitted that under the facts and circumstances of the present matter, SEBI cannot allege that the Noticee has violated Regulation 9A(1)(b) of the RTA Regulations since the same was introduced only in the year 2006 vide the SEBI (Registrars to an Issue and Share Transfer Agents) (Amendment) Regulations, 2006, which came into effect on September 07, 2006.*

6. *In the present case, SEBI is alleging a violation of Regulation 9A(1)(b), which only came into force on September 7, 2006, while relying on a circular issued in 1994. This reliance is fundamentally flawed and legally untenable. The draft agreement provided by SEBI under its circular dated October 11, 1994, cannot be used as a basis to substantiate an allegation under a regulation that was not in existence at the time. SEBI's approach attempts to retroactively apply the provisions of Regulation 9A(1)(b), which is contrary to established principles of law.*

7. *Further, Regulation 9A of the RTA Regulations is not retrospective. It is well settled principle that retrospectivity cannot be presumed, unless there is clear intention in the new rule or amendment.*[34]

8. *In any case, as submitted in the reply to the SCN and also during the hearing:*

(a) *the draft agreement provided under SEBI Circular dated October 11, 1994 is merely a model agreement and which is non-mandatory and can be suitably modified depending upon the circumstances of each case. (reference – submissions made at para 36-46 of the reply to the SCN)*

(b) *Without prejudice, even before the issuance of the SCN, a fresh agreement dated August 01, 2022 was executed between the Noticee and Exide Industries Limited which was also sent to SEBI vide email dated August 19, 2022 (reference - submissions made at para 47-51 and Annexure D of the reply to the SCN)*

(c) *Therefore, concern if any, was already remedied as a part of inspection of the Noticee. It is well settled law that purpose of inspection is not punitive but remedial.*

B. Penalty under Section 15HB is a composite penalty

9. *It is submitted that under the SCN, SEBI has called upon the Noticee to Show Cause as to why an inquiry should not be held against it in terms of Rule 4(1) of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("Adjudication Rules"), and why penalty should not be imposed under Section 15HB of the SEBI Act, 1992 for the following four (4) alleged violations:*

10. *It is submitted that the Noticee has already provided a comprehensive response, refuting each and every allegation on its merits and clearly demonstrating that the present case does not warrant any penalty whatsoever. Furthermore, in its reply, the Noticee has elaborated that even if SEBI were to find any violation, the present case did not warrant any penalty and at best can only impose only the minimum penalty.*

11. *It is humbly submitted that all the alleged four violations are arising out of the same inspection which has been conducted by SEBI which i.e. a comprehensive inspection between March 03, 2022, and March 30, 2022. The period of inspection was from April 01, 2019, to October 30, 2020. Further, all these violations are similar to each other i.e pertains to records / systems maintained by the Noticee.*

12. *Without prejudice to the submissions made in the reply to the SCN, it is submitted that the penalty under Section 15HB is intended to be a composite penalty. Section 15HB does not mandate that each section or sub-section, regulation, or circular is to be individually penalized within the minimum prescribed penalty. Any other interpretation would render the provision otiose. Therefore, for all alleged violations, at most, only one composite penalty can be imposed, not four separate penalties.*

13. *In any case, it is reiterated that the purpose of inspection is not punitive and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant, which as on the date the Noticee is compliant.*

14. *In the past as well, in various cases pertaining to violations arising from an inspection of a registered intermediary, SEBI has imposed only a bare composite or consolidated minimum penalty for multiple violations and some of such cases are:*

15. *In view of the cases referred hereinabove, it is evident that SEBI has imposed a common bare minimum penalty under Section 15HB despite there being multiple violations.*

C. No penalty can be imposed u/s 15HB of the SEBI Act, 1992 for violation of a circular

34 (2021) 10 SCC 210 and (2015) 1 SCC 1

16. *It is respectfully submitted that Section 15HB does not empower the Ld. Adjudicating Officer to impose penalty for violation of a circular framed by SEBI.*

17. *Under the SCN SEBI has alleged that the Noticee has violated SEBI circulars i.e Circular dated October 11, 1994 and Circular dated April 20, 2018 for which it seeks to impose penalty u/s 15HB of the SEBI Act, 1992 and it is submitted that SEBI cannot invoke its powers u/s 15HB to levy penalty for violation of a 'circular'. In this regard, Section 15HB of the SEBI Act, 1992 is reproduced hereinunder:*

"15HB. Penalty for contravention where no separate penalty has been provided Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees"

(Emphasis supplied)

18. *From perusal of the aforesaid provision, it is clear that nowhere under the said provision the term 'circular' is used. SEBI circulars are neither a Central Government made 'rule' nor a SEBI made 'regulation'. It certainly cannot be a 'direction' which can only be issued u/s 11(4)(f) or 11B of the SEBI Act, 1992. The circulars issued by SEBI are issued under Section 11(1) of the SEBI Act, 1992 which does not deal with power to issue directions.*

19. *It is well settled that penal provisions have to strictly interpreted. Reliance in this regard is placed on State of Jharkhand v. Ambay Cements[35] wherein the Hon'ble Supreme Court observed:*

"26…It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed…"

20. *Therefore, since the term circular is not included in Section 15HB, SEBI ought not to read anything into the said provision as it is well settled that something which a statute does not provide expressly, cannot be read into.[36]*

….'

D. CONSIDERATION OF ISSUES AND FINDINGS:

11. The following issue arises for consideration in the instant matter:

Issue No. I:	Whether the Noticee had violated the provisions of SEBI RTA Regulations, SEBI Intermediaries Regulations and SEBI Circulars, as alleged?
Issue No. II:	If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, 1992?
Issue No. III:	If yes, what should be the monetary penalty that can be imposed upon the Noticee?

12. Before going into the merits of the case, it would be pertinent to firstly deal with the preliminary/ technical contentions raised by the Noticee as part of its replies to the SCN dated June 29, 2024 and July 09, 2024.

35 (2005) 1 SCC 368
36 Reliance is placed on: Shiv Shakti Coop. Housing Society v. Swaraj Developers & Ors (AIR 2003 SC 2434); Babita Lila v. Union of India (2016) 9 SCC 647; Hiralal Ratanlal vs. STO (AIR 1973 SC 1034); and Raghunath Rai Bareja v. Punjab National Bank (2007) 2 SCC 230

12.1. In this regard, the Noticee, as part of its replies to the SCN dated June 29, 2024 and July 09, 2024, inter alia contended that *'…Noticee had sought inspection of all relevant documents, but SEBI only provided a limited set of documents…SEBI ought to have granted inspection of all relevant documents and its failure to do so in violation of the principles of natural justice….SEBI, without providing any rationale, has dismissed / rejected the request for obtaining file noting(s) or the opinion formed by the competent authority regarding the current proceedings*…'

In this regard, the Noticee placed reliance on the following judgments of Hon'ble Supreme Court in the matter of T. Takano and Anr. v. SEBI and in the matter of Reliance Industries v. SEBI, Bombay High Court in the matter of Ashok Dayabhai Shah And Ors v. SEBI And Ors, Securities Appellate Tribunal in the matter of Mukesh D. Ambani v. SEBI and in National Stock Exchange of India Ltd. v. SEBI , Hon'ble Gauhati High Court in the judgment of Sunita Agarwal v. Securities and Exchange Board of India and Another, Adventz Finance Private Ltd. v. SEBI and Anr.

In this regard, I note that the relied upon documents relevant to the instant proceedings including the copy of Inspection Report had been provided to the Noticee as part of SCN and also to the ARs of the Noticee during the inspection. Further in this regard, as regards request seeking copy order relating to appointing the Ld. Adjudicating Officer etc., I note that Noticee had been provided with the copy of the communique of appointment of the Adjudicating Officer along with SCN itself.

Further in this regard, I also note that the request of the Noticee was not specific and /or vague /roving in nature in so far as the request was made inter alia stating, "*All the documents received, communications made by SEBI with any person in respect of the present proceedings, not provided along with the SCN, if any"* and "*Any adverse material available on record or any documents with SEBI evidencing anything in relation to the*

allegations against the Noticee" and *"Any statement recorded by SEBI during the inspection."*

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

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

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

12.2. In this regard, the Noticee, as part of its replies to the SCN dated June 29, 2024 and July 09, 2024, inter alia also contended *"the SCN fails to consider absence of any 'interest of investors' or 'interest of securities market' that has been hurt, when applying any regulation or circular under the SEBI Act, 1992*.

In this regard, I note that the contentions of the Noticee is vague and roving in nature in so far as Noticee has submitted that *'...when applying any regulation or circular under the SEBI Act…'*. Further in this regard, I also note that considering that regulated entities are under obligation to ensure compliance of inter alia the Regulations/ circulars issued by a regulatory body, the said contention of the Noticee is out of context and at best can be considered as mitigating factor.

12.3. In this regard, the Noticee, as part of its replies to the SCN dated June 29, 2024 and July 09, 2024, inter alia also contended that *'…. the SCN does not consider the Noticee's response to SEBI inspection team providing detailed clarifications and explaining that there is no case of any violation …'*.

In this regard, I note from material available on record that pursuant to the Inspection, SEBI sought comments of Noticee on the findings of inspection vide SEBI letter dated April 05, 2022. In this regard, SEBI analysed the findings vis-à-vis the replies of the entity and carried out post inspection analysis inter alia bringing out whether the replies of the Noticee were accepted or not accepted by SEBI. The copy of the post inspection analysis was provided to the Noticee vide email dated June 14, 2024, which has also been acknowledged by the Noticee in its reply dated June 29, 2024. Pursuant to the post inspection analysis, SEBI observed and alleged the violations of provisions of SEBI RTA Regulations, SEBI Intermediaries Regulations and SEBI Circulars and initiated instant proceedings in respect of the Noticee. In view thereof, Noticee's contention in this regard are devoid of merit and hence cannot be accepted.

12.4. Noticee as part of its reply to the SCN had inter alia also contended that *'…the scn is vague and incoherent…It does not provide details of how the Noticee is still held to be in violation of Clause 4 of Part II of Annexure to SEBI Circular dated April 20, 2018…'.*

In this regard, Noticee placed reliance on Gorkha Security Services v. Govt. (NCT of Delhi), Surender Kumar Jain V. Principal Commissioner, Delhi North Zone & Anr.

In this regard, I note that the SCN has evidently brought out the alleged violation of Clause 4 of Part II of Annexure to SEBI Circular dated April 20, 2018 under paragraph 4.2 of the SCN. I note that the allegation is with respect to the findings for the alleged violations during the inspection period. Therefore, the contention of the Noticee, in particular that '…*how the Noticee is still held to be in violation of Clause 4..',* are devoid of merit and hence not acceptable.

13. I now proceed to deal with the matter on merits as regards alleged violations in respect of the Noticee, as per the SCN.

Issue No. I: Whether the Noticee had violated the provisions of SEBI RTA Regulations, SEBI Intermediaries Regulations and SEBI Circulars, as alleged?

Agreements / Tripartite agreement entered into by the RTA:-

14. In this regard, SEBI inter alia observed and alleged that the draft agreement as prescribed by SEBI had been tampered with by RTA in its agreement with M/s Exide Industries Limited ('Exide').

In view thereof, it was inter alia alleged that Noticee had violated provisions of Regulation 9A(1)(b) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993; Draft Agreement in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994; Clauses 3 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations 1993.

14.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia read as under:

Regulation 9A(1)(b) of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993:

'…

[35][9A.Conditions of registration.—(1) [36][registration granted under regulation 8]] shall be subject to the following conditions, namely:-

…

(b)without prejudice to its obligations under any other law for the time being in force, it shall enter into a legally binding agreement with the body corporate or the person or group of persons for or on whose behalf it is acting as a registrar to an issue or a share transfer agent stating therein the allocation of duties and responsibilities between itself and such body corporate or person or group of persons, as the case may be;

…'.

Draft Agreement in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994:

'…

13. Transfer Agent shall use its best efforts to perform the duties assigned to it in terms of this agreement with the utmost care and efficiency. Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it. Transfer Agent shall, however, not be responsible or liable for any direct or consequential omission / commission committed by the Transfer Agent in good faith or in absence of its negligence or breach of the terms of this agreement or due to reasons beyond the Transfer Agent's reasonable control.

…'.

Clauses 3 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations 1993:

'…

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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.

…

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[Regulation 13]
CODE OF CONDUCT

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.

…'.

14.2. In this regard, I note from material available on record that SEBI had checked agreement of Noticee inter alia with Exide Industries Limited (Letter dated March 26, 2021 from Exide Containing a copy of the Agreement between RTA & Exide). SEBI observed that agreement with Exide Industries Limited did not include "Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it" as stated in Clause 13 of Draft Agreement under Annexure B of Schedule II of SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994.

14.3. In this regard, I also note from material available on record that in its reply to the findings of inspection, Noticee had submitted before SEBI that *'…The agreement with Exide Industries Ltd was executed long back and renewed thereafter through exchange of letters. The line "Transfer Agent*

shall……reasonable control" was not included. We are already in process of execute a fresh agreement on the above line in terms of Annexure B of Schedule II in SEBI Circular….'.

14.4. In this regard, I note from material available on record that the reply of the Noticee that agreement was executed long back was not accepted by SEBI as the Draft Agreement issued by SEBI vide Circular "Instruction to Registrars to an Issue/ share Transfer Agents" was issued in the year 1994. I also note from material available on record that SEBI had sought a copy of new agreement. Vide email dated Aug 8, 2022, the RTA had submitted that "*the draft of Agreement has been forwarded to the client (Exide Industries Ltd) and had a discussion on the same. They have more or less agreed on the terms of the Agreement and the matter is pending at their higher level which we hope will be resolved very soon.".* In this regard, SEBI observed and alleged that as on date of initiation of instant proceedings, the violation of tampering with the text of Draft Agreement issued by SEBI remained.

14.5. In this regard, Noticee, as part of its reply to SCN dated June 29, 2024 inter alia contended that *'…paragraph 1 of the SEBI Circular dated October 11, 1994, itself states that the model agreement between RTA and Body Corporate can be suitably modified depending upon the circumstances of each case… incorporating all the clauses on 'as it is' basis is neither the requirement under the SEBI Circular dated October 11, 1994 nor the intention of SEBI… Clause 1 of the SEBI Circular dated October 11, 1994 does not make it mandatory for the RTA to incorporate all the clause from the model / draft agreement provided by SEBI… The term 'as far as possible' indicates that the stipulation is not mandatory…aforementioned clause must be regarded as non-mandatory. If SEBI intended to mandate the incorporation of all clauses in the draft agreement, it ought to have expressly stated so in the SEBI Circular dated October 11, 1994…'.*

In this regard, Noticee placed reliance on judgment of the Hon'ble Supreme Court in the matter of Osmania University v. V.S. Muthurangam and Ors, M.P. v. Narmada Bachao Andolan and Another, Shiv Shakti Coop. Housing Society v. Swaraj Developers & Ors, Babita Lila v. Union of India, M/s. Hiralal Ratanlal vs. STO, in Raghunath Rai Bareja v. Punjab National Bank,

In this regard, in my opinion each case is peculiar in its facts and circumstances based on which the violations are ascertained.
I note from the text of the circular dated October 11, 1994 that *'…While the RTI / STA and the Issuer / body corporate may suitably modify the agreement depending upon the circumstances of each case, they should, as far as possible, observe the spirit behind the various clauses contained in the model agreements….'.* In this regard, I note that in terms of the aforesaid circular the clauses maybe suitably modified depending on the circumstances of each case and I also note that the aforesaid circular evidently emphasises to observe the spirit behind the various clauses contained in the model agreement.

I note that clause 13 of the draft agreement inter alia casts obligation on the Noticee to ensure that adequate control are established to ensure the accuracy of the reports furnished by it, as underlined below:

'…

13. Transfer Agent shall use its best efforts to perform the duties assigned to it in terms of this agreement with the utmost care and efficiency. Transfer Agent shall ensure that adequate control are established to ensure the accuracy of the reports furnished by it. Transfer Agent shall, however, not be responsible or liable for any direct or consequential omission / commission committed by the Transfer Agent in good faith or in absence of its negligence or breach of the terms of this agreement or due to reasons beyond the Transfer Agent's reasonable control.

…'.

(Emphasis supplied)

I note that the Noticee had removed the text as underlined above from its agreement with Exide. However, in this regard, I note from material available on record that SEBI had observed that such modification was not observed in other agreements. In my view, by not incorporating the said text in its agreement with Exide, the Noticee has failed to observe the spirit

behind clause 13 of the draft agreement and diluted its obligation wherein Noticee is inter alia required to ensure that adequate control are established to ensure the accuracy of the reports furnished by it.

In view thereof, the contention of the Noticee in this regard, are devoid of merit and hence not acceptable.

14.6. In this regard, Noticee, as part of its reply to SCN dated July 09, 2024 inter alia contended that *'…SEBI is alleging a violation of Regulation 9A(1)(b), which only came into force on September 7, 2006, while relying on a circular issued in 1994…'.*

In this regard, I note that as regards agreement to be entered between RTA and Issuer/ body corporate, the Circular dated October 11, 1994 draws reference to rule 4(1)(b) of the SEBI (Registrars to an Issue and Share Transfer Agents) Rules, 1993 which inter alia read as under:

> *'…*
> ***Conditions for grant or renewal of certificate***
> *4. (1) The Board may grant or renew a certificate to a registrar to an issue or a share transfer agent subject to the following conditions namely :*
> *(b) without prejudice to the obligations under any other law the registrar to an issue or share transfer agent, shall enter into a valid agreement with the body corporate or the person or group of persons for or on whose behalf he is buying or selling or dealing in securities as a registrar to an issue or as a transfer agent and the said agreement amongst other things may define the allocation of duties and responsibilities between him and such body corporate or persons or group of persons, as the case may be;*
> *…'*

In this regard, I note that rule 4(1)(b) of the SEBI (Registrars to an Issue and Share Transfer Agents) Rules, 1993 was rescinded vide notification Notification N0. SO 1455(E), dated 7.9.2006, w.e.f. 7.9.2006.

Pursuant to this, vide SEBI (Registrars to an Issue and Share Transfer Agents) (Amendment) Regulations, 2006, Regulation 9A titled as 'Conditions of registration' was inserted in Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations,1993 wherein Regulation 9A(1)(b) has similar requirements in so far as RTAs are required to state in the agreement about the allocation of duties and responsibilities between itself and such body corporate or person or group of persons. I note that both the Regulation and circular have to be read collectively and the legally binding agreement, as required under Regulation 9A ought to be in the manner as prescribed under SEBI

Circular dated October 11, 1994. In view thereof, the contention of the Noticee are devoid of merit and hence not acceptable.

14.7. In this regard, I also that Noticee, as part of its reply to SCN dated June 29, 2024 had inter alia submitted that '…*the Noticee herein has entered into a fresh agreement with Exide in terms of the SEBI Circular dated October 11, 1994 which was executed on August 01, 2022 and the same was submitted before SEBI vide email dated August 19, 2022 immediately after execution which clearly states that* "*Transfer Agent shall ensure that adequate controls are established to ensure the accuracy of the reports furnished by it*."…'.

14.8. In view thereof, I find that the allegation in respect of the Noticee that draft agreement as prescribed by SEBI had been tampered with by RTA in its agreement with M/s Exide Industries Limited, stands established. Therefore, I hold that the Noticee had violated provisions of Draft Agreement in Annexure B of Schedule II in SEBI Circular "Instruction to Registrars to an Issue/ share Transfer Agents" dated October 11, 1994; Clauses 3 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrars to an Issue and Share Transfer Agents) Regulations 1993.

Compliance of SEBI circular Dated April 20, 2018 & July 16, 2018- Maintenance of system log:-

15. In this regard, SEBI inter alia observed and alleged that the system logs containing records of changes carried out in a folio was not being maintained by RTA.

In view thereof, it was inter alia alleged that Noticee had violated Clause 4 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No.

SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

15.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia read as under:

Clause 4 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018:

'…

4. RTAs and Issuer Companies shall ensure that all updation in the folio records shall be enabled only through front end modules. No back-end entry/updation /correction should be permitted. RTAs and Issuer Companies shall ensure that "System Log" having complete details for any change (viz. nature of change, user access history, user identification, date/time of change etc.) must be maintained. This provision will come into effect after 90 days from the date of this circular.

…'

Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993:

'…

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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.

…'.

Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008:

'…

Code of conduct.

16. An intermediary and its directors, officers, employees and key management personnel shall continuously abide by the code ofconduct specified in Schedule III.

SCHEDULE III

SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008
[See regulation 16]

V.COMPLIANCE AND CORPORATE GOVERNANCE

5.6 An Intermediary shall maintain an appropriate level of knowledge and competency and abide by the provisions of any act, regulations, circulars and guidelines of the Central Government, the Reserve Bank of India, the Board, the stock exchange or any other applicable statutory or self regulatory or other body, as the case may be, and as may be applicable to the Intermediary in respect of the business carried on by such Intermediary. An Intermediary shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

…'.

15.2. In this regard, I note from material available on record that during the inspection, RTA had confirmed to SEBI that they have separate login id for each user and accordingly a log was created for every login from each user id which can be accessed by the IT team of the RTA only. The inspection team was provided with two such login ids to check company wise and folio wise information for the purpose of inspection. SEBI queried the RTA to generate the log for all users for March 15, 2022 since on that day the inspection team had accessed many folios to check enhanced due diligence requirements.

15.3. In this regard, SEBI observed that although the RTA had verbally informed earlier that they were tracking which user was accessing database of which company, however, when asked to produce such data log for verification, the RTA said that they have enabled the same only on March 17, 2022 and the log of such user wise data log was not available for March 15, 2022. The RTA submitted that system log being maintained had mechanism to show as to: which user had logged into their system on which date using which computer and had accessed data for which company. However, SEBI observed that there was no tracking with respect to the following i.e. which folio of a particular company was accessed by the user and the user had accessed which information for a folio viz., signature of shareholder, Bank details of shareholder etc.

15.4. In this regard, I note from material available on record that in its reply to the findings of inspection, Noticee had inter alia submitted to SEBI that '…we

have since put in place tracking system to, identify and record the user who has accessed / viewed and altered the 'field of the folios of the company i.e signature, address, bank details etc…'

15.5. In this regard, SEBI had inter alia observed that in terms of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, all updation in a folio shall be allowed only from front end and the RTA had to ensure that a 'System Log' having complete details of any change must be maintained. The term 'change' refers to any change in signature, address, Bank Account details, change in / updation of PAN number etc; the user of the front end; date and time of change.

15.6. In this regard, I note that submissions of the Noticee are in the nature of admission in so far as the Noticee as part of its reply to the SCN dated June 29, 2024 had inter alia submitted that *'…The alleged irregularity was rectified promptly by the Noticee….as soon SEBI inspection team had pointed out, the Noticee has taken diligent steps to rectify the same…..'* .

15.7. In this regard, I also note that the Noticee, as part of its reply to the SCN dated June 29, 2024 has inter alia also submitted that *'…the motive behind such inspections is not to penalize the RTAs but to ensure that the RTAs rectify such mistakes promptly…No complaints from the issuer companies…No Injury Caused to Any Investor…*'.

In this regard, I note that system logs containing records of changes carried out in a folio were not being maintained by RTA, as already brought out above and also admitted by the Noticee in its reply to the SCN dated June 29, 2024. Having regard to this, the contentions of the Noticee with respect to no injury to investor or no complaints from issuer, would not absolve the violations existing during the inspection period. In view thereof, the contention of the Noticee in this regard are devoid of merit and hence not acceptable.

16. In view thereof, I find that the allegation in respect of the Noticee that the system logs containing records of changes carried out in a folio were not being maintained by RTA, stands established. Therefore, I hold that Noticee had violated Clause 4 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

Compliance of SEBI circular Dated April 20, 2018 & July 16, 2018- System based alerts to exercise Enhanced Due Diligence for cases as listed out in clause 13 of SEBI Circular dated April 20, 2018:-

17. In this regard, SEBI inter alia observed and alleged that no system based alerts or pop ups were enabled with respect to folios with dividend unpaid for more than three years, missing PAN, missing bank account details. Further, no enhanced due diligence was performed while processing three requests for change in bank account details.

In view thereof, it was inter alia alleged that Noticee had violated Clause 13 and 14 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

17.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia read as under:

Clause 13 and 14 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI 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:

i.Where dividend/interest/redemption remains unpaid for three years & above
ii.PAN / bank account details not available in the folio.
iii.Unclaimed suspense account constituted pursuant to SEBI (Listing Obligations and Disclosure Requirements) Regulations.
iv.IEPF suspense account set up pursuant to Companies Act 2013.
v.Any other stringent criteria as decided by the Issuer Company and the RTAs.
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. In case any request for transactions is received from such folios, the Issuer Company and RTAs shall exercise enhanced due diligence. For the purpose of exercising enhanced due diligence, Issuer Companies and/or RTAs shall call for documents related to proof of identity/address, PAN and bank details , and such other additional procedures that would enable the Issuer Company/RTA to reasonably satisfy itself about the genuineness of the request.

Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993:

'…

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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.
…'.

Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008:

'…

Code of conduct.

16. An intermediary and its directors, officers, employees and key management personnel shall continuously abide by the code of conduct specified in Schedule III.

SCHEDULE III
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008
[See regulation 16]

V.COMPLIANCE AND CORPORATE GOVERNANCE

5.6 An Intermediary shall maintain an appropriate level of knowledge and competency and abide by the provisions of any act, regulations, circulars and guidelines of the Central Government, the Reserve Bank of India, the Board, the stock exchange or any other applicable statutory or self regulatory or other body, as the case may be, and as may be applicable to the Intermediary in respect of the business carried on by such Intermediary. An Intermediary shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

…'.

17.2. As regards enhanced due diligence with respect to folios where PAN and Bank Account details of shareholder were missing, I note from material available on record that the RTA was asked by SEBI to provide a list of the top 5 shareholders (by number of shares held) each for its top 10 most active companies where either PAN number or Bank Account details or both were missing. For these 50 folios, SEBI checked whether the RTA's software had listed them out as folios marked for enhanced due diligence. SEBI observed that the RTA's software did not have any pop-up or any other similar mechanism in its software's master data to show that these folios were marked for enhanced due diligence.

17.2.1. In this regard, I note from material available on record that in response Noticee's reply to the findings of inspection, SEBI observed that the only explanation offered by the RTA that their *"system shows KYC fields those are not updated and accordingly further processing of service request are restricted"* seems to be of no consequence as the Circular was clear in stating that an alert mechanism must be enabled.

17.2.2. In this regard, the Noticee, as part of its reply to the SCN dated June 29, 2024 inter alia had contended that *'…Tag was marked against each of such Folios where KYC was incomplete by which no front manager could process any Service Request without Enhanced Due*

Diligence. Further as submitted at the time of inspection, pop-up was also installed after it was pointed out during inspection team…'.

In this regard, I note that the submissions of the Noticee as part of its reply dated June 29, 2024 are in the nature of admission in so far as the Noticee has submitted that '…*pop-up was also installed after it was pointed out during inspection team…'.*

Further in this regard, I also note that in terms of para 14 of the SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, RTAs are inter alia required to have system based alerts for processing of all transactions in such account folios referred in para 13 of the SEBI Circular dated April 20, 2018 including folios where PAN / bank account details are not available. In this regard, I note from that the Noticee has not demonstrated with relevant details and supporting documents that it had system based alerts with respect to such folios during the inspection period. In my view, the contention that pop-ups were installed after inspection, would not absolve the violations existing during the inspection period. In view thereof, the contention of the Noticee in this regard are devoid of merit and hence not acceptable.

17.3. As regards folios with dividend unpaid for more than three years, I note from material available on record that SEBI had asked the RTA to demonstrate if the folios had been marked as ones for enhanced due diligence when dividend remains unpaid for stated period. The RTA verbally submitted (and subsequently showed) that the same can be checked in the 'dividend master' for the said folio. However, there was no pop-up enabled in the 'database Master' (which is different from 'dividend master') even for such folios where Dividend remains unpaid for three years or more.

17.3.1. In this regard, I note from material available on record that in response to Noticee's reply to the findings of inspection, SEBI observed that the RTA's submission that "Our system provides TAG for enhanced due diligence for folios with unpaid dividend for more than three years" was incorrect as the 'system' being referred to by the RTA was their 'Dividend Master' and not the 'Database Master' which was shown to the Inspection Team initially. SEBI observed that there was no reason for a user (RTA employee) to refer to the 'Dividend Master' while processing request for Change of Address and therefore the user will never know about the requirement of Enhanced Due Diligence. Whereas if the folio was marked for Enhanced Due Diligence in the 'Database Master', even for processing Change of Address request (or any other request), the user will know and therefore perform Enhanced Due Diligence. Therefore the said TAG should be available in 'Database Master'.

17.3.2. In this regard, the Noticee, as part of its reply to the SCN dated June 29, 2024 inter alia had contended that *'…system based Tagging was implemented both in Dividend Register and Database by which no Service Request could be processed without enhanced due diligence. However, immediately after inspection the pop-up system was also implemented, immediately after the inspection i.e on March 25, 2022, ensuring compliance of the said SEBI Circulars…. there is no requirement under the Regulations or circular that for unpaid dividend the pop-ups should only be under the database master and not dividend master.'.*

In this regard, I note that in terms of para 14 of the SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, inter alia RTAs are required to have system based alerts for processing of all transactions in such account folios referred in para 13 including folios where dividend/interest/redemption remains unpaid for three years &

above. In this regard, I note that the Noticee has not demonstrated with relevant details and supporting documents that it had system based alerts with respect to such folios during the inspection period.

In my view, the contention that system based alerts for folio where dividend/interest/redemption remains unpaid for three years & above, were installed after inspection, would not absolve the Noticee of the violations existing during the inspection period. In view thereof, the contention of the Noticee in this regard are devoid of merit and hence not acceptable.

17.3.3. In this regard, the Noticee, as part of its reply to the SCN dated June 29, 2024 inter alia had also contended that '…*The Circular dated April 20,2018 does not expressly mandate the inclusion of "pop-ups" or prescribe a specific format for generating system-based alerts…RTA Regulations prescribes an Internal Code to be developed by the RTA for governing its own operations and laying down appropriate conduct for its employees….This regulatory scheme grants the RTA the authority to adopt measures it deems fit for enhancing due diligence without a specific mandate for "pop-ups" or predefined alert mechanisms..SEBI cannot assert that one method is superior to another, as long as the RTA adheres to the overarching objective of implementing system-based alerts and conducting enhanced due diligence to reasonably assure the genuineness of the requests...'.*

In this regard, Noticee placed reliance on Hon'ble SC judgment in M/s. Hiralal Ratanlal and B. Premanand & Others v. Mohan Koikal & Others,.

In this regard, I note that the Circular dated April 20, 2018 evidently requires that RTAs shall have system based alerts for processing of all transactions in such account folios referred in para 13 of said circular. I note that Noticee has not demonstrated with relevant details and supporting documents that it had complied with the requirements

of the circular in this regard by having system based alerts, in any manner. In my opinion, the contention of the Noticee that it had authority to develop its own internal code of conduct for governing its internal operations would not absolve the Noticee from complying with what has been mandated in the Circular issued by the Regulator viz., SEBI being Circular dated April 20, 2018 in the instant case. In view thereof, the contention of the Noticee in this regard are devoid of merit and hence not acceptable.

17.4. As regards no Enhanced Due Diligence performed while processing the three requests for Change of Bank Account (COB) details, I note from material available on record that SEBI had observed that for verifying COB related due diligence, a total of 15 folios were given as sample to the RTA (initial samples given before the beginning of inspection) which were then checked to see if 'enhanced due diligence' was performed while processing the request for COB as these were folios that were to be marked as enhanced due diligence folios since previously the Bank Account details were missing in those folios. In this regard, SEBI inter alia observed as under:

Issuer Company	Folio no	Reference date	No. of shares	Value of shares on Dt of processing (Rs)	Violations
BERGER PAINTS INDIA LTD.	****87	13/04/2021	29,568	2,15,13,677	1. PAN card copy as identity proof not taken 2. Address Proof not taken
EXIDE INDUSTRIES LIMITED	****17	01/02/2021	15,000	29,25,000	1. PAN card copy as identity proof not taken 2. Address Proof not taken
BERGER PAINTS INDIA LTD.	****59	15/01/2021	13,440	1,06,17,600	1. PAN card copy as identity proof not taken 2. Address Proof not taken

17.5. In this regard, I note from material available on record that SEBI had observed that in all these cases, RTA had not taken the PAN card of shareholder to establish the identity of shareholder and that in all these cases, no document to establish proof of address (i.e. Adhaar etc.) were sought from shareholder.

17.5.1. In this regard, I note from material available on record that in response to Noticee's reply to the findings of inspection regarding folio No. ****87, ****17 and ****59, SEBI inter alia observed that collecting original cancelled cheque was the procedure for processing change / updation of bank account details in normal folios. However, for folios requiring Enhanced Due Diligence at least proof of identity and address must also be sought as provided in clause 14 of Part II to Annexure of Circular dated April 20, 2018. Therefore it cannot be said that the RTA had done the necessary due diligence to "reasonably satisfy itself about the genuineness of the request" as mentioned in clause 14 of said circular. Further, as regards folio no. ****59, SEBI had also observed that the RTA claimed that PAN was updated on Nov 17, 2020. However, SEBI did not accept it as the Change of bank is a separate request as it was processed on a different date (Jan 15, 2021) and for each separate request, Enhanced Due Diligence must be performed. Therefore, it was inter alia alleged that Enhanced Due Diligence had not been performed.

17.6. In this regard, as regards folio no. ****59, the Noticee as part of its reply dated June 29, 2024, had inter alia contended that *'… the claim of SEBI that the PAN of a certain folio was updated in November 17, 2020 and for a separate request received in the folio on January 15, 2021, the Noticee has failed to conduct enhanced due diligence is not on merits, as the gap between both the transactions is of less than two months. The Noticee is not obligated to conduct enhanced due diligence as long as it is satisfied about the genuineness of the transaction.…'.*

In this regard, I note that in terms of circular dated April 20, 2018, enhanced due diligence has to be followed inter alia for folios where bank account details are not available. In the instant case, the bank account details were missing and therefore, Noticee had to exercise enhanced due diligence wherein the Noticee was required to call for documents related to proof of

identity/address, PAN and bank details, and such other additional procedures that would enable the Issuer Company/RTA to reasonably satisfy itself about the genuineness of the request. In this regard, I note that the folio continued to be under enhanced due diligence owing to missing bank account details and the Noticee was obligated to perform enhanced due diligence. The Noticee has not demonstrated with relevant details and supporting documents that it performed enhanced due diligence in terms of the circular. In view thereof, the contention of the Noticee in this regard are devoid of merit and hence not acceptable.

17.7. In view thereof, I find that the allegation in respect of the Noticee that no system based alerts or pop ups were enabled with respect to folios with dividend unpaid for more than three years, missing PAN, missing bank account details. Further, no enhanced due diligence was performed while processing three requests for change in bank account details, stands established. Therefore, I hold that Noticee had violated provisions of Clause 13 and 14 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.) of Annexure to SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

Compliance of SEBI circular Dated April 20, 2018 & July 16, 2018- Maintenance of Register for Record of Destruction of Documents:-

18. In this regard, SEBI inter alia observed and alleged that Noticee was not maintaining physical register to record destroyed documents. Futher, only

records of destroyed share certificates were maintained without maintaining the following details:

I. Name of authority authorizing the destruction
II. Date of authorization of destruction
III. Destroyed in whose presence (with signature)

In view thereof, it was inter alia alleged that Noticee had violated Clause 15 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.") of the Annexure to SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018;Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

18.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia read as under:

Clause 15 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.") of the Annexure to SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018:

'…

15. RTAs shall maintain a register containing details of records and documents destroyed. The register shall inter alia contain the following particulars: description of the records and documents destroyed, name of authority authorising the destruction, date of authorization of destruction, destroyed in whose presence (with signature) and date of destruction. The authenticity of the register shall be verified during internal audit. The register shall be maintained till perpetuity.

…'

Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993:

'…

CHAPTER III
GENERAL OBLIGATIONS AND RESPONSIBILITIES

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.
…

[81][SCHEDULE III
SECURITIES AND EXCHANGE BOARD OF INDIA
(REGISTRARS TO AN ISSUE AND SHARE TRANSFER AGENTS)
REGULATIONS, 1993
[Regulation 13]
CODE OF CONDUCT

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.
…'.

Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008:

'…

Code of conduct.
16. An intermediary and its directors, officers, employees and key management personnel shall continuously abide by the code of conduct specified in Schedule III.

SCHEDULE III
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008
[See regulation 16]

V.COMPLIANCE AND CORPORATE GOVERNANCE

5.6 An Intermediary shall maintain an appropriate level of knowledge and competency and abide by the provisions of any act, regulations, circulars and guidelines of the Central Government, the Reserve Bank of India, the Board, the stock exchange or any other applicable statutory or self regulatory or other body, as the case may be, and as may be applicable to the Intermediary in respect of the business carried on by such Intermediary. An Intermediary shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

…'.

18.2. In this regard, as regards allegation with respect to maintenance of physical register to record destroyed documents, the Noticee as part of its reply dated June 29, 2024 had inter alia contended that *'… Paragraph 15 of the SEBI Circular dated April 20, 2018 does not specifically provide for maintenance of register in a physical format and the only requirement is with respect to maintenance of the aforementioned register...something which is not expressly provided, cannot be read into by SEBI……Schedule III to RTA Regulations itself provides for maintain electronic registers'.*

In this regard, I note from the text of Para 15 of SEBI Circular dated April 20, 2018 that it inter alia reads as *'…RTAs shall maintain a register containing details of records and documents destroyed…The register shall inter alia contain the following particulars:…destroyed in whose presence (with signature) and date of destruction..' (emphasis supplied).* I note that

Noticee was required to maintain register which should also contain signature of the person in whose presence the documents were destroyed, which the Noticee failed to demonstrate. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

18.3. Further, as regards allegation with respect to maintaining records of documents destroyed other than share certificates, Noticee as part of its reply dated June 29, 2024 had inter alia contended that *'… If no documents have been destroyed, it would be unreasonable to require a register documenting such nonexistent destruction….records pertaining to Undelivered Dividend Warrants, Unused Stationery for Dividend Warrant are not destroyed and are kept in the warehouse of the Noticee….'.*

In this regard, I note that the material available on record has not brought out clearly as to what other documents were destroyed and the details of which were not maintained by the Noticee in terms of the circular dated April 20, 2018. In view thereof, having regard to the submissions of the Noticee, I am inclined to allow benefit of doubt to the Noticee in this regard.

18.4. As regards allegation with respect to maintaining the particulars of documents destroyed, I note that the submissions of the Noticee as part of its reply to the SCN dated June 29, 2024 are in the nature of admission in so far as the Noticee had inter alia submitted hat '…*absence of minor details like, Name of authority authorizing the destruction, Date of authorization of destruction and Destroyed in whose presence (with signature) are merely technical aspects as the absence of such data has not affected any shareholder / investor or the securities market..'.*

In this regard, I also note that in terms of SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, Noticee was required to maintain a register containing details of records and documents destroyed. The register shall inter alia contain the following particulars:

description of the records and documents destroyed, name of authority authorising the destruction, date of authorization of destruction, destroyed in whose presence (with signature) and date of destruction, which the Noticee had failed to maintain.

18.5. In view thereof, I find that the allegation in respect of the Noticee that it inter alia failed to maintain register in the manner as prescribed viz., register with signature and that only records of destroyed share certificates were maintained without maintaining the following details i.e. Name of authority authorizing the destruction, Date of authorization of destruction and Destroyed in whose presence (with signature), stands established. Therefore, I hold that the Noticee had violated Clause 15 of Part II (Provisions with regard to Transfer / Transmission / Correction of Errors etc.") of the Annexure to SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018; Clause 3 and 16 of Schedule III (Code of Conduct) read with Regulation 13 of SEBI (Registrar to and Issue and Share transfer Agents) Regulation 1993; Clause 5.6 of Part V (Compliance and Corporate Governance) of Schedule III (Code of Conduct) read with Regulation 16 of SEBI Intermediaries Regulation 2008.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, 1992?

19. It has been established in the foregoing paragraphs that Noticee had violated provisions of SEBI RTA Regulations, SEBI Intermediaries Regulations and SEBI Circulars.

20. In this regard, the Noticee, as part of its reply dated July 16, 2024 had inter alia contended that '…*alleged lapses are technical, venial and procedural in*

nature and purpose of inspection is not punitive…sebi has imposed no penalty or minimum penalty or given warning in rta inspection cases in the past and there is no reason to discriminate and be non-uniform…'

In this regards, Noticee placed reliance on the case of Samrat Holdings Ltd. v. SEBI, DSE Financial Services Limited, Karvy Consultants Ltd. v SEBI, Insight Share Brokers Pvt Ltd, State Bank of India vs Securities and Exchange Board of India, UPSE Securities Limited v. SEBI, ACML Capital Markets Limited v. SEBI, Religare Securities Limited v. SEBI, Link Intime India Pvt Ltd in the matter of Atlanta Infrastructure and Finance Ltd, Infotech Limited order dated June 19, 2019, ABS Consultants Private Limited, Beetel Financial & Computer Services Private Limited***.***

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

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

Further in this regard, I also note that the alleged violations in respect of the Noticee are of extant applicable provisions of law as are otherwise applicable

to the entire category of intermediary viz., Stock Broker in the instant case, and not just about minor procedural aspects limited to Noticee alone. I note that the provisions relating to securities laws, including regulation and circulars issued by the regulator, are mandated inter alia with the objective of orderly functioning of the securities market and its constituents having regard to protection of the interest of the investors, which the Noticee failed to comply with, as dealt with and brought out in the foregoing. In view thereof, the contention of the Noticee in this regard cannot be accepted.

21. Further in this regard, Noticee had inter alia also contended that '…*imposing a penalty against the noticee would, in effect, penalize the parent company, link intime, which should be avoided…new management was not involved in the functioning of the Noticee company during the inspection period…'.*

In this regard, I note that the instant proceedings are in respect of the Noticee for the violations during the inspection period, as brought out and established in the foregoing. Therefore, the contention of the Noticee in this regard are out of context and hence not acceptable.

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

In this regard, I note that in the judgement relating to Bharjatiya Steel Industries vs Commissioner, Sales Tax, U.P, the Hon'ble Supreme Court of India had inter alia also observed that *"Furthermore, the question as to*

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

23. I note that Noticee as part of its submissions has cited orders of WTMs /Adjudicating Officers of SEBI indicating exoneration or minimal penalty.

In this regard I note that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. Hence, any generic parallel drawn would be devoid of merit. I note that Noticee has merely cited and mentioned about the Orders, however, the Noticee has neither demonstrated as to how the cited orders were applicable in the instant matter nor demonstrated as to what are the relied upon findings in the respective orders which have a bearing on the alleged violations against Noticee in instant matter.

Further in this regard, I note that the alleged violations by the Noticee were of the extant applicable provisions of law that were otherwise applicable to that entire class of the intermediary and not just about minor procedural aspects specific to the Noticee only but inter alia regarding maintaining system logs, performance of enhanced due diligence, maintaining register to record destroyed documents etc. Accordingly the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

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

"…In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established....."

25. The Noticee has also contended that '…*SEBI cannot invoke its powers u/s 15HB to levy penalty for violation of a 'circular'..SEBI circulars are neither a Central Government made 'rule' nor a SEBI made 'regulation'. It certainly cannot be a 'direction' which can only be issued u/s 11(4)(f) or 11B of the SEBI Act, 1992. The circulars issued by SEBI are issued under Section 11(1) of the SEBI Act, 1992 which does not deal with power to issue directions. ..'.*

In this regard, I note that SEBI circular which have been violated by the Noticee were issued in exercise of the powers conferred under Section 11 (1) of the SEBI Act, 1992 which inter alia provides that "… *Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit*." Further in this regard, I also note that Section 15HB of the SEBI Act, 1992 inter alia provides that "*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."* In this context, reliance is placed on Hon'ble SAT's order dated June 28, 2023, in the matter of Annaswamy Venkatramani vs. SEBI, wherein Hon'ble SAT inter alia held that:

> *'…12. The word 'directions' issued by the Board under Section 15HB is different and distinct from the directions issued under Section 11B after due enquiry and adjudication. There are many directions issued under the Regulations and the Circulars requiring a person to do an act in a certain manner. For example, a person is required to comply with a certain provision within a stipulated period. Failure to comply with such directions issued by the Board under the Act, Regulations, Rules or Circulars if not complied with may invite penalty. If penalty is not specified under Chapter-VIA from Section 15-A to Section 15-HAA for failure to comply with such type of directions then penalty can be imposed after adjudication under the residuary clause Section 15HB…'*

In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

26. Therefore, for the established violation, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Section Section 15HB of the SEBI Act, 1992 which inter alia read as under:

SEBI Act, 1992:

> *'…*
> ***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.*
> *….'*

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

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

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

> **SEBI Act, 1992**
>
> *'…*
> ***Factors to be taken into account while adjudging quantum of penalty.***
> ***15J****. While adjudging quantum of penalty under 15- I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*
> *a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *b. the amount of loss caused to an investor or group of investors as a result of the default;*
> *c. the repetitive nature of the default.*
> *Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*
> *…."*

28. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, as regards repetitive nature of default, I

note from SEBI website that Adjudication Order dated February 28, 2011 was passed in respect of the Noticee imposing monetary penalty. I note that Noticee being a SEBI registered intermediary was required to comply with the applicable provisions of securities laws, which it had failed to comply with, as dealt with and brought out in the foregoing and which SEBI is duty bound to enforce compliance of. Such failure and non-compliances accordingly needs to be dealt with suitable penalty.

E. ORDER:

29. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose following penalty, as per details in Table below, upon the Noticee, for the aforementioned violations, as brought out in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty Under Section	Penalty Amount (Rs.)
CB Management Services Pvt. Ltd.	15HB of SEBI Act, 1992	Rs. 4,00,000/- (Rupees Four Lakhs Only)

30. 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

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

32. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: FEBRUARY 28, 2025 **AMAR NAVLANI**
PLACE: MUMBAI **ADJUDICATING OFFICER**