BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2021-22/14225]

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

In respect of

Boston Leasing and Finance Ltd.
[PAN: AAACB8430A]

In the matter of

Accurate Securities and Registry Pvt Ltd.

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of M/s. Accurate Securities and Registry Private Limited (hereinafter referred to as "**Accurate/ASRPL"**) from December 17, 2018 to December 19, 2018, at its office 23, 3rd floor, Sarthik Complex, Nr. Fun Republic, Iscon Cross Road, Satellite, Ahmedabad - 380 015. The period covered in the inspection was from April 01, 2017 till December 17, 2018 (hereinafter referred to as **"Inspection Period"**).

2. Based on the findings of inspection conducted by SEBI and the response of ASRPL dated May 31, 2019, SEBI observed that Boston Leasing and Finance Ltd. (hereinafter referred to as '**Noticee**') had not executed any tripartite agreement among its erstwhile Share Transfer Agent (hereinafter referred to as "**STA**") i.e., Purva Sharegistry (India) Pvt. Ltd (hereinafter referred to as "**Purva**") and ASRPL and itself.

3. Accordingly, SEBI observed*, inter-alia*, certain non-compliances of SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 (herein after referred to as **"LODR Regulations, 2015"**) and Code of conduct as specified in SEBI (Registrars To An Issue and Share Transfer Agents) Regulations, 1993 (herein after referred to as **"RTI/STA Regulations"**) against Noticee. Therefore, SEBI initiated adjudication proceedings against Noticee for violation of Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of Code of Conduct as specified in Schedule III of RTI/STA Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated September 08, 2020, Ms. Sangeeta Rathod was appointed as Adjudicating Officer (**AO**) under Section 19 read with Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of SEBI Act, the aforesaid alleged violations by Noticee. Subsequent to transfer of Ms. Sangeeta Rathod, Shri Prasanta Mahapatra was appointed as the AO in the said matter. Thereafter, the undersigned was appointed as the AO in the matter by SEBI vide order dated December 04, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A show-cause notice no. EAD-10/ADJ/SM/DD/OW/16972/1/2021 dated July 29, 2021, (hereinafter referred to as '**SCN**') was issued to Noticee under rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under Section 15HB of SEBI Act for the aforesaid alleged violations committed by Noticee.

6. The SCN, *inter alia,* alleged the following:

   a. *During the course of inspection, it was submitted by ASRPL vide its letter dated December 19, 2018 that it had not received the previous records from the erstwhile STA such as share certificate lying undelivered, unpaid dividend data, physical* *share transfer, demat request forms, issuance of duplicate share certificate/conversion of shares/transposition of shares, transmission of shares, remat, split, consolidation, payment of dividend, bonus, shareholder address, no. of shareholders at the time of agreement, no. of physical shares, no. of shares in demat mode, dividend amount transferred to IEPF, share forfeiture, partly paid-up shares etc. and that no further efforts were made by them to obtain all such records from Noticee.*

b. *It was observed that Noticee had not executed tripartite agreement between erstwhile RTAs and ASRPL (Refer Annexure-1). In view of the same it is alleged that Noticee has violated Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of Code of Conduct as specified in Schedule III of RTI/STA Regulations 1993.*

7. The SCN, issued to Noticee, was sent via Speed Post Acknowledgement Due ('**SPAD**') as well as through email dated July 29, 2021 and was duly served upon Noticee and Noticee was given fifteen (15) days' time to make its submission or file its reply in respect of the allegations made in the SCN. Noticee, vide letter dated August 19, 2021, which was received by SEBI on September 06, 2021, submitted its reply to the SCN. The relevant extracts of submissions made by Noticee vide the aforementioned letter is as given hereunder:

a. *Regarding non execution of the tripartite agreement, we hereby want to inform you that at the time of change in RTA/STA of the company none of them has informed us for executing the tripartite agreement and later on when ASRPL approached us for the same company has executed the same. We therefore deny the charge of violation of the said regulation 7(4) as company is in compliance of the same. Copy of tripartite agreement is enclosed herewith for your reference.*

b. *Further, it has been mentioned in the Notice that ASRPL had submitted in its reply that they had not received previous records from the erstwhile STA. For the same, company is not in violation of the same as it has been specifically mentioned in the clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA*

Regulations, 1993, that RTA and STA needs to adhere by the said clause and not company. Further we think they have not stated the same for our company as these records are not applicable for our company. We herewith submit our response for records applicable to company which is as follows:

1) *Unpaid Dividend Data: Company had not declared any dividend till date. Hence not applicable.*
2) *Split: Company has not sub-divided the shares till date. Hence not applicable.*
3) *Consolidation: Company has not consolidated the shares till date. Hence not applicable*
4) *Payment of dividend: Company had not declared any dividend till date. Hence not applicable.*
5) *Bonus: Company has not issued bonus shares till date. Hence not applicable.*
6) *Dividend amount transferred to IEPF: Company had not declared any dividend till date. Hence not available.*
7) *Partly Paid up shares: Company's has not issued partly paid shares till date. Hence not applicable.*

We therefore deny the alleged charge of not furnishing the required date to the STA or non receipt of any such data by the STA.

c. *Further, Clause 20 of the Code of Conduct as prescribed in Schedule III of RTI/STA Regulations is an obligation on STA and Noticee cannot be charged for violation of the same.*

8. Thereafter, in the interest of natural justice, vide hearing notice dated September 24, 2021, served upon Noticee through email dated September 27, 2021 as well as through SPAD, an opportunity of personal hearing was provided to Noticee on October 21, 2021 through the online webex platform. However, Noticee failed to attend the hearing on the scheduled date. Therefore, in the interest of natural justice, another opportunity of personal hearing was granted to Noticee on November 12, 2021 vide hearing notice dated October 29, 2021 which was served upon Noticee through email dated October 29, 2021. I note that Noticee once again failed to attend the hearing on

the scheduled date. I am of the view that sufficient opportunity was granted to Noticee to present his submissions and the requirement of natural justice is met in the present matter.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have carefully perused the charges levelled against Noticee, replies/submissions made by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

(a) Whether Noticee has violated the provisions of Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations?

(b) If yes, then do the violations, if any, on the part of Noticee attract any monetary penalty under Section 15HB of the SEBI Act?

(c) If yes, then what would be the quantum of monetary penalty that can be imposed upon Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act?

10. Before moving forward, it is pertinent to refer to the relevant provisions of LODR Regulations, 2015 and RTI/STA Regulations which are reproduced as under:-

Relevant provisions of LODR Regulations, 2015

Regulation 7(4): *In case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity, in the manner as specified by the Board from time to time: Provided that in case the existing share transfer facility is managed in-house, the agreement referred above shall be entered into between the listed entity and the new share transfer agent.*

Relevant provisions of RTI/STA Regulations

SCHEDULE- III

RTI/STA Regulations

Code of Conduct

> ***Clause 20***:- *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.*

Issue No. I: Whether Noticee has violated the provisions of Regulation 7(4) of LODR Regulations, 2015 and Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations?

11. I note from records that ASRPL is a SEBI registered STA having registration no. INR000004173. From the submissions of Noticee, I note that Noticee, vide its board resolution dated March 12, 2016, had terminated the services of its existing STA, Purva, and appointed ASRPL as its new STA. I also note from letter dated December 19, 2018 submitted by ASRPL to SEBI that effective date of change of STA was April 23, 2016. In the aforementioned letter, ASPRL has also stated that while taking over charge, it had not received the previous records such as share certificate lying undelivered, unpaid dividend data, physical share transfer, demat request forms, issuance of duplicate share certificate/conversion of shares/transposition of shares, transmission of shares, remat, split, consolidation, payment of dividend, bonus, shareholder address, no. of shareholders at the time of agreement, no. of physical shares, no. of shares in demat mode, dividend amount transferred to IEPF, share forfeiture, partly paid-up shares etc. from Purva. I observe that in the letter dated May 30, 2019 submitted to SEBI, ASRPL stated that at the time of inspection, Noticee had not entered into a tripartite agreement with ASRPL and its erstwhile STA, Purva. Vide the aforementioned letter, ASRPL also informed SEBI that as a corrective measure, it had afterwards prepared and dispatched the tripartite agreement to the former STA and the same was under the process of signing.

12. I note that in terms of Clause 20 of Code of Conduct as specified in Schedule –III of RTI/STA Regulations, Registrars to an Issue (**RTI**) and Share Transfer Agents 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.

13. In this regard, Noticee, in its submissions, has contended that compliance of Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations is an obligation on RTI/STAs and Noticee cannot be charged for the violation of the same. In this context, I note that Regulation 13 of RTI/STA Regulations makes it obligatory on the part of every RTI/STA holding a certificate to abide by the Code of Conduct as specified in Schedule III. Further, I note that Clause 20 of the aforesaid Code of Conduct requires an STA to 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. Therefore, I note from the wordings of aforesaid provisions that obligation under Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations is binding only on RTIs and STAs and is not applicable to issuer companies. Thus, I find that compliance of Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations is not applicable to Noticee, since it is not an STA. In view of the above observations, I find that allegation that Noticee violated Clause 20 of the Code of Conduct as specified in Schedule III of RTI/STA Regulations does not stand established.

14. I note that in terms of Regulation 7(4) of LODR Regulations, 2015, an obligation is placed on a listed entity to enter into a tripartite agreement among itself, its existing STA and its new STA on change/appointment of a new STA in the manner as specified by the SEBI from time to time. In this regard, I note that in terms of Regulation 7(4) of LODR Regulations, 2015, SEBI, vide its letter MIRSD-3/SS/RTA/32265/2016 dated November 28, 2016, sent to the Registrars Association of India, has framed a model tripartite agreement to be entered into among Issuer Company, new STA and its erstwhile STA. I note that clause 5 of the aforementioned model tripartite agreement states that "*In terms of regulation 7(4) of Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015, the Issuer is*

required to enter into an agreement with the Existing STA and New STA *__at the time of change of the existing STA__*__."__ Therefore, in terms of Regulation 7(4) of LODR Regulations, 2015, Noticee was under obligation to enter into tripartite agreement at the time of change of its STA from Purva to ASRPL.

15. Further, clause 6 of the aforesaid model tripartite agreement, *inter alia*, states that "The *date of signing of this Agreement is the date of discontinuation of work by the existing STA and is also referred to as the cutoff date in this Agreement"*. Further, I note that clause 12 of the model tripartite agreement, *inter alia,* states that " *__The responsibility of the new STA shall commence on receipt and verification and verification of records/date and documents as per Annexure –I".__*

16. From the perusal of the model tripartite agreement and on combined reading of above mentioned clauses built into the model tripartite agreement, I find that the primary objective of the tripartite agreement to be entered into by issuer companies along with its new STA and its erstwhile STA is to ensure smooth transition of responsibility and accountability from existing STA to new STA and to ensure complete handing over of all records, data etc which are in possession of an existing STA to the new STA of the issuer company, so that new STA can render its services unhindered.

17. In regard to violation of Regulation 7(4) of LODR Regulations, 2015, Noticee has contended that it had executed the tripartite agreement as required under the said regulation and has also furnished a copy of the said tripartite agreement (hereinafter referred to as '**Agreement**') to substantiate its claim. In its submissions, Noticee has further stated that the aforementioned agreement was executed by Noticee only after inspection of ASRPL by SEBI and on being approached by ASRPL. From perusal of the aforesaid agreement, I observe that the same was executed on May 24, 2019, which is almost 3 years after April 23, 2016, the effective date of change of STA. Noticee has tried to justify the delay in executing the agreement by stating that it was not informed about requirement of executing a tripartite agreement by ASRPL and Purva. I find that the obligation to enter into tripartite agreement is mandated by

Regulation 7(4) of LODR Regulations, 2015 and listed entities are obligated to abide by the aforesaid regulations. In the instant matter, Noticee's submission indicates that it was ignorant of not only the aforesaid provision of LODR Regulations but also of the model tripartite agreement specified by the SEBI. It is well established legal maxim that "Ignorantia juris non excusat", or "ignorance of the law excuses no one". Therefore, Noticee's contention that it was not informed about requirement of tripartite agreement is not acceptable.

18. However, I note that the model format for tripartite agreement under Regulation 7(4) of LODR Regulations was specified by SEBI by its letter dated November 28, 2016, whereas the change of STA by Noticee was effected almost 7 months earlier. In light of legislative ambiguity existing at the time till the circulation of the model tripartite agreement format by SEBI, I find that obligation to enter into tripartite agreement arises only after November 28, 2016. It is a settled position of law that any ambiguity in law should be decided in favour of Noticee. Considering the same, I find that Noticee was required under the provisions of the aforesaid Regulation 7(4) LODR Regulations, 2015 to execute the tripartite agreement immediately after it was communicated by SEBI on November 28, 2016, so as to fulfill the primary objective of the agreement. However, I note that even after the model tripartite agreement had been specified by SEBI, Noticee failed to execute such tripartite agreement at that time.

19. I also note from records that ASRPL, in its reply dated December 19, 2018 to SEBI during inspection, had stated that it had not received the previous records from the erstwhile STA such as share certificate lying undelivered, unpaid dividend data, physical share transfer, demat request forms, issuance of duplicate share certificate/conversion of shares/transposition of shares, transmission of shares, remat, split, consolidation, payment of dividend, bonus, shareholder address, no. of shareholders at the time of agreement, no. of physical shares, no. of shares in demat mode, dividend amount transferred to IEPF, share forfeiture, partly paid-up shares etc.. At this juncture, it may be pertinent to highlight the fact due to absence of such

agreement, the new STA, ASRPL, did not get all records/documents which in turn was prejudicial to interest of investors.

20. In view of the above findings, I find that Noticee has not complied with Regulation 7(4) of LODR Regulations, 2015. Therefore, the allegation that Noticee has violated Regulation 7(4) of LODR Regulations, 2015 stands established.

<u>Issue No. II- Does the violation attract monetary penalty under Section 15HB of SEBI Act</u>?

21. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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.….". ,*

22. In view of the judgment referred above and the fact that the Noticee has violated Regulation 7(4) of LODR Regulations, 2015 I am of the view that a monetary penalty needs to be imposed upon the Noticee under Section 15HB of the SEBI Act, which reads as under:

Section 15HB of SEBI Act

"*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*".

<u>Issue No. III: If so, what would be the monetary penalty that can be imposed?</u>

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

SEBI Act

Factors to be taken into account by the adjudicating officer.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as 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 of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

24. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee or the consequent loss caused to investors as a result of the default. Further, the records do not show any repetitive default of this nature by the Noticee. Though there was much delay, I note that Noticee had entered into tripartite agreement with ASRPL and Purva, post SEBI's inspection which can be considered as a mitigating factor in this case.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 2,00,000/-(Rupees Two Lakh only) on Noticee i.e.

Boston Leasing and Finance Ltd. under the provisions of Section 15HB of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

26. 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

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

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

28. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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 of Noticee.

29. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz Boston Leasing and Finance Ltd. and also to SEBI.

Date: November 22, 2021	**SOMA MAJUMDER**
Place: Mumbai	**ADJUDICATING OFFICER**