BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/SM/LD/2022-23/22691]

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 the respect of

M/s. MCS Share Transfer Agent Limited

PAN: AAHCM3618E

F65, 1st Floor,

Okhla Industrial Area, Phase-1,

New Delhi – 110020

in the matter of Complaint of Ms. M Vimala against MCS Share Transfer Agent Limited.

FACTS OF THE CASE

1. SEBI vide an email was in receipt of a scanned copy of a Writ Petition (W.P.) filed by one Ms. M Vimala (hereinafter referred to as **'Complainant'**) v/s Securities and Exchange Board of India ('SEBI'), MCS Share Transfer Agent Limited (/MCS) (**hereinafter referred to as 'Noticee'/'MCS')**, Jay Bharat Maruti Limited (JBM) (**hereinafter referred to as 'JBM')** and National Securities Depository Limited (NSDL) which was heard before the Hon'ble Delhi High Court on October 21, 2021. The Complainant in the W.P. stated that she was a shareholder of JBM since 1994-95 holding 22,200 equity shares of JBM at the rate of Rs. 10 each which were sub-divided on October 01, 2005 and became 44,400 equity shares of Rs. 5 each. Subsequently, her total holding reached to 88,800 equity shares after declaration of bonus on October 07, 2006 and that she is holding physical original share certificates bearing numbers 1351, 3104, 3164 and 1425.

2. The complainant stated that she was regularly getting the annual dividend till 2017-18 from JBM through cheque. Upon non receipt of dividend, she enquired with JBM about the same and was informed by JBM that dividend is credited to the shareholders' bank account as per the records of the Company and that the 88,800 equity shares of JBM held by her was dematerialized on October 5, 2018 (apparently by an impersonator). Thus her name did not appear in the list of registered shareholders of JBM as on record date, for dividend for 2019.

3. The complainant lodged a complaint at the SEBI SCORES online platform on August 16, 2021. Even when the complaint was under examination of SEBI at SCORES, the Complainant filed the W.P. in the High Court of Delhi. When the said matter came before Hon'ble Court on October 21, 2021, the Hon'ble Court disposed off the said petition with the following directions: -
   I. The Complainant to submit a supplementary representation to SEBI within 2 weeks stating the present status of the proceedings; and
   II. SEBI to respond to the petitioner's complaint within eight weeks thereafter in accordance with law, after making such inquiries as it deems fit.

4. Subsequently, SEBI examined the matter to ascertain lapses, if any, on part of the Noticee and it was observed that the Noticee as a RTA failed to exercise due diligence, ensure proper care and exercise independent professional judgment while processing the demat request and therefore is alleged to have violated Clauses 1, 2, 3, 13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations,1993 (hereinafter referred as "**RTA Regulations**"). Hence, the instant adjudication proceeding was initiated against it.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

5. SEBI appointed Smt. Geetha G., Chief General Manager vide order dated May 17, 2022 as the Adjudicating Officer (AO) under Section 19 of the SEBI Act read with Sections 15-I(1) of the SEBI Act, to inquire and adjudicate for violation of Clauses

1, 2, 3,13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the RTA Regulations by the Noticee with regard to a complaint filed by the Complainant**.** Thereafter, Shri Amit Kapoor, General Manager was appointed Adjudicating Officer vide order dated September 19, 2022. Subsequently I was appointed Adjudication Officer by SEBI vide Order dated October 06, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Show Cause Notice ("SCN") bearing reference no. SEBI/EAD-1/SM/LD/57003/1/2022 dated November 09, 2022 was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules 1995 (hereinafter referred to as "AO Rules") and why penalty, if any, should not be imposed on the Noticee under the provisions of Section 15HB of the SEBI Act, 1992 for the alleged violations of Clauses 1, 2, 3,13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the RTA Regulations for failing to exercise due diligence and ensuring proper care and exercising independent professional judgment while processing the demat request of the Complainant.

7. **Allegations levelled against the Noticee in the SCN :**
   1) On the Demat Request Form (**DRF**) sent to the Noticee, two official staff of the Noticee made contradictory statements with regard to the signature of the Complainant. While one submitted that the signature of the shareholder on the DRF was similar to the signature in the Company's records, the other submitted that the flow of signature was slightly altered.
   2) There was a mismatch in the information about the documents sent by Kotak Securities, Depository Participant **(hereinafter referred to as 'DP')** to the Noticee and that received by the Noticee from the DP. While the DP had submitted that no document pertaining to signature attestation by bank was received by it with the documents submitted by the imposter/s for dematerialisation of securities, the Noticee has submitted that signature attestation from bank, PAN and Aadhaar were part of the documents received by it along with the demat request.

3) There were several differences observed on comparing the original share certificate lying with the Complainant and the one submitted along with the DRF.The Noticee had processed the demat request inspite of the father's name of the shareholder provided by the imposter/s with the demat request did not match with the names available in the Noticee's records.
4) Dematerialization of shares was approved without the original share certificate.
5) Noticee did not do due diligence while processing demat request inspite of already being in knowledge of the fraud committed in a previous case.
6) The fraud in the matter was committed in connivance with the Noticee.

8. A reply to the above SCN was received from the Noticee vide letter dated November 22, 2022, wherein the Noticee submitted the following:

I. *the signature of the said complainant, M Vimala on the Demat Request Form (DRF) was similar with that recorded with Jay Bharat Maruti Limited but the flow appears to be slightly different whereas signature was attested by the Banker of the shareholder Indian Overseas Bank (IOB) supported with original cancelled cheque. Further, their statement was not at all contradictory since they had already informed that signature was similar but flow was slightly different and the same was duly attested by IOB with original cancelled cheque which is acceptable as per the Guidelines of SEBI and Depositories.*

II. *That they had received the documents for dematerialisation of shares on 15.09.2018. The DRN No. 124130 was supported with the Share Certificate in original having No. 1351, 3104, 1425, 3164 for 88800 equity shares of Jay Bharat Maruti Limited along with self-attested copy of PAN Card, signature attested by IOB with original cancelled cheque. The DRF was received from Kotak Securities Limited, Gurugram - Haryana and the same was scrutinized by them and was found to be in order. Accordingly, the said demat request was confirmed / approved by them under DP-ID/Client-ID:IN300214/24370646 which belongs to M Vimala. The original share certificates No. 1351, 3104, 1425, 3164 for 88800 equity shares of Jay Bharat Maruti Limited was cancelled and mutilated by them after confirmation/approval as mentioned in compliance with the applicable rules and bye laws of the Depositories (NSDL & CDSL).*

III. *That the operating procedure for dematerialisation of shares is governed by the Business Rules & Bye-laws of the depositories i.e. NSDL and CDSL and that the guidelines /circulars/instructions issued by both the depositories from time to time and that they follow the procedure of dematerialization which is same for both the depositories.*

IV. *Accordingly, the following procedure is followed by them:*

- *In case of dematerialisation, shareholders need to tender his/ her share certificate with his / her depository participant (DP). DP in turn, generates Electronic Request for Dematerialisation and send physical share certificate along with Demat Request Form (DRF) and other documents, as required, to them.*
- *On receipt of physical documents, they verify the following:*
  - *The DRF has the DP's authorisation*
  - *The dematerialisation request has been received in electronic as well as physical form.*
  - *The DRN in the physical documents matches with the DRN in the electronic request.*
  - *The inward counter verifies the physical documents with the details in the covering letter and DRF and forwards the documents for dematerialisation.*
  - *Original Share Certificate should be free of Demat*
  - *Verify signature of Shareholders.*

  If all the above criteria are in order, they confirm the Electronic Request and release for credit.
- *They shred the certificates once the process of dematerialisation is complete, after the specific retention period and the details of the certificate destroyed are entered into the Register of Destroyed Certificates.*

V. *That they strongly oppose and deny the allegations levelled by Ms. M Vimala, as the same is baseless and there is no material facts and evidence for the same. They strictly followed the prevailing guidelines and procedure for dematerialisation of shares and have not violated code of conduct as alleged.*

VI. *Further, all the documents related to M Vimala case had been given in to Sub-Inspector Haryana Police on 16.12.2019.*

VII. *That the original share certificate no. 1351, 3104, 1425 & 3164 for 88800 equity shares of Jay Bharat Maruti Limited was cancelled and mutilated after Demat confirmation in compliance with the applicable rules and bye-laws of the Depositories (NSDL & CDSL).*

VIII. *That "dematerialisation of shares was approved without original share certificates" is not correct as they had received the DRF with other requisite documents for Dematerialisation of shares (registered in the name of M Vimala) on 15.09.2018 under DRN No. 124130 attached therein the Share Certificates in original having Nos. 1351, 3104, 1425 & 3164 for 88800 equity shares of Jay Bharat Maruti Limited. Self-attested copy of PAN Card, signature attested by IOB with original cancelled cheque of the shareholder was also attached with DRF which were scrutinised by itself and found to be in order.*

IX. *That they deny a contradictory submission given by them since they have already informed that signature of the said M Vimala on DRF was similar with that recorded with Jay Bharat Maruti Limited maintained by them but the flow appears to be slightly different whereas signature was attested by the Banker of the shareholder IOB supported with Original Cancelled cheque.*

X. *That as per record Father's name of shareholder is A R Halayasam and as per copy of PAN Card submitted with DRF is A R Hayasalam. Further, PAN Card and Aadhar Card for processing the Demat request are not mandatory and verification of Father/Husband Name of shareholder is also not mandatory as per the depository guidelines. There was Bank seal embossed mentioned the branch address and was also supported by the original cancelled cheque.*

XI. *That they were surprised to know that DP had sent only the DRF and the share certificates whereas all the documents as mentioned by them were attached to the DRF which were received from DP only. That they had never asked the shareholder or the DP to provide the KYC documents as the same were not required by them to confirm the demat request. That RTA is required to check only the DRF and the share certificate details and match with the records. It's the duty of DP to undertake due diligence at the time of opening the demat account of any investor and all such documents are kept with them and RTA has no access to such documents. RTAs can ignore those documents which are unnecessarily attached with any DRF as the same are not required at all for* *the purpose of demat. That they would want to place on record that the documents were attached to the DRF which were received from the office of the DP only.*

XII. *That as per the set procedure of checking the share certificates attached to DRF by the RTAs are to see whether names of the shareholders), order of names, no. of shares, certificate no. distinctive nos. etc. as mentioned on the certificates are matching with the records of RTAs. There is no clause in the guidelines that RTAs should match the signature of the Authorised Signatory who sign the certificate on behalf to the Issuer. There may be many signatories authorised by the Issuer for signing the share certificates from time to time for various issues and / or service requests but RTAs never required to keep records of the Authorised Signatories. There is also no instruction in the guidelines that date of issue of certificates are required to be checked at the time of scrutiny of share certificates surrendered for dematerialisation. Certificates are issued by the Issuers from time to time for various issues as well as for subsequent service requests and there is no such advice in the guidelines that such dates are required to be checked. In this instant case DRF/certificates submitted are in accordance with the guidelines and as such it was processed. As regards adhesive stamps, in many physical certificates adhesive stamps are detached from them as they become old in passage of time and it is the common practice that RTAs affix Rs. 1/- stamp to avoid unnecessary harassment to a shareholder.*

XIII. *That they confirm that the information available in records of Jay Bharat Maruti Limited maintained by them pertains to shareholder is her name, Father's name, address, Folio, Certificate No. Distinctive nos. and specimen signature. As per record Father's name of shareholder is A R Halayasam and as per copy of PAN Card submitted with DRF is A R Hayasalam.*

XIV. *That the verification of Father/Husband name of shareholder is not mandatory as per the depository guidelines.*

XV. *That there is no difference in the name of the shareholder as per records of Jay Bharat Maruti Limited maintained by them and as per the DRF along with documents received for Demat. Name of the shareholder, Folio No. Share*

Certificate Nos. Distinctive Nos mentioned on share certificates are tallied with the records of Jay Bharat Maruti, maintained by them.

XVI. *That any indicative conclusion cannot be construed as it is having offices at Kolkata, Mumbai, Delhi, Ahmedabad and Baroda and most of the RTAs, DPs, Banks are having branches pan India basis.*

XVII. *That unpaid dividend details are also uploaded in the Company's website every year and if any one keeps a watch year wise, he can find out whose dividends remain unpaid for consideration period and from folio no., it can be ascertained whether the shares are in physical form as the pattern of DP & Client Id of depositories are known to all. Physical share certificates are available with other shareholders also whom the fraudster knows. Moreover, DPs throughout India get the physical certificates of the companies for dematerialisation. Therefore, sample certificates can be obtained. It may be possible that the fraudster knows the actual shareholder and obtained the details in such a manner that the shareholder could not know.*

XVIII. *That they strongly oppose and deny the allegation that fraud has been committed in connivance with the RTA as the same is baseless and there is no material facts and evidence for the same and that they have strictly followed the prevailing guidelines and procedure for dematerialisation of shares and not violated the code of conduct as alleged.*

Hearing

8. In consonance with the Adjudication Rules and in the interest of natural justice, the Noticee was provided with an opportunity of hearing in the present matter on December 02, 2022 through Cisco Webex Platform. Mr. Santosh Ghosh, Mr. Ajay Kumar Dalal and Mr. Narender Singh Negi, the Authorised Representatives ("**ARs**") appeared on behalf of the Noticee and reiterated the submissions contained in the Noticee's response dated November 22, 2022. Vide email dated November 30, 2022, SEBI also requested DP to attend the hearing. The hearing was attended by Ms. Manali Raut, Shri Jignesh Jani and Advocate Gireesh Kumar who were the ARs for the DP. During the hearing, the DP was advised to submit details of the documents that were sent to the Noticee alongwith the demat request. It was observed that Noticee had written an email to Indian Overseas Bank (IOB) in the year 2021 to ascertain the signature of the complainant. Noticee

was advised to confirm why it chose to write to IOB in the matter after three years of actual demat request received. Accordingly, Noticee was granted time till December 09, 2022 to provide information sought during the hearing. The Noticee vide email dated December 08, 2022 made its additional submitted which was as under:

a. *The Noticee submitted that on receipt of the complaint they had done various internal enquiry in respect of the procedure followed for dematerialisation in the particular case. The Police Authority had investigated the matter and questioned their employees at their office as well as at the police station from time to time but no adverse report was made either against their company or against the employees. They thought it prudent also to enquire with the Bank about the authentication of the attestation of the signature of Ms. M. Vimala as a part of their internal enquiry but no response was received from the bank. The email was sent to the Bank to confirm whether the attestation was done by the bank.*
b. *With regard to checking of genuinity of the Authorized Signatory of the Company on the share certificate, the Noticee has submitted that since the public issue of Jay Bharat Maruti Ltd. in 1988 various personnel of the Company were authorized from time to time for signing the certificates but no such list is provided by them. Moreover, such checking of authorized signatory has never been mandated by any Statute.*
c. *Although the DP denied earlier that they had not sent the KYC documents along with the DRF, at the time of hearing the representative of the DP could not confirm the same and asked for time to check it. In this connection please also note that KYC documents are not required by the RTA at the time of dematerialization but the DPs in many occasions send the same with the DRF as received from the shareholders and the representative of the DP had also accepted the same during the hearing.*
d. *There is no provision in the prevailing Bye Laws and Business Rules of Depositories for keeping the scanned copies of dematerialized share certificates. They had sent the details of all the share certificates dematerialized during a quarter to the Company with a certificate that those certificates have been mutilated.*

9. Further, the submission made by DP post-hearing vide email dated December 08, 2022 was as under:

a. *One Mrs. M. Vimala had approached them for opening a Trading and Demat Account and requisite KYC documents viz PAN, Aadhaar Card etc was submitted by her. Post verification, the beneficial Owner (BO) account was opened on August 29, 2018 and Client ID: 24379646 was allotted to her.*

b. *Thereafter, Mrs. M. Vimala submitted the DRF along with four original physical share certificates of Jay Bharat Maruti Limited holding 88,800 shares bearing details as under which was received by KSL on September 05, 2018:*

Sr. No.	***Folio No.***	***Certificate No.***	***Quantity***	***Distinctive No. from***	***Distinctive No. to***
1	*00026105*	*1351*	*24400*	*4908601*	*4933000*
2	*00026105*	*3104*	*24400*	*15672601*	*15697000*
3	*00026771*	*1425*	*20000*	*4984201*	*5004200*
4	*00026771*	*3164*	*20000*	*15739001*	*15759000*

(The DP annexed copies of the documents sent by it to the Noticee i.e. DRF and share certificates).

c. *They had followed all processes as prescribed by the regulator and submitted the collected documents to the Noticee for dematerialization of the said physical shares. Only in case of rejections, the RTA agent send back original documents with objection memo. However, in this case no objection memo was received. Since no objection was observed by the Noticee, dematerialized securities which were then credited to the Client ID: 24379646 held by Mrs. M. Vimala on October 08, 2018.*

10. The issues that arise for consideration in the present case are:

I. Whether the Noticee violated the Clauses 1, 2, 3, 13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 RTA Regulations

II. If yes, whether the violations would attract monetary penalty on the Noticee under the provisions of the Section 15HB of the SEBI Act, 1992?

III. If yes, what should be the quantum of monetary penalty?

11. The relevant extracts of the provisions of law, allegedly violated by the Noticee are mentioned as under:

RTA Regulations

Code of conduct as per Schedule III prescribed under Regulation 13

1. A Registrar to an Issue and Share Transfer Agent shall maintain high standards of integrity in the conduct of its business.

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

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

13. A Registrar to an Issue and Share Transfer Agent shall not divulge to other clients, press or any other person any confidential information about its clients which has come to its knowledge except with the approval / authorisation of the clients or when it is required to disclose the information under any law for the time being in force.

25. A Registrar to an Issue and Share Transfer Agent shall ensure that it has satisfactory internal control procedures in place as well as adequate financial and operational capabilities which can be reasonably expected to take care of any losses arising due to theft, fraud and other dishonest acts, professional misconduct or omissions.

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.

28. A Registrar to an Issue and Share Transfer Agent shall ensure that good corporate policies and corporate governance are in place.

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

Regulation 13 of the RTA Regulations :

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.

Issue I: **Whether the Noticee violated the Clauses 1, 2, 3, 13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the RTA Regulations**

12. It has been alleged in the SCN that the fraud in the matter was committed in connivance with the Noticee and that the Noticee had failed to exercise due diligence, ensure proper care and exercise independent professional judgement while processing the demat request and therefore is alleged to have violated Clauses 1, 2, 3, 13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the RTA Regulations.

13. From the material place on record, I note that the Noticee in its reply to the SCN has denied the allegation that two of its official staff having made contradictory statements with regard to the signature of the complainant, Ms. M Vimala. I note that during a meeting held in SEBI Delhi Office, Shri Subodh Vichare, the Director of the Noticee submitted that the signature of the shareholder on the DRF was similar to the signature recorded with the Company/RTA, while a staff member of the Noticee, Mr. Suresh Kumar, who had verified the signature on DRF while processing of the demat request, had during the meeting with the SEBI officials and vide letter dated November 09, 2021 submitted that flow of signature was slightly altered and hence he had marked a cross on DRF. Thus I note that the Director and the staff member of the Noticee were not on the same page with regard to the verification of the signature. I am of the view that verification of the signature of the shareholder is a very important part of the

process of dematerialization of shares. However, in the instant case I note that the difference in the opinion of the Director and staff member remained unreconciled and the process of dematerialization proceeded without further check in the matter. The Director should have taken the staff member's remark on the signature, seriously and looked into the matter. In my opinion, the staff member's remark on the signature was a red flag and should have been looked into with diligence & proper care.

14. I note that the aforesaid clauses of the Code of Conduct in the RTA Regulations stipulates that the Registrar to an Issue and Share Transfer Agent shall maintain high standards of integrity and at all times shall exercise due diligence, ensure proper care and exercise independent professional judgment. However, the Noticee failed to comply with the Code of Conduct while executing its duties. While forgery is a common mode of manipulation, I note that the Noticee ought to have been more cautious in its duties to ensure that the shares of rightful shareholders do not fall into the hands of fraudsters. Hence the contention of the Noticee that it did not make contradictory statements is not acceptable.

15. I note that it was alleged that there were several differences observed on comparison with the original share certificate lying with the complainant and the one submitted along with the DRF, which were as under:

Allegations	**Noticee**	**Conclusion**
Signature of authorised signatory in the forged certificates did not match with the original share certificates	There is no clause in the guidelines that RTAs should match the signature of the authorised signatory who sign the certificate on behalf of the Issuer as there may be many signatories authorised by the Issuer for signing the share certificates	I note several instances of fraudulent demat of shares are being reported and Noticee itself was party to some of them. The Noticee ought to have taken proper care that no loss to actual shareholders arises due to theft, fraud and other dishonest acts

	from time to time for various issues and RTAs are never required to keep records of the Authorised signatories	and professional misconduct or omissions, while performing its duties. Moreover, I also note that the Noticee in its reply to the SCN has made a remark that "*it may be possible that the fraudster knows the actual shareholder and obtained the details in such a manner that the shareholder could not know*" from which is it very evident that the Noticee is aware of the possibilities of frauds happening and hence the Noticee should have been more cautious. I note there was slight mismatch in the name of the complainant which could have been reason for the Noticee to reject the Demat request sent by the imposter.
Dates on forged certificate no. 3104 and 3164 did not match with original share certificates.	There is no instruction in the guidelines that date of the issue of the certificates are required to be checked at the time of scrutiny of share certificates surrendered for dematerialisation	
Certain reference no. was appearing on the share certificate submitted in the complaint by the Noticee at the time of issue of such certificates while was not appearing on the forged certificates	No response	
Name of shareholder on the forged certificates was wrongly mentioned as M. VIMALA instead of M VIMALA as appearing on the original share certificate	That there is no difference in the name of the shareholder as per records of Jay Bharat Maruti Limited maintained by them and as per the DRF along with documents received for Demat.	

	Name of the shareholder, Folio No., Share Certificate Nos., Distinctive Nos mentioned on share certificates are tallied with the records of Jay Bharat Maruti, maintained by them	
All the original share certificates have adhesive stamp but on the forged certificates no such stamps appeared.	As regards adhesive stamps, in many physical certificates adhesive stamps are detached from them as they become old in passage of time and it is a common practice that RTAs affix Rs. 1/- to avoid unnecessary harassment to a shareholder.	

<u>Documents sent along with DRF by DP to the Noticee</u>

16. I note that the Noticee was alleged to have made contrary statements with regard to documents forwarded by the DP to the Noticee along with the DRF, to that made by the DP. While the DP had submitted that no document pertaining to signature attestation by bank was received by it with the documents submitted by the imposter/s for dematerialisation of securities, the Noticee has submitted that signature attestation from bank, PAN and Aadhaar were part of the documents submitted towards demat request. During the hearing for which the DP was also advised to attend, the Noticee was questioned as to what were the documents received by it from the DP and why an email dated September 10, 2021(after three

years of actual processing of demat request) was sent to the bank to enquire about the authentication of the attestation of the signature of M. Vimala. The Noticee submitted that they had received the DRF with attached Share Certificates in original along with self-attested copy of PAN Card, signature attested by IOB with original cancelled cheque of the shareholder. I note that it is a normal practice in Banks that at the time of certifying any signature or issuing any letter, employee signing it, put his /her staff identification number, which was missing in the instant case and this was another red flag for the Noticee to act upon. I also note that the Noticee has in its reply submitted that RTA is required to check only the DRF and share certificate details and that RTAs can ignore those documents which are unnecessarily attached with any DRF as the same are not required at all for the purpose of demat. With regard to Noticee's email in the year 2021 to IOB, here Noticee has informed that since police authority was also investigating the matter, they later thought it prudent to enquire with the bank about the authentication of the attestation of the signature of Ms. M. Vimala. From the above, I am of the opinion, that had the Noticee been diligent in its duties, it would have approached the bank for authentication of the attestation of the signature at the time when it was received, as claimed by it, along with the DRF and not at a later stage, after the damage to the rightful shareholder was done. I also note that the documents submitted towards attestation of signature by the bank did not mention employee number of the bank employee who had signed the letter and that the Noticee did not take any objection to the same but proceeded with demating the shares. Further, in the reply submitted by the DP, post-hearing, the DP made no mention of the document for signature attestation by bank while submitting the list of documents forwarded by it to the Noticee. The fact that the document of attestation received along with the DRF should have been another red flag raised to the Noticee as to why the same was received along with the demat request, which is normally not a document submitted at the stage of making a request for demat of shares. During hearing Noticee was questioned why did they go ahead and processed the demat request despite the signature mismatch being flagged by the staff member. On this, AR stated that they had cross checked the signature of the complainant with that of signature appearing on the purported letter issued by IOB and based on that they had processed the demat request. If documents other than DRF form and Original share certificates are not be considered, then why Noticee relied upon on the signature validated by the purported letter issued by IOB. Here I note that first, Noticee has feigned that there were no signature mismatch and then upon insisting and showing the statement of its own staff, Noticee took support of the same documents which it initially informed were not relied upon or were extra or of no use. Here, I note that there were two red flags before the Noticee , one Bank signature endorsement document not a compulsory document was attached with Demat Request form and secondly mismatch in the signature of the Complainant. Noticee ought to have exercised diligence by enquiring further in the matter and take steps to ensure demat request is received from the bonafide shareholder only. However, in this case I note Noticee did not take extra care in its operations which led to the transfer of shares from a bonafide shareholder to an imposter, fraudulently.

Mismatches

17. From the material, before me, I also note that the Noticee is alleged to have processed the demat request inspite of the father's name of the shareholder provided by the imposter/s with the demat request did not match with either of the names available in the Noticee's records. While the father's name of the shareholder was "A R Halayasam", the name of the father was "A R Hayasalam" in the copy of the shareholder's PAN card. I note that the Noticee has in its reply submitted that PAN Card and Aadhar Card for processing of demat request are not mandatory and verification of father/husband name of shareholder is not mandatory as per the depository guidelines. Noticee had the option to cross verify the details as available in the PAN/ Aadhar of the shareholders.

18. I note that the Noticee has denied the allegation levelled against it that "dematerialisation of shares was approved without original share certificates" is not correct. The Noticee has submitted the details of the documents sent along with the DRF which they received on 15/9/2018 and stated that they followed the procedure of dematerialisation which is the same for both the depositories i.e. NSDL and CDSL and that the documents sent with the DRF was scrutinised by them and found to be in order. However, I am not inclined to accept the contention

of the Noticee as there were sufficient red flags raised during the processing of the demat request which were ignored by the Noticee. Therefore, the Noticee has not complied with the said clauses of the Code of Conduct.

19. Further, I note that a similar SCORES (SEBI Online Complaint Redressal System) complaint was lodged by one Mr. Rajesh Agarwal, on behalf of Bindal Cotton Mills Pvt. Ltd (BCMPL) against the Noticee for fraudulent demat of shares of JBM. An email dated December 13, 2022 (in addition to the SCN) was therefore sent by SEBI to the Noticee to provide the action taken on the said complaint. Vide email dated December 19, 2022, the Noticee replied that "…*the demat request was received from the DP 4A Securities Ltd. and was confirmed by MCSSTA in accordance with the prevailing norms on the basis of the documents received from the concerned DP 4A Securities Ltd…..".* I therefore observe that the Noticee despite being in knowledge of the fraud being committed by imposters in the JBM shares, the Noticee failed to do due diligence in another case thereafter, while processing the demat request by an imposter, for the shares of JBM (i.e. the same company as in the instant case), whose rightful shareholder was BCMPL. Thus, had the Noticee been diligent and taken care while verifying the documents sent by the DP 4A Securities Ltd., the fraud where the modus operandi of the imposter/fraudster appears to be the same as in the instant case, would not have taken place again. This lackadaisical behaviour of the Noticee is therefore a risk to the interests of innocent shareholders/investors.

20. Thus in view of all the above observations, I am not inclined to accept the contentions made of the Noticee as it is very clear that the Noticee has failed to exercise independent professional judgment in carrying out its duties as a RTA and therefore violation of Clauses 1, 2, 3, 13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of RTA Regulations by the Noticee stands established. The acts such as that of the Noticee can put the interest of the investors in jeopardy and can go against SEBI's duty to promote the interest of investors and to promote the development of and to regulate the securities market, for which SEBI formulates regulations for the benefit of investors and development of the securities market.

21. Noticee has reiterated that it had followed all the procedures laid down by Depositories in case of Demat Request Processing however I note there were enough red flags for the Noticee to act upon and moreover there are various methods to cross check the authenticity of DRF requests received along with physical share certificates. It is observed that physical share certificates come with embedded risk of impersonation by fraudsters and hence SEBI registered Intermediary is expected to be cautious and diligent enough to keep fraudulent activities at the bay as much as possible. In the matter I hold Noticee accountable as it did not act upon prudently and there is a similar instance in the same scrip and same modus operandi followed suggests that Noticee has not enhanced its internal control systems and apparently fraudsters have understood the lacunae in the process being adopted by the Noticee and hence they are able to transfer shares of bonafide shareholders in their account fraudulently.

Issue II**: If yes, whether the violations would attract monetary penalty on the Noticee under the provisions of the Section 15HB of the SEBI Act, 1992?**

22. It is established that the Noticee by failing to maintain high standard of integrity, failing to fulfil its obligations in a prompt, ethical and professional manner and failing to exercise of due diligence, ensure proper care and exercise independent professional judgment, by failing to have satisfactory internal control procedures in place, failing to develop internal code of conduct and laying down standards of appropriate have violated Clauses 1, 2, 3, 13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 RTA Regulations.

23. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held "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 have made by the defaulter with guilty intention or not.''

24. Therefore, in light of the aforesaid violations as established and placing reliance on the aforementioned decision of Hon'ble Supreme Court, I find that the above violations by Noticee would attract monetary penalty under Section 15HB of SEBI Act, 1992. The text of Section 15HB of SEBI Act, 1992 is reproduced below:

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

ISSUE III: **If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?**

25. 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

Factors to be taken into account by the adjudicating officer:

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.]

26. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. However, I note that in recent past, there have been various orders passed by SEBI against the Noticee, as mentioned below:

S N	Date of Order	Violation **Orders passed by SEBI AOs**	Penalty
1	October 31, 2022	For violations of the Code of Conduct under Regulation 13 of the RTA Regulations.	Three lakhs
2	April 29, 2022	For violations of the provisions of RTA Regulations , Depository Participants Regulations 1996, SEBI (Listing obligations and Disclosure Requirements) 2015	Three Lakhs
3	August 24, 2020	Violations of Code of Conduct under Regulation 13 and other provisions of RTA Regulations	Five Lakhs

27. Violation of SEBI Regulations adversely affects the interest of public shareholders. Moreover, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of SEBI Act which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty which should act as a deterrent.

ORDER

28. In view of the above, after considering all the facts and circumstances of the case, the material available on record, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.1,00,000/- (Rupees One lakh only) to be paid by the Noticee in terms of Section 15HB of the SEBI Act, 1992 for violation of Clauses 1, 2, 3, 13, 25, 27, 28 and 30 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the RTA Regulations.

29. The said penalty imposed on the Noticee as mentioned above, shall commensurate with the violations committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

30. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in : ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

32. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department- DRA-2), the Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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	

33. 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.

34. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee i.e**. MCS Share Transfer Agent Limited** and also to the Securities and Exchange Board of India.

Date : January 4, 2023 **Sahil Malik**
Place: Mumbai **Adjudicating Officer**