BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO. Order/SS/RK/2023-24/29909]**

UNDER SECTION 15-I OF THE 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

S.No	Name of the Noticee	PAN
1.	Tamilnad Mercantile Bank	AAACT558K

In the matter of "Tamilnad Mercantile Bank"

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI")** had observed certain Non-compliances by Tamilnad Mercantile Bank (hereinafter referred to as the **Noticee/TMB**), a Banker to Issue, registered with SEBI bearing Registration No. INBI00001276 since June 14, 2023 wherein it was observed that the said Noticee had been carrying out activities as a Self Certified Syndicate Bank (SCSB) without obtaining SEBI's registration as a Banker to Issue thereby violating provisions of the SEBI Act, 1992 and SEBI (Banker to an Issue) Regulations, 1994 (hereinafter referred to as the **"Banker to an Issue Regulations")**

APPOINTMENT OF ADJUDICATING OFFICER

2. In this regard, SEBI initiated Adjudication Proceedings against the Noticee and appointed Shri Santosh Kumar Sharma as the Adjudicating Officer (AO) vide order dated September 12, 2023, communicated vide communique dated November 06, 2023 under Section 15-I of the SEBI Act, 1992 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 Section 15HB of the SEBI Act, 1992 for the aforesaid violation alleged to have been committed by the Noticee as specified in the Show Cause Notice (SCN).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. An SCN No. AO/SK/VP/45576/1/2023 dated November 13, 2023 was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against it and why penalty, if any, under Section 15HB of the SEBI Act, be not imposed upon it.

4. The said SCN was issued to the Noticee via SPAD and vide email dated November 13, 2023, which were duly delivered. The proof of service is on record. In response, the Noticee vide its letter dated November 29, 2023 received through email dated November 28, 2023 submitted its reply to the SCN. Further, Noticee vide its said email requested to be granted an opportunity of hearing on November 29, 2023. In this regard, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on November 29, 2023 vide Hearing Notice dated November 28, 2023

served through email. The said hearing was attended to by employee of the Noticee in the echelon of the Deputy General Manager (DGM). The said employee reiterated the submissions made vide its letter dated November 29, 2023. Further, Noticee made additional submission in the matter vide email dated December 06, 2023. The reply submitted by the said Noticee vide its letter dated November 29, 2023 and December 06, 2023 is mentioned as under:

- *As per the Certificate of Registration issued by Securities and Exchange Board of India (SEBI) dated 22nd December 1994, our Bank was permitted to do transactions under "Banker to an Issue" privilege, for the period from 16th November 1994 to 15th November 1997. Our registration code for the Banker to an Issue (BTI) is INBI00000013. Subsequently, the BTI certificate was renewed once in three years, till the validity period up to 28th August 2013. Afterwards, we have inadvertently not renewed the BTI registration certificate.*
- *During January 2023, our Bank had applied for grant of Bank's UPI handle which could be used as a payment mechanism during public and rights issue. For considering the request, we were asked to submit the BTI registration details on 09.01.2023. We informed that we did not have our BTI registration renewed. Subsequently, on 13.01.2023, we were informed by SEBI that the Bank cannot be Self-Certified Syndicate Bank (SCSB), unless we are registered as a Banker to an issue and also directed us to apply for the certificate of registration in the capacity of BTI.*
- *We immediately started the process of renewing the BTI registration and paid the application fee of Rs.50,000/- on 19.01.2023 and applied for the registration. SEBI acknowledged our application on 24.01.2023.*

Subsequently additional documents and declarations were sought by SEBI on 25.01.2023. Further,were instructed to remit the renewal fee for the entire period starting from 28.08.2013. We received the confirmation mail from SEBI for the renewal of the certification as BTI with registration No.INBI00001276 with effect from 14.06.2023.

- *Now, we have paid the fee for the entire break period of renewal from 28.08.2013 with retrospective effect for the period of 12 years in 4 blocks valid until 28.08.2025 we have also paid the registration fee to continue as BTI. We have now complied with all other guidelines by SEBI for acting as SCSB to process the ASBA applications*
- *We have handled 1069 number of ASBA functions during the period from 29.08.2013 to 13.06.2023, other than that we have not carried out any of the Merchant Banking activities during that period.*
- *Considering our unblemished conduct with regard to the depository participant operations for ASBA applications, we request your good office to condone our omission in renewal of the BTI certificate as a special case.*
- *The bank has not carried out any business as Banker to an Issue during the period from 29.08.2013 to 13.06.2023.*
- *Our banks' name is appearing name is appearing in the list of SCSBs in SEBI website and that it had been offering ASBA services to its customers as the same was being allowed by SEBI in the absence of a mechanism to link, providing ASBA services with BTI status of an SCSB.*
- *Once the bank came to know about the non-payment of renewal fee for BTI, we have paid the pending renewal fees since 2013 of Rs 36 Lacs and*

applicable Registration fee of Rs 20 lacs during the month of March 2023 and July 2023

5. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply submitted by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully perused the submissions made by the Noticee and documents available on record, and the issues that arise for consideration in the present case are:

ISSSUE I: Whether Noticee has violated the provisions of Section 12(1) of the SEBI Act and Regulation 3(1) of Banker to an Issue Regulations?

ISSUE II: Does the violation, if any, on the part of the Noticee attract penalty under Section 15HB of the SEBI Act?

ISSUE III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

7. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act and Banker to an Issue Regulations alleged to have been violated by the Noticee. The same are reproduced below:

<u>Section 12(1) of SEBI Act</u>

Registration of stock brokers, sub-brokers, share transfer agents, etc

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) *No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:*

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained *from the Board in accordance with the regulations providing for such registration.*

Provision of SEBI (Banker to an Issue) Regulations, 1994

Application for grant of certificate of [113][***]registration].

3.(1) *An application [214][***]for grant of a certificate [315][of [416][***]registration]as banker to an issue shall be made to the Board in Form A.*

(1A) *An application for registration made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Schedule II*.

ISSUE I: Whether Noticee has violated the provisions of Section 12(1) of the SEBI Act and Regulation 3(1) of Banker to an Issue Regulations?

8. In this regard, I note that SEBI had received emails dated January 2, 2023, and January 9, 2023, from the Noticee wherein the said Noticee had applied for a grant of the Bank's UPI handle, which could be used as a payment mechanism during public and rights issues.

9. Further, I note from the material available on record that on perusal of the above emails of the Noticee, it was observed that the Noticee was registered with SEBI as a Depository Participant (DP) and was not registered as a Banker to an Issue (BTI). Accordingly, SEBI vide email dated January 9, 2023 had sought details pertaining to BTI registration from the Noticee. Subsequently, vide email dated January 12,

2023, the Noticee had informed that it was registered as a Self-Certified Syndicate Bank (SCSB) and it was not registered as a BTI.

10. Further, I note that the Noticee vide email dated January 24, 2023, had inter alia informed SEBI as under:

    i. The validity of the Certificate of Registration (CoR) of the Noticee in the capacity of BTI was from August 29, 2010, to August 28, 2013, and it had not applied for the renewal of the BTI certificate after the due date.
    ii. The Noticee is willing to pay the renewal fees for the entire period starting from August 28, 2013, and has requested SEBI to condone the non-compliance for the said period.
    iii. The Noticee has already applied for CoR as a BTI with SEBI.

11. In this regard, Noticee submitted that as per the Certificate of Registration issued by SEBI dated 22nd December 1994, it was permitted to do transactions under "Banker to an Issue" for the period from 16th November 1994 to 15th November 1997 and its registration code for the Banker to an Issue (BTI) was INBI00000013. Subsequently, the BTI certificate was renewed once in three years, till the validity period up to 28th August 2013. Afterwards, it had inadvertently not renewed the BTI registration certificate.

12. It also submitted that it had not carried out any activity of Merchant Banking during the period from 29.08.2013 to 13.06.2023. It further submitted that its name was

appearing in the list of SCSBs on SEBI website and that it had been offering ASBA services to its customers as the same was being allowed by SEBI in the absence of a mechanism to link, providing ASBA services with BTI status of an SCSB. Noticee, additionally submitted that it came to know about the non-payment of renewal fee for BTI and that it had paid the pending renewal fees since 2013 of Rs 36 Lacs and applicable Registration fee of Rs 20 lacs during the month of March 2023 and July 2023.

13. With regard to the aforesaid, I note from the Noticee's submission that its name was appearing in the list of SCSBs on SEBI website and was accepting application from its clients for ASBA whereas SEBI raised no questions/query till date. Further, I note that it was the Noticee in the instant case that it had applied for grant of UPI handle to SEBI vide its email dated January 02, 2023 and January 09, 2023 wherein it was observed by SEBI for the first time that the Noticee was not registered as BTI. Further, it is pertinent to mention here that the Noticee has paid the Registration fees of Rs 20 lacs as well as the Renewal fees of Rs 36 Lacs for the period from 2013 to April 18, 2023, with retrospective effect for the period of 12 years which shows that SEBI has taken the fees for a fresh Registration & renewal, i.e.for the period wherein it was observed by SEBI that the Noticee was unregistered. Thus, aforesaid acknowledgement of fees by SEBI for renewal from 2013 to April 18, 2023 validates/regularizes the BTI registration for the said period. Further, Noticee's name should not have been displayed on the SEBI website for the period from 2013 till the period it was unregistered as BTI.

14. In view of the aforesaid as brought out in the preceding paragraphs I find that the Noticee is not in violation of the provisions of Section 12(1) of the SEBI Act and Regulation 3(1) of Banker to an Issue Regulations.

15. Since, violations are not established, ISSUE-II and III do not require any consideration.

ORDER

16. Accordingly, the adjudication proceedings initiated against the Noticee vide the SCN dated November 13, 2023 stand disposed of without any penalty.

17. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: December 29, 2023 **SANTOSH KUMAR SHARMA**

Place: Mumbai **ADJUDICATING OFFICER**